EDITOR'S CHOICE OF THE MONTH

ISSUE 5 | AUGUST 2024

CENTRUL PENTRU STUDIUL DEZVOLTĂRII INTERNAȚIONALE ȘI MIGRAȚIEI

CENTRE FOR THE STUDY OF INTERNATIONAL DEVELOPMENT AND MIGRATION

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Editor's Choice

The Limits and Constraints of the Refugee Convention

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The Convention

The 1951 Refugee Convention is the only universally applying legal document that establishes the status of refugees. It was written in the context of post WW2 Europe in order to offer a legal status for those forcefully displaced from their homes and ensure a standard set of rights that they are entitled to even across international borders.
Up until today, the Convention was modified only once through the 1976 amendment which removed the geographic and time constraints mentioned in its original format that only recognised as refugees the Europeans who were displaced due to events occurring before 1 January 1951.
This change opened the path for the 1951 Refuge Convention to become a truly universal legal document that is the cornerstone of the way we define and treat refugees today. Even so, an issue arises if we ask ourselves if a document established for the particular circumstances of post WW2 Europe can properly respond to the needs of the present?
According to it, people can be considered refugees only if they have a „well-founded fear of persecution for reasons of **race**, **religion**, **nationality, membership of a particular social group or political opinion".** This definition has an exclusionary character because if people do not fall into one of these five specific categories, they cannot be recognised as refugees and therefore they are not entitled to the protection grated to refugees on the ground of the Convention. Some of the issues that are not named in this definition also happen to be one of the most pregnant in the contemporary struggle of migrants, such as, but not limited to: sexual orientation, disability, foreign aggression, war or generalised violence, natural disasters, environmental degradation and so on, are not considered reasons to ask for and in turn receive international protection.

Alternatives to the Convention

Due to this limited framework for refugee recognition, there have been two regional documents so far that expend the conventionally accepted definition of refuges; the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention) and the 1984 Cartagena Declaration on Refugees which was adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama.
These two legally binding documents defined refugees as „every person who, owing to external aggression, occupation, foreign domination or **events seriously disturbing public order** in either part or the whole of his country of origin or **nationality is compelled to leave his place of habitual residence" in the case of the OAU Convention and as „persons who have fled their country because their lives,** safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other **circumstances which have seriously disturbed public order" in the case of the** Cartagena Convention.
In both interpretations, „public order" is a key term because it does not have one single commonly agreed upon meaning in international law and therefore leaves enough space for interpretations if the need arises for these definitions to encompass a variety of other problems, even unknown ones at the time of the signing of the document.
There are also other alternatives such as complementary protection (also called subsidiary protection in the EU) and temporary protection mechanisms (sometimes called stay arrangements in some national legislative systems) which are in place in order to avoid the issue of refugee recognition altogether but still provide help to those in need of international protection that would not otherwise have received it through the Refugee Convention.
There is no official universal definition or set of rules or procedures set in place for managing the beneficiaries of either of these two systems, as their formulation is up to individual states, not an international endeavour. As a consequence, significant differences can be found between one country and another in terms of which asylum seekers get to stay, as well as the rights that they are entitled to.
Even so, as a general interpretation, IOM describes complementary protection as **„Various mechanisms used by States to regularize the stay of persons falling outside the scope of the 1951 Convention** relating to the Status of Refugees or its 1967 Protocol, **but who are nevertheless in need of international protection".**
Meanwhile, temporary protection, as the name suggests, has a more temporary character, it is provisory and it entails a short-term emergency response to a situation of crisis that causes a significant number of international displaced people.

Regardless of these differences, usually, any type of protection that is not based on the Refugee Convention offers protection for a shorter period of time and grants fewer benefits to those in need than if they were to be recognised as refugees.

Should the Convention be changed?

As we have seen so far, countries have taken it upon themselves to fill the gaps of the Refugee Convention without actually amending it but in doing so they created a fragmented protection system, with many inconsistencies present from the policies implemented in one state to another. This inconsistency is confusing for both policymakers and asylum seekers across the world and the issue can only be solved if some basic guidelines are agreed upon at an international level or by going to the root cause and addressing the gaps present in the Refugee Convention.

When it comes to changing the Convention, surprisingly or not, the majority agrees that it should be done, the problem is that there are diverging opinions in regard to how to do it. There are currently two sides in this argument, each supporting radically different solutions, mostly because they perceive different problems with the Convention. One side thinks that the Convention is too restrictive and, like I argued before, it does not properly account for all the people in need of international protection, while the other thinks that the Convention is not restrictive enough.

Some clear examples in this sense are the intent expressed by certain political actors to withdraw their country from the Refugee Convention, such as the case of the British Democrats in the UK, a far-right ultraconservative but marginal party that has made exiting the Convention one of their main policy pledges and in the case of South Africa, where their own Department of Home Affairs raised such a proposal. Eventually, the proposal was scrapped due to international pressure and in the case of most countries such an extreme party as the British Democrats is unlikely to get in a high enough position of power to implement their stances on migration.

However, the most concerning element that is to be taken into account and one that has a higher chance of concretization is the externalisation of refugee protection through the processing of asylum seekers in third countries. These types of initiatives already took shape in the UK's Rwanda Plan and the Italian government's agreement with Albania where they plan to transfer asylum seekers from their territory abroad, a practice in which so far, 15 other EU countries have also shown interest in, even though such act might come in direct opposition with the Refugee Convention and other international agreements.

In fact, UNHCR responded to the issue by stating that „Such measures have the potential to erode the international protection system, and if adopted by many States, could render international protection increasingly inaccessible, placing many asylum-seekers and refugees at risk of limbo, mistreatment or refoulement". Therefore, outsourcing protection responsibilities might lead to the fragmentation of the current system and its displacement through the defection of the parties involved in granting protection to those in need.

Conclusion

It is very difficult to ensure international consensus on the issue of migration, which is an intrinsic element for any collective action aimed to further expand the definition of refugees or even set some more clearly defined parameters for granting this status. Tailoring complementary protection to recognise and propriety respond to people's needs can be considered a doable task and if we take into account the currently hostile environment for refugees in a lot of developed countries, focusing on harmonising the plethora of national systems of complementary protections could turn out to be more beneficial for people in need of international protection than opening up the 1951 Refugee Convention for any amendments or even redrafting it.