

Review Note Assignment for Module C 2004

Changing nature of Refugee Situation in South Asia.

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No region is spared the agony of the tragic experiences of refugees, comprising men, women and children of armed conflict, political, economic, and environmental or intolerance. They leave behind them their properties, possessions, jobs, social relations, and organizational structure and are forced into exile, looking for food, for safety with a hope of returning to their motherland in future.

The life of refugees in exile is as bad as or even worse than the countries from which they have fled. They are deprived of opportunities to work or farm their own land; they depend on international charity for survival. Refugees are often separated from their families, exposed to the danger of armed attack, subject to many forms of exploitation and degradation, and haunted by the constant fear of expulsion. The differences in culture and climate, depression, often-profound alienation and unemployment have devastating effects.

The detachment of the people (Refugee) from their home, land, property, possessions, jobs, social relations and so on could have crush human dignity, reducing the human capacity for hope and regeneration. Often, under such conditions, refugee might loose control over their lives and future and the basic right to be treated with human dignity and respect. The initial objective should be to generate volunteer service among the refugee community through participatory approach to refugees (of refugees, by refugees and for refugees) can reverse this trend.

The citizens of a nation are branded by the states policy when they are forced to leave their original homestead. Refugees are termed Economic refugees, Migrant refugees, Internally Displace persons, rejected people and so on. The background and the conflict that compelled these citizens to become refugees are different but the pain and the difficulty they face in a foreign land would be same.

The UNHCR, a globally accepted UN agency, response to the request of the host country to assist the refugees by providing International protection and material assistance. The protection and material assistance are interrelated "UNHCR can only offer effective legal protection if a person's basic needs - shelter, food, water, sanitation and medical care- are also met". All the assistance from UNHCR to the refugees are subject to the permission of the host government.

Around 52000 Chakma and Hajong tribes took refuge in India due to the construction of Kapatai dam in the Chittagong Hill tracts in Bangladesh. Similarly the Mangla Dam construction at Mirpur district of Pakistan controlled Kashmir had displaced around 30000 people. The Independence of India in 1947 and the separation of Pakistan have lead to migration of around 15 million people.

The Indian Muslims migrated to Pakistan and the Pakistani Hindus moved to India. The people of Indian origins, nearly 5 lakhs, living in Burma since early 20th century were compelled to leave Burma after its independence in 1948. Similarly around 9 lakhs Tamil estate workers, who had been to the island country in 1830 were rendered homeless by Sri Lanka after its independence. Nepal hosts more than 1 lakh Bhutanese Refugees since 1992, who had been the victims of state terrorism and discriminatory Law of the land. "Since the fall of the Taliban regime in late 2001, more than 2.3 million refugees have returned to Afghanistan. However, a similar number of exiles remain in Pakistan and Iran and continue to constitute the largest single group anywhere in the world 'of concern' to UNHCR.

Bangladesh host about 238000 unwanted Biharis, who are stateless, and around 47000 Rohingya-Burmese refugees await "imposed repatriation". Unfortunately they are again fleeing from Myanmar. The truce between the Sri Lankan government forces and the Tamil Tiger rebels is one of the longest running conflicts that had paved way for peace in 2002 by the Norwegian mediator. Around 1000 refugees from India and about 3 lakhs Internally Displaced people have gone back to their villages and towns. Still more than 5 lakhs civilians remain away from their homestead. India hosts, formally and informally, about 51000 Chakma, 56000 Sri Lankan, 10000 Bhutanese and thousands of Burmese and Tibetan refugees.

The long stay of the refugees either in the camps or in a specified area generates socio-economic problem, political competition, frustration and generation gap on the knowledge of the land of origin. The social values and norms become fragile. The people living in congested huts of the refugee camps make everything open secrets. The desire for personal identity and community leadership enhance political competition and division. The inability to acquire basic requirements and unemployment generate frustration and lead to antisocial activity. The frustrating youths are prone to the result oriented action packed programmes and activities. The love and respect for the country and the leaders are overcome by the attitude of revenge and destruction.

Globally, the process of peaceful resolution is talked but the peace brokers are attracted to the bomb blasts and killings. The Sri Lankan conflicts, Afghan suicide bombs overshadow the peaceful struggle of Tibetans, Bhutanese, Burmese, Chakmas etc. Though the peaceful solutions are appreciated and talked of in the seminars, the refugees wish to have result-oriented action plan for a solution.

