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QUESTION:  DO YOU THINK THAT DEVELOPED COUNTRIES IN EUROPE AND NORTH AMERICA ARE PROTECTING THE RIGHTS OF REFUGEES

Over the years, people have been forced to flee their homes because of conflict, political, racial and religious persecutions, inhuman treatments or other circumstances that have posed a threat to their lives. They may end up as refugees or asylum seekers in foreign countries. Therefore, migration, whether voluntary or forced, has always been a characteristic of individual and collective human behaviour. Refugees today face many problems, not simply the threat of refoulement. And Prolonged or arbitrary detention; lack of due process; cruel, inhuman or degrading treatment; xenophobia, the 1951 Convention and 1967 Protocol are silent on such issues, whereas international human rights law includes provisions that might be applicable. As a matter of fact, international refugee instruments were never meant to address all the human rights of refugees. International human rights law constitutes the broad framework within which refugee law provisions should be seen.

However, in 2014, more than 200,000 refugees and migrants fled for safety across the Mediterranean Sea. Crammed into overcrowded, unsafe boats, thousands drowned, prompting the Pope to warn that the sea was becoming a mass graveyard. The early months of 2015 saw no respite. In April alone more than 1,300 people drowned. This led to a large public outcry to increase rescue operations. More so, an index in 2015 from the United Nations High Commission for Refugees revealed that in the first six months of 2015, about 137,000 refugees and migrants attempted to enter the European Union, there was also a rise of 83% on the same period in 2014. This increase is largely attributable to the sharp rise in people using the Eastern Mediterranean route from Turkey to Greece, a great number of which are refugees fleeing the wars in Syria and Iraq. Since the beginning of the Syrian civil war, the number of refugees in Turkey has risen to more than 2 million. As the United Nations High Commission for Refugees in 2015 noted that this has placed a huge pressure on the country’s infrastructure and economy and has made it increasingly difficult for refugees to access, work, shelter and education as well. However, faced with the deterioration in conditions in Turkey, increasing numbers of refugees have opted to pay people smugglers to help them make the perilous journey across the Aegean to Greece. Also, the rise in migration across the Mediterranean, often in heavily overcrowded small boats or dinghies, has coincided with a sharp increase in the loss of life. In the first three months of 2015, 479 refugees and migrants drowned crossing the Mediterranean crossing in comparison to 15 during the same period in 2014 (UNHCR, 2015). However the death toll reached a peak in April 2015 when 1,308 refugees and migrants were lost at sea (UNHCR, 2015). Meanwhile, the UNHCR’s primary function involves protecting the right of human beings. It is true that even the most basic human rights are routinely violated, and that efforts by international bodies to ensure respect for human rights are often fruitless. However, this does not mean that international human rights law is of no use to UNHCR but simply that it has its limitations. The difficulties of enforcing international human rights law are similar to the difficulties of enforcing most branches of international law. Like many human rights treaties, the 1951 Convention is not always honored by states parties but it continues to be of real help to countless numbers of individuals who rely on its provisions and UNHCR continues to insist on respect for the principles it establishes.

Furthermore, ever since the number of asylum-seekers in Western Europe began to climb in the late 1980s, burden-sharing has been a frequent item on the political agenda. But in the absence of a workable system for distributing asylum-seekers and for sharing the accompanying costs among countries in the region, governments have turned to a more convenient approach which is the application of safe third country rules. According to this notion, asylum-seekers should not have the luxury of choosing the country where they will ask for asylum. Rather, they should ask for protection in the first country they reach where this would be possible. Countries which apply the safe third country rule deny asylum-seekers access to a substantive refugee status-determination procedure on the grounds that they could have, or should have, requested asylum elsewhere.

It is widely recognized that the term “safe third country” or “safe host country” can be a useful procedural tool to enable states to handle asylum procedures expeditiously. However, if it is applied without adequate procedural safeguards there is a risk of chain deportations in which each country without looking into the merits of the individual claim passes the asylum-seeker back to the last country through which he or she travelled. The reverse journey may end in a country which does not afford sufficient protection to refugees or, worse, in the country of origin.

However, democratization in Central Europe and the emergence of a general perception of the region as “safe” for refugees gave Western European governments a strong incentive for formalizing policies regarding safe third countries. More so, on 30th November 1992, the ministers responsible for immigration in what was then the European Community adopted a “Resolution on a Harmonized Approach to Questions Concerning Host Third Countries.” This was intended to establish objective criteria for applying the safe third country principle. According to the resolution, “if there is a host third country, the application for refugee status may not be examined and the asylum applicant may be sent to that country.” However, since adoption of the resolution, there has been considerable disagreement both on how to determine if a country meets the criteria for being a safe third country, and on when the concept should be applied. For instance, Should Poland be considered a “safe” third country, even though there are persistent reports that certain groups of asylum-seekers; for example, Armenians have difficulty getting access to the asylum procedure there?

