Human Insecurity: Confronting Displacement and Trafficking

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1. The second half of 2015 witnessed mounting panic in European states as refugees and asylum seekers sought to make their way to safety in Europe. In 2015, some 1,015,078arrived by sea, and nearly 4000 perished in the attempt. Roughly half were from Syria, with around 20 per cent from Afghanistan and 10 per cent from Iraq. While the countries of the European Union have a population totaling 506 million, the initial burden of arrivals fell disproportionately on just two, Greece and Italy, which received over 850,000 and 150,000 persons respectively. Politicians on the far right conjured up the spectacle of an 'invasion' (Khan, 2015).

2. The Syrian refugee crisis is the most numerically substantial in the contemporary world. As of mid-2015, UNHCR was assisting 4,023,972 Syrian refugees, and a further 7,632,500 Syrians were internally displaced.Turkey found itself hosting 1,838,848 Syrian refugees; Lebanon 1,172,388; and Jordan 664,102 (UNHCR, 2015: 23, 17, 18). Yet surviving in these countries, even with UNHCR assistance, is becoming ever more difficult. The outgoing UN High Commissioner for Refugees, António Guterres, made this point forcefully in 2015: 'Mr Guterres said the reasons for the massive movement are easy to find in the teeming refugee camps of Turkey and Jordan. More than 80 per cent of families there are below the local poverty line, and only half of the children are in school. The U.N. refugee agency is able to help only about 20 per cent of families in the Jordanian camps – and they receive only $1 per person per day. In September, the World Food Program was forced to drop 229,000 Syrian refugees from its voucher program in Jordan, continuing a series of cuts that Mr. Guterres said provided a trigger for the mass movement toward Europe'('"We need more from everywhere" to help migrants, U.N. refugee commissioner says', *The Washington Post*, 29 October 2015).

3.According to UNHCR's assessment, in 2015 some 1,150,000 refugees were in need of resettlement; but in the same report, UNHCR noted that in 2014, only 73,331 UNHCR resettlement departures occurred.Furthermore, existing resettlement programs do not necessarily target the neediest refugees. For example, in 2014, some 8,395 of the 73,311 refugees resettled were Bhutanese, and while no one could begrudge them the chance for a new life, few informed observers would have seen them as the neediest in the world. The number of Bhutanese resettled in 2014 actually exceeded the numbers of both Syrians (7,021) and Afghans (only 3,331) (UNHCR, 2015b: 10, 48, 51).

4. Understandably fearful of returning to Syria, Afghanistan or Iraq, facing deteriorating living conditions in countries of first asylum, and with little hope of resettlement, refugees are more and more having recourse to the services of people smugglers in order to escape from increasingly intolerable conditions.

5. This reflects two distinct phenomena. One is the reluctance of wealthy Western states to honour their responsibilities under the 1951 *Convention Relating to the Status of Refugees*, and the other is simply the power of market relations.

6. In order to prevent immigration quota restrictions from being used to exclude refugees, as happened shamefully in the 1930s (see Ogilvie and Miller, 2006: 25), the 1951 *Convention* provided in Article 33.1 that 'No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.' The United States Supreme Court in *Sale v. Haitian Centers Council, Inc.* 509 U.S. 155 (1993) undermined this principle by sanctioning turnbacks at sea of vessels carrying asylum seekers (see Dastyari, 2015), and Australia has followed suit, either turning boats carrying asylum seekers back to Indonesia, or despatching the passengers to squalid camps on Nauru and in Papua New Guinea (Gleeson, 2016).

7. Furthermore, the 21st century has witnessed the systematic closure of 'legal' routes of egress for the poor, the vulnerable, and victims of persecution. Visa restrictions play an insidious role. As John Morrison has put it, 'the imposition of visa restrictions on all countries that generate refugees is the most explicit blocking mechanism for asylum flows and it denies most refugees the opportunity for legal migration' (Morrison, 2000: para.3.2.1). Technologies of control have expanded the capacity of agents of rich states to engage in exclusion. One notable example is the phenomenon of carrier sanctions, where airlines can face penalties if they allow a person to board a flight when that person has not been electronically cleared in advance by agencies of the country into which he or she wishes to fly. Yet another way of denying opportunities to victims of persecution to seek protection is simply not to locate diplomatic or consular posts where visas could be lodged in countries where persecution is rife and the number of applications would likely be large. In Matthew J. Gibney's words, 'We have reached the *reductio ad absurdum* of the contemporary paradoxical attitude towards refugees. Western states now acknowledge the rights of refugees but simultaneously criminalize the search for asylum' (Gibney, 2006: 143). To put it bluntly, Western policies have driven refugees into the arms of people smugglers.

