

Topic 6: What political and moral challenges are raised by the issue of refugees?

The issue of refugees is one that is politically, ethically, and morally very complex. Consequently, there are many problems and challenges that arise out of an issue that primarily concerns the survival and welfare of human beings in need. It is because of this that the issue of refugees raises many moral challenges. However the current global setting of the sovereign state system means that the issue of refugees will also be inextricably linked to the realm of politics, and therefore will also raise many political challenges. This essay will seek to seek to present and discuss these political and moral challenges raised by the issue of refugees. These topics include the issue of the definition of a refugee, the complexity that this issue creates, the function and role of the Office of the United Nations High Commissioner for Refugees (UNHCR), and also the topic of moral obligation on behalf of the international system. As a result, this essay will also examine the issues of state sovereignty and humanitarian intervention, as well as examine Australia and its stance in relation to the moral and political challenges raised by the issue of refugees.

According to the Office of the United Nations High Commissioner for Refugees, as of 1st January 2002, the estimated number of persons that fall under the mandate of the UNHCR totals at approximately 20 million. However this figure may be misleading, for a prominent political challenge that arises out of the issue of refugees is that of definition. The question of what exactly comes under the term 'refugee' has been a controversial topic that has been debated vigorously ever since the 1951 United Nations Convention Relating to the Status of Refugees (D'Souza 1981: 7).

According to the 1951 Convention, a refugee is:

any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social

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...(quoted in Loescher 1999: 234)

The 1967 Protocol also extended this definition to remove both time and geographical limitations, for the 1951 Convention was primarily for European refugees following World War II (D'Souza 1981: 7).

The 1951/1967 definition is particularly restrictive in terms of who actually qualifies to be a refugee. This definition focuses entirely on people fleeing persecution over state boundaries. Therefore, it excludes people who leave their countries due to other conditions such as poverty and famine, and also those that are displaced within their own countries for whatever reason, including persecution (Chalk 1998: 154). The issue of definition is important both politically and morally as it poses challenges to the intended application of refugee law. Also, it inhibits the functionality and effectiveness of the UNHCR by posing political and legal challenges against its attempts to remedy the humanitarian problem presented by refugees.

A key to understanding the moral and political challenges raised by the issue of refugees is to examine the role and actions of the largest non-government body established to oversee the handling of the problem: the UNHCR. Established in 1950, the Office of the United Nations High Commissioner for Refugees "is mandated to lead and co-ordinate international action to protect refugees and solve refugee problems worldwide" (UNHCR). The UNHCR has helped approximately 50 million people over its 52 years (UNHCR). Although this body was initially set up to help European refugees immediately following World War II, it has been permanently established to oversee the handling of refugee issues world-wide.

In examining this key organisation responsible for handling the refugee issue, the political and moral challenges become evident. The challenge of definition mentioned

earlier is a key issue within the UNHCR, and according to Gil Loescher (1999: 235), the UNHCR has interpreted its mandate over the past several decades to include various other peoples that are excluded by the 1951/1967 definition. This is a way for the UNHCR to circumvent its moral challenge of an obligation to these people, but of them not being included in the refugee definition.

However a problem for the UNHCR is that its moral objectives, which are based on human rights ideals, are running into political challenges. This is two fold in that political challenges are raised when trying to engage the states that are the sources of refugees, and also from the states that are destinations for refugee movements. In the latter, this issue can spark intense political reactions, as shown in Australia. The issue of refugees create a situation where moral ideals exist in tension with, and “compete against the values of political and civic separateness that continue to underlie the realities of the present sovereign states system” (Chalk 1998: 161).

Along with the UNHCR, states are pivotal when considering the moral and political challenges raised by the issue of refugees. As mentioned earlier, states create the problem of refugees, and also deal with it by granting refugees asylum. According to Amin Saikal (1989: 6), organisations such as the UNHCR face a dual problem: the “states which create the refugees are not prepared to admit to engaging in such conduct, and recipient states are not interested in seeing the definition of [a] refugee expanded”. In these recipient states, the moral and political challenges raised there are considerable, for a state not only has a basic obligation to its own citizens, but under international law, it also has an obligation to refugees.

This obligation to refugees is based on international refugee law, and the application of, and compliance with this law is a major political challenge. According to Peter Chalk (1998: 153), international refugee law provides a set of normative

standards for the actions of states, and also places “certain legal obligations on countries to meet the duties and responsibilities these impose”. A concept that is a key legal obligation for states, and that is central to both international refugee law and the 1951 Convention, is the principle of *non-refoulement* (Fonteyne 2002: 18).