Also, Germany has Europe’s most far-reaching safe third country rule. Although Article 16(a) of Germany’s Basic Law, or Constitution, still affirms that, “politically persecuted enjoy the right to asylum,” the next paragraph excludes from the right to asylum all persons who enter Germany from a “safe” country, defined as one where application of the 1951 Convention relating to the status of refugees and the European Human Rights Convention is assured. All countries having land borders with Germany are thus deemed “safe” with the result that no asylum-seeker entering Germany overland after 1st July 1993 should have access to protection in Germany. Although in practice it has not been possible to apply this rule as rigorously binding as was intended, either because asylum-seekers intend not to know through which country they travelled or because neighbouring countries refuse to readmit them, the rule still has the potential to change the asylum landscape in Europe.

The European Council on Refugees and Exiles (ECRE), in its February 1995 publication titled “Safe Third Countries: Myths and Realities,” warns that “by introducing various and varying categories of ‘second’ and ‘third’ ‘responsible’ host countries, states have actually increased, rather than reduced, the incidence of ‘refugees in orbit’” - those who end up in limbo, shunted from one country to another without access to proper status determination.

Further, under general international law, states are only obliged to readmit their own nationals. To facilitate the return of asylum-seekers to countries through which they have travelled, Western and Central European states are increasingly concluding readmission agreements which apply to third-country nationals as well. Yet, with the exception of returns in the framework of multilateral agreements like the Schengen Agreement and the Dublin Convention, this has not yet enforce, there is no guarantee that the individual will have access to an asylum procedure. The readmitting state is generally not informed that the person it is being asked to take back is an asylum-seeker, nor of the fact that his or her claim has not been examined on its merits by the sending state.

UNHCR was disappointed that member states of the European Union did not agree to include even a modest safeguard in the “Standard Bilateral Readmission Agreement,” the text of which the European Union Ministers of Justice and Home Affairs adopted at their meeting on 1st December 1994. Such agreements are intended, among other things, to allow the transfer of asylum-seekers to third countries, but lack provision that an asylum claim will be examined on its merits in the third country. Formal agreement among states about the responsibility for handling asylum requests would reduce the number of asylum-seekers in orbit and discourage misuse of asylum procedures. The Dublin Convention and the Schengen Agreement are a step in the right direction because they address questions of readmission of asylum-seekers and competence for examining an asylum request. However, the first months’ experience with the Schengen Agreement demonstrates that even among parties to that accord, it is difficult to reach agreement on responsibility for asylum claims.

According to the German Interior Ministry, of 511 requests to readmit asylum-seekers addressed to Germany by France and the Netherlands in the first three months of application of the Schengen Agreement (March-June 1995), Germany rejected 53 percent, accepted 12 percent, and at the end of June, they were still studying the remainder. Meanwhile, the network of bilateral readmission agreements grew close. A 1994 compilation prepared by the Secretariat of the Inter-governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia lists 30 separate bilateral readmission agreements involving Western and Central European states, or between Central European states. Although not all extend to the readmission of third country nationals, most do so. None contains any specific assurances regarding protection of asylum-seekers.

It is however clear that the asylum scene in Europe, previously divided into East and West, is now characterized by a three-way division: the traditional asylum states of Western Europe; a new Central European buffer zone; and the turbulent region of the former Soviet Union and the Balkan states. Although asylum-seekers are increasingly being returned to countries in Central Europe which have been deemed “safe,” the number of persons who apply for asylum in these countries remains very low. Thus, there are many reasons why asylum-seekers do not ask for protection in the first country in which this might be possible. Varying levels of material assistance and varying standards of protection are part of the explanation. As far as Central Europe is concerned, most asylum-seekers do not yet perceive this as an asylum region, and many try again and again to make their way to Western European countries. Sometimes, asylum-seekers are unable to gain access to asylum procedures, even in countries deemed “safe.”

In an effort to remove the element of uncertainty for the asylum-seeker, and to offer a fundamental safeguard, UNHCR has recommended that the consent of the third state be secured before an applicant for asylum is sent there, and that assurances be obtained that he or she will be admitted to an asylum procedure. It would also be important especially with regard to the “new” asylum states to inform the individual of the possibility to apply for asylum. (Kumin, 1995).

# References

Kumin, J. (1995, September 01). Refugees Magazine Issue 101 (Asylum in Europe) - Protection of, or protection from, refugees? Retrieved April 16, 2020, from https://www.unhcr.org/publications/refugeemag/3b543d444/refugees-magazine-issue-101-asylum-europe-protection-protection-refugees.html