8. As the philosopher and political economist Adam Smith put it, it is 'not from the benevolence of the butcher, the brewer or the baker, that we expect our dinner, but from their regard to their own self interest' (Smith, 1873: 6-7). People smugglers in this respect are no different from almost any other suppliers of goods or services in commercial transactions. They also differ in principle from people *traffickers* (see Gallagher and David, 2014). 'Trafficking in persons' is stringently defined in Article 3 (a) of the December 2000 *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, supplementing the *United Nations Convention Against Transnational Organized Crime* as 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of

vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'.In practice, some people smugglers can treat their customers abominably, blurring the distinction at law between smuggling and trafficking. Rohingyas from Myanmar (see Ibrahim, 2016) have been particularly victims in this respect. But in other cases, people smugglers may provide the only realistic escape route for vulnerable people whom the wider world would much prefer to forget.

9.Faced with the arrival on their shores or at their borders of refugees in unwelcome numbers, a number of European states, following Australia's example, have sought to adopt exclusionary policies rationalised in terms of 'saving lives at sea'. These claims should be treated with considerable caution, for two reasons. First, if underlying causes of refugee flight are not confronted, a policy of 'stopping the boats' will not save lives;it will simply cause people to *diesomewhere else*. Second, such 'humane' considerations may be little more than a cover for cynical attempts to win the support of anti-refugee groups at home.In 2009, the opposition Liberal Party of Australia strongly attacked the government over the arrival of boats, claiming that lives were being put at risk. But thanks to Wikileaks, we now know that on 13 November 2009, the US Embassy in Canberra sent a cable to Washington headed 'Australia Searches for Asylum Seeker Solution', and in a section headed 'Opposition smells blood', the author wrote that 'A key Liberal party strategist told us the issue was "fantastic" and "the more boats that come the better"' ('Australia Searches for Asylum Seeker Solution', Cable Reference ID 09CANBERRA1006, U.S Embassy, Canberra, 13 November 2009). The Leader of the Liberal Party at the time was the current Australian Prime Minister, Malcolm Turnbull.

10. Diplomatic engagement holds out some hope of addressing the problems of refugees, but not as much as one might wish. One successful example of cooperation was the 1989 so-called 'Comprehensive Plan of Action', pursuant to which Vietnamese asylum seekers would receive temporary protection in the countries in which they initially arrived, with a commitment from traditional resettlement states to resettle those found to be refugees under the 1951 *Convention* (see Robinson, 1998), and while some questions arose about the quality of status determination procedures (Helton, 1993), the scheme largely succeeded because countries such as the US, Canada and Australia were prepared to do the 'heavy lifting' of resettlement. It is far from clear that such countries would step up in a similar way today. As Astri Suhrke has argued, the Comprehensive Plan of Action was a hegemonic scheme underpinned by the power of the United States (Suhrke, 1998: 413). UNHCR can play a useful role as a 'norm entrepreneur' to encourage collective responses (see Orchard, 2014: 189-200), but asymmetries of power in the international system may well incline richer stays to do no more than the minimum required to salve their consciences, and otherwise endeavour to leave poorer developing countries to carry the bulk of the burden of refugee protection (see Betts, 2009; Maley, 2013; Maley 2016).