The refugees wish to have settlement in the country with their identity as a citizen of a nation. They are eager to have their own house to live and die peacefully.

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Role of UNHCR in South Asia: Achievements & Limitations

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The problem of refugees ever since its emergence has continued to be a singularly disturbing one in the innumerable challenges and predicaments that it had posed globally.

UNHCR, the international agency with the mandate to provide international protection and to seek durable solutions for the refugees, announced a decade ago, 'the subject of refugees and displaced people is high on the list of international concern not only because of its humanitarian concerns today but also because of its impact on peace, security and stability' (Sadako Ogata, erstwhile United Nations High Commissioner for Refugees, 1993).

Till date, the only international regime having near universal effect pertaining to refugees is the 1951 Refugee Convention and its 1967 Protocol on the Status of Refugees drafted by the UNHCR.

UNHCR in South Asia

However, none of the countries of South Asia have ratified either, though the region hosts the largest number of refugees in the world. Historically, South Asia has witnessed substantial intra-regional movement and dislocation of regional groups fleeing ethnic or religious persecution and political instability. The empirical experience of the region shows countries can be both refugee generating and refugee hosting.

The 1951 Convention has been criticized for its inadequacy to deal with the realities of South Asia's refugee and forced migration issues. Basically, when the Convention came into force, the refugees of concern to its drafters were usually moving from a European country to another Western state whereas now the vast majority of contemporary refugees originate in and are protected by the poor countries of the South Asia. Consequently, the Convention requires to be modified according to the area specific refugee needs of the South Asian countries. The need can be best demonstrated by the single fact that in India out of the more than 300,000 refugees, only 18,500 have been recognized (and hence received assistance and protection) by UNHCR (according to the U.S. Committee for Refugees 1998 Country Report on India). Also, UNHCR considered all Afghans in Pakistan to be prima facie refugees, but had individually recognized as refugees only 4,592 Afghans, mostly persons seeking resettlement in countries outside the region. This discrepancy arose due to the limited criteria in the Convention by which a person can be recognized as a refugee.

While addressing the inadequacy of the Convention definition and the conceptual gaps therein, it must be further borne in mind that it makes no provision for the Internally Displaced Persons (IDPs).

Thus the UNHCR has failed to accommodate the changing nature of the refugee phenomenon since the enactment of the Convention. The contemporary mandate of universal refugee protection obviously encompasses a refugee problem vastly different in scope and nature. The growing complexity of the inextricable reasons behind a mass migration has rendered it difficult to distinguish between a person who should be rightfully assigned the status of a refugee and one who should not be. This factor necessitates application of sound and effective parameters for refugee status determination. This dilemma is more pronounced in the case of the SAARC countries where the plight of the growing millions of refugees is swamping the resources of their host countries. All of the countries involved suffer from overpopulation and extreme poverty. It can be correctly observed that the UNHCR is not sensitive enough to the refugee problems of the developing world. Neither did the UN convention contain any specific reference to the responsibilities of the country of origin in what can be counted as a serious absence of insight into the problem.

However, it has not been easy for UNHCR either. Non-accession to the United Nations Convention on the Status of Refugees of 1951 and its Additional Protocol of 1967 by the South Asian countries has definitely weakened and limited the role of UNHCR in those countries. Without any legal protection against expulsions, the refugees are treated as illegal immigrants and not as victims of persecution. As a result, the UNHCR has not been able to provide effective and meaningful protection to most refugees in the region. As Wei Meng Lim-Kabaa, Deputy Chief of Mission, UNHCR, says: "Protection of refugees can

only be offered by the government. We are only an intervening body. Lack of national legislation makes it difficult for us to function, especially when we come across cases of resettlement. There is no effective alternative to a law for the refugees." Nevertheless, UNHCR has definitely provided protection under the principle of non-refoulement to certain groups, for instance, the Afghan, Iranian, Somali, Sudanese and Burmese refugees in India. In India, it also provided assistance to the Tibetan refugees through the league of Red Cross Societies. In Nepal, the Bhutanese refugees received considerable support from them. Most of the refugees, 100,780, live in seven UNHCR-assisted camps in the Jhapa and Morang districts of eastern Nepal. UNHCR had been able to help repatriate about 2,500 Sri Lankan Tamil refugees in India since mid-2002. It also provided a limited package of assistance to those opting for voluntary repatriation. In Bangladesh, UNHCR assisted 150 refugees, including 83 Somalis and 36 Burmese. UNHCR had assisted 1,381 Tibetans in their journey from Nepal to India. An estimated 22,000 Burmese Rohingya lived in refugee camps in Bangladesh, assisted by the UNHCR. Numerous such examples can be cited. UNHCR further issues refugee certificates, which in absence of government recognition acts as the only tool of redemption.

