

Migrants at sea: Case studies of Syrians and Rohingyas

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ABSTRACT

According to the United Nations, the current worldwide displacement is at the highest level ever recorded. Further, the humanitarian crises unfolding in the Mediterranean and the Bay of Bengal have focused the spotlight on the maritime domain as a prominent escape route. They have also raised many questions pertaining to human security and the humanitarian obligations of the states at one end of the spectrum and national security considerations that come with such mass arrivals on the other. However, the two crises have elicited varying responses by the affected state and non-state actors, who have interpreted international law and state obligations differently. This paper seeks to understand and analyse maritime and policy responses to the Syrians in the Mediterranean and the Rohingyas in the Bay of Bengal and Andaman Sea to identify the best practices for states to comply with their international humanitarian obligations while taking state security imperatives into consideration.

KEYWORDS

Migrant crisis; refugee crisis;
Rohingyas; boat people;
Syrian refugees

In the recent past, migrants and refugees have been in the limelight globally. As more people are fleeing conflict zones to safer places, refugees and migrants have been catapulted to the centre of a heated debate worldwide. On the one hand, human rights groups advocate welcoming those who have been compelled to flee their homelands to seek protection; on the other, right-wing and anti-immigrant sentiments have gained ground, particularly in many developed countries, which are vouching for protection of their borders and economies. These diverse discourses put states in a complex and sensitive position, straddling their international humanitarian obligations with internal dynamics. As many parts of the world are facing protracted conflict, it appears unlikely that the problem of refugees and forced migration will go away in the foreseeable future.¹ A new facet of the contemporary refugee crisis is the maritime nature of the problem.

An unprecedented number of deaths at sea steered the world's attention to a humanitarian crisis in the Mediterranean. As recourse to the sea route shot up astronomically – having been used by over one million people to migrate to Europe in search of shelter, protection, a better life and security, or to reunite with family – the dangers of the maritime domain were exposed. The humanitarian crisis not only highlighted the risks of the sea route due to the nature of the domain, or lack of adequate safety measures adopted by people smugglers, but exposed the vulnerability of Europe's maritime frontiers.

Even as the humanitarian crisis in the Mediterranean captured the media headlines in 2015, there was another humanitarian crisis unfolding simultaneously, smaller in scale, but just as serious. Increasing number of deaths occurred in Bay of Bengal and Andaman Sea, as more and more Rohingyas, a minority Muslim community on the borders of Myanmar and Bangladesh, took to the seas in unseaworthy vessels to reach economically more developed countries such as Malaysia, Thailand and Indonesia.

Evidently, the contexts which pushed the two communities to the seas are extremely different. However, there are a few common denominators: in both cases, migration on a smaller scale had been going on for many years; however, the scale intensified only recently. The past two years witnessed an unprecedented rise in numbers, and consequently increasing deaths at sea, demanding state attention. Secondly, both groups belong to conflict-torn societies. But the differences in the scale of the crises and their distinct geo-political and strategic locations have shaped perceptions and response mechanisms.

This paper studies the two maritime crises in context and seeks to compare and analyse states' responses to boat arrivals of migrants and asylum seekers, and looks at options for best practices in balancing the two dimensions. It is divided into three sections: the first section looks at the causes of displacement in each case and attempts to locate that within the context of international law. The second section focuses on the maritime nature of the problem and evaluates the state responses. In conclusion, the paper steers towards locating and evaluating the best practices and policy recommendations.

Causes of displacement

Syrians

The five-year-long civil war in Syria has taken a toll on the population and caused massive displacement, producing the maximum number of refugees globally. The atrocities by the Syrian government and the Islamic State compelled millions to flee.² According to the United Nations, the multiparty “conflict has spawned 4.8 million refugees in neighbouring countries, hundreds of thousands in Europe, and 6.6 million people displaced inside Syria against a pre-war population of over 20 million”.³ While a majority of Syrians fled to neighbouring Turkey, which currently hosts the largest number of refugees (more than two million Syrian refugees), many fled to Jordan and Lebanon, apart from smaller numbers across the world.⁴ The number of Syrians fleeing to Europe increased in 2014–2015, and of the one million people that crossed the Mediterranean Sea in 2015, one in every two came from Syria.⁵

Rohingyas

The Rohingyas are a religious, ethnic and linguistic minority from Myanmar who have been historically and legally persecuted by the Buddhist majority government.⁶ Their social discrimination heightened since the 1982 Constitution, in which they were denied recognition as an ethnic group, and were instead labelled as Bengali migrants.⁷ This effectively rendered them stateless, denied citizenship and freedom of mobility, ownership of land and property, marriage, access to employment and health care.⁸ Following

episodic clashes with the Buddhist majority and a crackdown by the government, the Rohingyas have been fleeing Myanmar in small numbers since the late 1970s. They primarily fled to neighbouring Bangladesh, where they are unwelcomed by the government and the local population.⁹ Bangladesh, itself a populous state confronted with the effects of climate change and frequent natural disasters, is dealing with “extreme poverty” and finds it difficult to accommodate more impoverished Rohingyas.¹⁰ The combination of persecution and neglect, and lack of identity and documentation, pushes many Rohingyas to the seas into the hands of human smugglers.¹¹

Why are so many people at sea?