The principle of *non-refoulement* (non-rejection) is stipulated under Article 33 of the 1951 Refugee Convention, and basically “defines the relationship between the country of refuge with respect to the provision of sanctuary” (Chalk 1998: 153). This principle essentially states that, apart from for a few exceptions, refugees must not be returned to any territory where their lives or freedom might be endangered for any of the reasons described in the refugee definition, and the law prohibits rejection at the border and expulsion after entry (Chalk 1998: 153). As an extension of *non-refoulement*, all legitimate refugees are also entitled to asylum within that country (Goodwin-Gill 1980: 11-12). Also, all refugees must be treated in accordance to basic human rights and provided basic material assistance by the state.

However as with any law or convention, the principles for the treatment of refugees are not always followed as they were intended, and as a result, many political and moral challenges and issues are created. In the present sovereign state system, there is no body superior to the state to forcibly enforce compliance. Although many states may sign treaties, statutes, and conventions, there is no guarantee that they will honour them completely. This is the same for the issue of refugees. A major political challenge is to get states to follow refugee laws and conventions as they were intended. Although states have a legal obligation for the treatment of refugees, many states still only genuinely follow them when it suits their interests. According to Chalk (1998: 150), a clear priority is established between the states political and

moral obligations with the effect that primary responsibility to its own citizens is reinforced.

One of the major objectives raised by these 'recipient' states is that the refugee problem should be dealt with at its source rather than at its end. There is now a growing recognition that many refugees are generated by severe human rights violations, and to put a stop to these violations would dramatically reduce the number of refugees (Loescher 1999: 239). Prevention of a refugee crisis is vastly less expensive, especially in terms of economic resources, than dealing with a full-blown protracted crisis (Dowty and Loescher 1996: 43-44). Thus international action to prevent human rights violations and refugees crises from happening, namely humanitarian intervention, has become a frequent occurrence in the post-Cold War world.

Humanitarian intervention is a very controversial and complex issue, and it raises many moral and political challenges alone. The major challenge in terms of the refugee issue is: does the violation of human rights, and the potential generation of a major refugee crisis morally oblige the international community to take action to prevent such an occurrence from happening? This is a question that has no straightforward answer, as there are many conflicting opinions on whether international action taken on the basis of moral obligation is appropriate. Nonetheless, this is a major moral challenge that the issue of refugees create.

The issue of humanitarian intervention also has a vast and complex legal and political side to it. Consequently, if humanitarian action were to be taken to prevent a refugee crisis from occurring, it would also face substantial political challenges. The most prominent political challenge is that of interfering in another state's domestic affairs. As mentioned earlier, in the present international system, the sovereignty of

the state is paramount, and many see international action, and especially humanitarian intervention, as a threat to state sovereignty.

In Australia in recent years, the issue of refugees and asylum seekers has generated a controversial political and moral debate. The public rhetoric of 'boat people' and 'queue jumpers' culminated in the Australian government taking an austere stance to the request of the Norwegian container vessel, *MV Tampa*, to dock at Christmas Island in 2001 after it had rescued over 400 asylum seekers from a sinking ship. This incident, as well as the mandatory detention policy, has attracted international criticism over Australia's treatment of refugees and its commitment to international human rights treaties (Cranson 2000: 124).

Here the moral and political challenges raised by the issue of refugees become evident. Australia is a signatory of many international human rights conventions and treaties, the least of which include the Universal Declaration of Human Rights and the 1951 Refugee Convention (Cranson 2000: 121). Although Australia has signed these documents, its actions and policies, especially in relation to the *Tampa* situation, violated its obligation to process the asylum seekers, and also potentially violates its moral, political, and legal obligation of *non-refoulement* (Fonteyne 2002: 18-19). Australia's policy of mandatory detention of so-called 'boat people' also raises some criticism on its interpretation of, and compliance with human rights obligations and international refugee law (Fonteyne 2002: 19-22).

However, in the present sovereign state system, Australia has a right to exercise its sovereignty over the domestic governance of the state. As mentioned earlier, moral and political challenges emerge when states, such as Australia, do not follow their moral and/or political obligations toward the treatment of refugees. Although a state is obligated to behave a certain way, there is no guarantee that it will.

As has been shown in this essay, the issue of refugees is one that is very complex. It mixes together the moral and political realms, which does not always provide a stable outcome. The issue of refugees thus raises many political and moral challenges that are not overcome easily. The UNHCR was somewhat restrained from its beginning because of a restrictive definition and political challenges complicating its primarily moral and welfare mission. Some of these political challenges include states that violate basic human rights and create refugees, and also states that do not comply with the international convention for dealing with them. However a moral challenge that must be remembered is that “refugees are *first* human beings, not social, political or economic ‘problems’; the duty we owe them is part of the duties we owe ourselves, part of what it means to be a just and human person” (Kamenka 1989: 12). Thus another moral challenge is remembering that refugees are people in need.

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