Thus the UNHCR continues to play important role albeit certain limitations in its functions. It remains the most comprehensive tool for international refugee protection. But a few overriding concerns have arose regarding the omission of any criteria to recognize vulnerable groups among refugees like the women, the children and the aged. It makes no separate specification for these sections. In September 2003, Bhutanese refugee women in Nepal encountered gender-based violence and systematic discrimination in access to aid according to the Human Rights Watch. It examined the uneven response of UNHCR and the government of Nepal to rape, domestic violence, sexual and physical assault, and trafficking of girls and women from refugee camps. Hence there is a particular requirement for drafting special provision which is sensitive for these groups, in the dearth of which it cannot serve as a complete instrument which addresses all the fractions among the refugees.

Further in more cases than one, it has failed to adhere to its neutral and non-political image. Neither did it sufficiently act as a proper knowledge base and information dissemination centre. The above two allegations can be best exemplified in the case of the refugees fleeing from Pakistan and residing in Rajasthan. In 1971, during the Indo-Pak conflict 90,000 people crossed the border (in face of severe religious persecution) and were accommodated in Refugee camps. On a personal note, an effort was made to bring this group under their notice. They promptly refused any involvement in the matter clearly stating the reason to be the relations with Pakistan (given an office in Islamabad) which might be affected in the circumstances. They also do not have any information regarding this group and have chosen to ignore their presence altogether.

To conclude, the Convention was drafted with a supremely noble reason of providing hope for the refugees living in abject despair and distress. But it has not made much progress in the direction of seeking permanent solutions for refugees as included in their mandate. The dynamics and sheer enormity of the problem requires a stronger device. To fully understand the meaning of the concept "refugee", it has to be situated and reconceptualised in the South Asian context and the connotation of the term in the Convention has to be broadened to accommodate all present day refugees. South Asian countries also have to reach consensus regarding the UNHCR's role so that the relevance and purpose of the agency is completely served. Looking at the geopolitical, socio-economic and political realities of the present day, it can be remarked that challenges facing UNHCR in coming times would increase if it wants to work according to its mandate. Given the spread and complexity of the refugee problem, UNHCR must attempt to resolve the situation by seeking a dialogue with the countries generating refugees such that the burden of responsibility can be shared. It can be also recommended that UNHCR should at least recognize all the South Asian refugee groups, as assistance is often a factor contingent on expendable resources. Then it can really take a step towards the fulfillment of a true protection regime. UNHCR, International Refugee Law, Domestic Law and Governments and NGOs should all work together to ensure a better tomorrow for the refugees.

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Both Sen and Magluff have attempted to bring to light the need for a more liberal and expanded interpretation of the 1951 Refugees Convention for it to encompass the multitude of modern-day refugee problems that are so unique that they could not have been envisaged by the framers of the Convention. They successfully establish that unless there is a broadening of the mandate of the UNHCR, re-interpretation of the Convention to include protection for the unique nature of movements within and across borders and increased cooperation from refugee receiving countries, the existing protection regime will

only get more ineffective with time. However, they are careful to emphasize on the importance of the Convention as 'the-best-that-we-have' and recommend that all developments in the area of refugee law take place with the Convention as the benchmark of best practices.

Sen in her essay examines the work of the UNHCR in India with special reference to the responses of the Government of India to the interventions it has made till date. While appreciating the work of the UNHCR in India, she also points at the paradox of the ad hoc refugee policy in the country, which curtails its work manifold. In India, the UNHCR provides only de facto protection to its mandate refugees and relies on the tolerance and goodwill of the Indian Government. The UNHCR mandate is only partially recognized by the Government, and mandate refugees have no formal recognition and are subject to the same municipal laws as foreigners. "The lack of a formal status weakens the UNHCR's role in advocacy and intervention for refugee rights," she observes.

