The pervertibility of refugee status

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The desire to categorise all those seeking refuge throws up continuing challenges to traditions of hospitality and to the realisation of migrants’ rights.

There are two types of problems associated with international refugee rights: ‘formal’ problems referring to the definition of legal concepts relating to refugee status, refuge and asylum; and ‘practical’ problems linked to implementation of these rights by nation states. On the first question, it is necessary to ask why and how ‘refugee status’ limits the right to hospitality, as understood by ‘asylum’. While asylum has been a practice and a right founded in pre-state customs which can be traced back to ancient traditions, refuge as a legal status was created with the Convention on the Status of Refugees (1951). This change of emphasis, from asylum to refuge, has led to a transformation in the reality of hospitality itself.

The right to refuge is conditional in nature. The UN system instituted the notion of ‘refugee status’ to define and determine who can gain access to temporary protection, thus abandoning defence of the unlimited and inalienable right to movement and settlement. The definition of refuge promoted by the UN thus leaves a set of fundamental problems associated with hospitality to foreigners (in its fullest sense) in the shadows. This ‘binding’ international protection system does not defend the human right to migrate and settle but assures the sovereign right to produce refugees, placing the right to receive above the right to be received.

The facility to grant refuge is jealously guarded by states, as part of their sovereign privilege. Universal rights and the international legal framework to protect and validate the right to be a member of a political community do not yet have the legal power to unconditionally guarantee either migration or settlement; the best evidence of this can be seen in the proliferation in recent decades of the restrictive mechanism of detention, founded on the criminalisation of asylum seekers, illegal immigrants and refugees.

The big problem is not so much that states pervert the sense of international refugee law in practice (although in fact they do) but that the legal structure and definition of this contain the latent possibility of perverting its spirit. In order to understand how it is possible that the rights associated with the right to refuge can contain within themselves their own ‘pervertibility’, the seed of their own destruction and the possibility of culminating in detention, emphasis must be placed as much on the reasons for inclusion as on those for exclusion within the parameters of the legitimate defence of sovereignty (national security and maintenance of public order).

Refugees, alongside the stateless, asylum seekers and the internally displaced, are categories of foreigners who find themselves under the international protection of UNHCR, part of what in recent decades has become known as ‘forced migrations’. But what counts as forced or involuntary in the UNHCR framework? The definition would appear to be very clear. The forced or involuntary nature of these migrations refers to a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.” The definition of refugee hides a ‘liberal prejudice’ according to which it is possible, desirable and legitimate to differentiate political, religious, ethnic, cultural and sexual issues from economic and social issues. The illusory nature of the distinction between forced and other migration is clearly manifest in the conundrum – for those who wish to ensure the protection of refugees – of ‘mixed migrations’.

Voluntary or involuntary?

In recent years, those who must implement effective policies for the protection of refugees at the international level have come up against the problem of mixed migrations: in other words, the impossibility of distinguishing between supposedly ‘voluntary’ economic migrations and forced and involuntary migrations. But just how ‘voluntary’ is the departure of a person who lives below the poverty line and for whom crossing the sea might mean a fourfold increase in life expectancy? Is it perhaps because the poor, the hungry and the marginalised do not have a well-founded fear of dying in the midst of absolute poverty? How can it be that when people who have “suffered serious human rights violations” must be protected, the grounds for persecution can immediately be restricted to so few? Extreme poverty and the lack of basic subsistence conditions can also be considered as “serious human rights violations” and an objective threat to “future existence”.

The Slovenian philosopher Salvoj Žižek differentiates two types of violence: subjective violence and objective violence.2 International refugee law aims for protection against subjective violence, exercised in a visible form by people against other people, and there is a deliberate non-inclusion of objective violence, which is invisible and economic. The Polish sociologist Zygmunt Bauman follows a similar line of thought, maintaining that immigrants and refugees are incarnations of the ‘human waste’ of the capitalist production process, manifesting what the systems seeks to hide at all costs: the implicit vulnerability of individuals within economic globalisation.3 Both authors show that the main sources of violence and insecurity are ‘objective’ and ‘impersonal’ economic processes. In the context of globalisation, the security policies implemented by states are directed towards easy
The road from Kabul

Lucia Cipullo and Jeff Crisp

New UNHCR research investigates the motivations for and challenges associated with the migration of young Afghans to Europe.

An old Afghan proverb provides the title for a new UNHCR study which examines the experiences of unaccompanied Afghan children who have made the long overland journey to Europe. *Trees Only Move in the Wind* (meaning nothing happens without a good cause) attempts to explain why increasing numbers of Afghan children are encouraged and even obliged by their families to undertake this arduous and expensive journey, usually at the hands of unscrupulous people smugglers.

The risks involved in unaccompanied child migration are seemingly outweighed by the prospect of moving from a country affected by armed conflict, severe human rights violations, ethnic discrimination, unemployment and corruption to a part of the world which, in the eyes of these children and their families, offers freedom and respect for human rights. Education and employment also serve as a strong motivation, as children who move to Europe are considered as a future source of financial support for family members remaining in Afghanistan.

Although journeys of the type undertaken by Afghan children are not unique (young Iraqis and Somalis are also involved in such long-distance journeys), the lack of accurate and up-to-date information about these children, plus current moves by European governments to return them to their country of origin, provided the impetus for the UNHCR study. Around 150 young Afghan boys (no girls could be found) were interviewed in six European countries in order to determine why and how the decision was made for them to leave Afghanistan and to understand how they were treated (and mistreated) in the course of their journey.

While the specific circumstances leading to departure differed significantly from one child to another, the research demonstrated the difficulty of labelling the Afghan children as either ‘refugees’ or ‘migrants’; in most cases, families have multiple motivations in sending their children to Europe.

Despite a common assumption that many of the Afghan children are orphans, the study shows that many of their parents are still living, and had paid up to US$15,000 to smuggle their children across Pakistan, Iran and Turkey before entering Europe, usually by way of Greece. The frequent use of professional people smugglers puts the children at great risk. Payment for the journey is usually made in instalments; if payment is delayed at any point, the boy will often be forced to remain