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QUESTION

Do you think that developed countries in Europe and North America are practicing the rights to refugees.

According to Article 1 of the 1951 UN Convention, as modified by the 1967 Protocol, a refugee is defined as a Person who ‘owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.’ This definition implies that several qualifying conditions apply to be considered a refugee: presence outside home country; well-founded fear of persecution (being at risk of harm is insufficient reason in the absence of discriminatory persecution); incapacity to enjoy the protection of one’s own state from the persecution feared. The definition of refugees was actually intended to exclude internally displaced persons, economic migrants, and victims of natural disasters, and persons fleeing violent conflict but not subject to discrimination amounting to persecution.

The principle of non-refoulement forms an essential protection under international human rights, refugee, humanitarian and customary law. It prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill treatment or other serious human rights violations. Under international human rights law the prohibition of refoulement is explicitly included in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

The greatest challenge facing refugees arriving in the developed world is to convince authorities that they are, in fact, entitled to recognition of their refugee status.

**Persons Applying for Protection from the Territory of another State**

The 1951 Refugee Convention has been drafted having territorial contact with the receiving State in mind. On the other hand, the receiving States, particularly the European Union Member States have recently developed so called ‘Protected Entry Procedures’ which refers to receiving and processing asylum applications or visa applications on asylum related grounds at their embassies abroad.

Through these procedures the States intend to control their refugee burden by restricting entry to their territories. This phenomenon raises the difficult question: Is there any territorial limit to the right to seek asylum? Does the admission requirement extend to individuals who apply for asylum from the territory of another State? As they are separately examined above, the practice of non-refoulement has different characteristics within the territory of a State, at the frontier and on the High Seas. However, extending the protected scope of the principle to the territories of other States have distinctive complications since unlike the others, such practices take place under the sovereign authority of another State.

In the early years of the Refugee Convention, there were no problems regarding the recognition as a refugee in Europe. However, this is not the case anymore. Namely, in the last couple of decades, European states have been demonstrating a relatively high level of reluctance to recognizing people in need of protection as refugees.

Many countries are responding to the crisis by placing caps on the number of refugees allowed into the country on any given day, month, or year. President Trump’s “travel ban” not only limited who could enter the U.S, but also capped the number of refugees it would allow to enter the country at 50,000 for the year 2017. Equally controversial, in 2016, Austria announced it would place a cap on the number of refugees allowed to apply for asylum or pass through the country each day. Though the European Union warned Austria that the cap would violate international law, Austria only cancelled their plan to cap refugees because the number of refugees decreased.

The legality of these actions is questionable. The United States’ Ninth Circuit Court of Appeals recently ruled that there was no justification for the Executive Order’s cap on refugees, holding that allowing more than 50,000 refugees would not be detrimental to the United States, a precondition for capping refugee numbers. The European Commission criticized Austria, claiming that it had an obligation to accept refugees and to do otherwise would violate the Geneva Convention. Countries do in fact have obligations to refugees under international law and refugee caps appear to contradict those obligations. However, with on-going wars, terrorism, and climate change, as well as the steadily increasing number of migrants, countries will continue to attempt to implement measures like refugee caps, as the “migrant crisis” is unlikely to go away anytime soon.

Regardless of the arguments against non-rejection, the actions of developed countries like the United States and Austria imply that they do in fact consider there to be a right of non-refoulement as well as a right to seek asylum. Developing countries routinely bear the weight of the refugees their developed neighbours are unwilling to take. In fact, the United States and the European Union expect other countries to prevent refugees from crossing their shared borders. In response to a massive influx of migrants from Central America, President Obama pressured the Mexican government to increase its border security in order to help curb the flow of migrants into the United States. Similarly, the European Union provides aid to Turkey in return for Turkey’s help to reduce the number of refugees that might otherwise make their way to the European Union. These expectations are simply examples of pushing other countries to take on a higher burden in the refugee crisis while limiting their own obligations towards refugees.

Helping other countries provide assistance to refugees implies that countries like the United States realize that refugees are entitled to protections, but that they do not want to fulfil that obligation themselves. Expecting other, usually less developed countries, to take on the obligations of developed countries, makes developed countries appear as though they are exempt from their international obligations.

REFRENCE

Members’ Research Service. (2015, October 27). Refugee status under international law. Retrieved April 29, 2020, from European Parliamentary Research Service Blog website: https://epthinktank.eu/2015/10/27/refugee-status-under-international-law/

Jelena Ristik. (2020). The Right to Asylum and the Principle of Non- Refoulement Under the European Convention on Human Rights. European Scientific Journal, ESJ, 13(28), 108. Retrieved from https://eujournal.org/index.php/esj/article/view/10048

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