This situation will find clones in other South Asian countries where none have acceded to the 1951 Convention or the 1967 Protocol, thus undermining the international legal regime for the protection of refugees. Though the Indian Government proceeds on the assumption that India has a strong humanitarian tradition of hosting refugees which was present even before the drafting of the Convention, lack of accession or development of national or regional refugee legal regimes is a cause of concern. Formal recognition has only been accorded to certain groups of refugees, leaving some groups largely without legal protection. Magluff maintains that this differential treatment of refugees accorded by political ad hocism is a fundamental problem that arguably negates the provisions of non-discrimination in the Convention.

In his essay Magluff argues that the 1951 Convention is too bound up with its unique historical context to be able to adapt and offer solutions to contemporary refugee problems. He points out the definitional deficiencies of the Convention that make it conceptually weak and this dissatisfaction which has led to developments like the Organization of African Unity (OAU) and the Cartagena Declaration that were designed to meet regional exigencies. However, where new realities demand the creation of new principles and approaches, we cannot sacrifice the existing principles of refugee law, which Magluff feels, are already being undermined in our contemporary global landscape.

According to both the authors the 1951 Convention and the 1967 Protocol remain the strongest expressions of international concern and solidarity for persecuted people and contend that it is the reluctance of states in the name of sovereignty that works as a stumbling block for the UNHCR to work in an effective fashion. In this light Sen goes on to illustrate how the UNHCR has worked in an admirable fashion in India and South Asia despite the fact that none of the countries are signatories to the Convention or the Protocol.

The authors, however, don't seem to be even constructively critical of the UNHCR's work in India and South Asia. Sen points out the immense difficulties and restrictions under which the office of the UNHCR in Delhi has to function, but fails to recognize that the local office of the UNHCR is at the moment unable to adequately meet the needs of refugees in New Delhi. In an article published in the Journal of International Affairs, human rights activist Ravi Nair points out how the guidelines for treatment of refugees are flagrantly ignored by the adjudication officers during the interview process.

In the same article Nair observes: "The cardinal problem arises when both the UNHCR and the Government of India (GoI) violate their own standards and principles. While it is possible to bring the GoI under the scrutiny of quasi-judicial bodies like the National Human Rights Commission and the Judiciary, there is no such mechanism to scrutinize the UNHCR. Official rules and procedures have become an excuse to raise the veil of secrecy and to resort to arbitrariness at the expense of the refugees."

In October-November 2003 a point had come where the UNHCR's New Delhi office required security protection – fearing attacks from Burmese Chin refugees it claimed to assist. When the demonstrations turned slightly volatile, the UNHCR actually got them arrested, knowing very well that some of the protestors were asylum seekers and could now be deported. Those arrested were remanded to custody for over two weeks without any intervention by the UNHCR. The Socio-legal Information Centre (SLIC), one of UNHCR's implementing partners responsible for providing legal assistance to refugees also turned a blind eye. It was only when certain other civil society organizations took up the issue that the UNHCR responded. This is just one of the many instances where the UNHCR had violated its own standards with literal impunity. More such instances are documented in 'The State of Refugees under the Protection of UNHCR in New Delhi', a report prepared by the Delhi-based South Asia Human Rights Documentation Centre (SAHRDC).

Sen seems overtly sympathetic towards the UNHCR and the problems it faces in India, rather than critically examining the work of the protection agency to find out whether it actually protects those it claims to. However, her essay provides a comprehensive overview of the history of the UNHCR's work in India and how it has commendably managed to sustain despite the many occasions of non-cooperation from the Indian government. In her conclusion she plainly submits that the "paradoxes of the existing humanitarian order... are a reminder of a much bigger syndrome". She does emphasize on the

development of domestic legislation but ignores to comment on the UNHCR strictly abiding by its own standards and principles.

Magluff on the other hand is more erudite in his conclusion where he urges nations to apply the Convention as liberally as possible, respecting its original spirit and aspirations. In response to the arguments of Euro-centrism of the Convention, raised by India and many other South Asian countries, he convincingly contends: "Third world nations must play an active role in the international system for the protection of refugees so that their interests feature in future approaches." This in turn could be a process of ensuring that the UNHCR functions in a more effective fashion, through the active cooperation of states, taking into consideration the uniqueness of different refugee situations in the Global South.