11. In mid-2015, UNHCR estimated that there were 14,441,674 refugees worldwide in the legal sense of the term; of these, 1,625,002, or 11.3%, were located in Europe. By contrast 7,853,396 were in Asia and 4,419,845 in AfricaWhen one includes internally displaced persons and others of concern to UNHCR, the figures are even more striking. Of 57,959,702 in total, Europe houses 4,673,766, or 8.1%, whereas Asia houses 28,420,724 and Africa 17,067,308 (UNHCR, 2015a: 19).Europe, in other words, is *not* the centre-stage of a global refugee crisis. The number of refugees who arrived in Europe in 2015 was the equivalent of less than *five days* of growth in world population. Regionally, it is Africa and Asia that are most affected by refugee movements and human displacement.This is not to say that there is not a crisis in Europe *over* refugees. It is however, a multidimensional *political* crisis (Albahari, 2015). It is in some states mainly a domestic problem, with governing parties fearing that they might lose votes to populists on the far right of the political spectrum. For Europe in a corporate sense, it is an intramural crisis in so far as powerful temptations for some states to be 'free riders', always a danger when one is faced with collective action problems, threaten the notion of a cohesive and co-operative Europe. Most fundamentally, it is a crisis of the Westphalian order. It is worth recalling, however, that the Peace of Westphalia of 1648, often seen as giving birth to the modern system of 'sovereign states', was about borders as markers of jurisdiction, not borders as devices of exclusion (Zaiotti, 2011: 47). As countries of ASEAN harvest the benefits of visa-free travel, it may be worth reflecting on whether it might not be timely to return to the original Westphalian conception of statehood, rather than the modern version marked by patrol boats, razor wire, and the export of misery.

References

Albahari, Maurizio (2015).*Crimes of Peace: Mediterranean Migrations at the World's Deadliest Border* (Philadelphia: University of Pennsylvania Press).

Betts, Alexander (2009), *Protection by Persuasion: International Cooperation in the Refugee Regime* (Ithaca: Cornell University Press).

Dastyari, Azadeh (2015) *United States Migrant Interdiction and the Detention of Refugees in Guantánamo Bay* (Cambridge: Cambridge University Press).

Gallagher, Anne T., and Fiona David (2014), *The International Law of Migrant Smuggling* (Cambridge: Cambridge University Press).

Gibney, Matthew J. (2006), '"A Thousand Little Guantanamos": Western States and Measures to Prevent the Arrival of Refugees', in Kate E. Tunstall (ed.), *Displacement, Asylum, Migration: The Oxford Amnesty Lectures 2004* (Oxford: Oxford University Press, 2006) pp.139-169.

Gleeson, Madeline (2016), *Offshore: Behind the Wire on Manus and Nauru* (Sydney: NewSouth Books).

Helton, Arthur C. (1993), 'Refugee Determination under the Comprehensive Plan of Action: Overview and Assessment', *International Journal of Refugee Law*, vol.5 no.4, pp.544-558.

Ibrahim, Azeem (2016), *The Rohingyas: Inside Myanmar's Hidden Genocide* (London: Hurst & Co.).

Khan, Shehab (2015), 'Refugees coming to Europe an "organised invasion", says Czech President Milos Zeman', *The Independent*, 28 December.

Maley, William (2013) 'Refugee Diplomacy', in Andrew F. Cooper, Jorge Heine and Ramesh Thakur (eds), *The Oxford Handbook of Modern Diplomacy* (Oxford: Oxford University Press) pp.675-690.

Maley, William (2016), *What is a Refugee?* (New York: Oxford University Press).

Morrison, John (2000), *The trafficking and smuggling of refugees: the end game in European asylum policy?* (Geneva: Evaluation and Policy Analysis Unit, UNHCR).

Ogilvie, Sarah A., and Scott Miller (2006), *Refuge Denied: The St. Louis Passengers and the Holocaust* (Madison: University of Wisconsin Press).

Orchard, Phil (2014), *A Right to Flee: Refugees, States, and the Construction of International Cooperation* (Cambridge: Cambridge University Press).

Robinson, W. Courtland (1998), *Terms of Refuge: The Indochinese Exodus and the International Response* (London: Zed Books).

Smith, Adam (1873), *An Inquiry into the Nature and Causes of the Wealth of Nations* (London: Nelson & Sons).

Suhrke, Astri (1998), 'Burden-sharing during Refugee Emergencies: The Logic of Collective versus National Action', *Journal of Refugee Studies*, vol.11, no.4, pp.396-415.

UNHCR (2015a),*UNHCR Mid-Year Trends 2015* (Geneva: UNHCR, 2015).

UNHCR (2015b),*Projected Global Resettlement Needs 2016* (Geneva: UNHCR) pp.10, 48.

Zaiotti, Ruben (2011), *Cultures of Border Control: Schengen and the Evolution of European Frontiers* (Chicago: University of Chicago Press).