Fleeing international borders is not a new phenomenon; neither is migration by the sea route. Yet the scale of the current forced migration at sea requires deeper inspection into what has caused so many displaced people to take the sea route.

The structure of international law is such that it necessitates the asylum seeker to be on the territory of the state in which he or she wants to seek asylum.¹² Hence, those seeking asylum in Europe could not do so from their homelands or other states of transit; they had to reach European territory to make their claims.

Although asylum seekers technically do not need a visa for air travel, other regulatory laws by the European Union (EU) make this provision almost defunct. “Nationals from war-affected countries”, like Syria, require a transit visa even to pass through an EU member state by air.¹³ This is difficult to obtain in the backdrop of war as diplomatic representations are usually under intense surveillance and scrutiny. Moreover, there are fears that offices may be closed due to political or security reasons.¹⁴ Even if these hurdles are overcome, sanctions imposed by the EU on airlines penalise travel without a visa, which acts as a deterrent for the airlines to take on passengers without proper and valid documentation.¹⁵

Moreover, the Protocol to the Convention on Transnational Organized Crime closes all potential illegal channels of movement, but does not have provisions to expand legal channels for entry. This closes down options for asylum seekers.¹⁶

Hence, the combination of international laws on asylum coupled with increasing control over land boundaries, and relative ease of accessibility of the sea for non-state actors, has given prominence to migration at sea.

International legal framework for protection

To understand the duties of states concerning the rescue, disembarkation and rights of asylum seekers, it is imperative to look at international laws that form the skeletal framework regarding this issue: an intersection of international maritime law, international human rights law and international refugee law.

International Maritime Law

The code of conduct for rescue operations is enshrined in several international conventions, such as the United Nations Convention on the Law of the Sea (UNCLOS, 1982),

Safety of Life At Sea Convention (SOLAS, 1974), and International Maritime Search and Rescue Convention (IMSAR, 1979).

Article 98 of the UNCLOS highlights that help should be given to those in distress, and for the same, a search and rescue team should always be available.¹⁷ The 1974 SOLAS Convention highlights that shipmasters should provide swift aid to a vessel in distress, and if they fail to provide assistance, should record the reasons for not doing so. The IMSAR Convention of 1979 promotes interoperability.¹⁸ Further, the Office of the United Nations High Commissioner for Refugees (UNHCR) Executive Committee has adopted several conclusions reiterating the above points, and, warning states practicing refoulement, promoted its efforts under the Rescue At Sea Resettlement Offers (RASRO) Scheme and DISERO (Disembarkation Resettlement Offers) Scheme.¹⁹ Also notable are the 2004 International Maritime Organization Guidelines, which, although not binding on states, stipulate that any screening procedures should not prevent vessels from rendering assistance, and ensuring the “survivors” reach a “place of safety”, i.e. where their lives and safety would not be threatened and their basic needs met.²⁰

International human rights law

International human rights law grants freedom of mobility, right to life and safety to all persons, irrespective of the status of their nationality and other affiliations. The Universal Declaration of Human Rights states that every individual has the right to seek asylum.²¹

*Although International Human Rights Law recognizes the right of states to control their borders and to restrict entry within their territory, the fact that a person has entered a country illegally does not affect his or her rights to life, security of the person, equality before the law, or other basic civil and political rights.*²²

International refugee law

The refugee crisis brought out numerous terminologies in popular discourse, such as “migrants”, “refugees”, “asylum seekers” or “economic migrants”, etc. Clarity in these terminologies is essential to understand the nature of the problem, and the type of responses different categories elicit from the state.

Asylum seekers are those who request international protection or asylum be granted to them. If they are granted asylum, they fall under the legal category of “refugees”. International law specifically outlines only certain categories of individuals, whose life and safety are at risk due to political reasons (it excludes economic migrants and those displaced by climate change or other causes). The 1951 Convention Relating to the Status of Refugees defines a refugee as:

*any 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 ... or ... is unable or, owing to such fear, is unwilling to return to it.*²³

States have certain obligations towards refugees; principal among them is the policy of “non-refoulement”. Under customary international law, as well as the 1951 Refugee

Convention, such a person should not be forcibly repatriated to their country of origin, where they fear for their life and safety.

Although refugee status determination is on a case-by-case basis, the UNHCR has declared:

During mass movements of refugees usually as a result of conflicts or generalized violence as opposed to individual persecution, there is not – and never will be – a capacity to conduct individual asylum interviews for everyone who has crossed the border. Nor is it usually necessary, since in such circumstances it is generally evident why they have fled. As a result, such groups are often declared "prima facie" refugees.²⁴

According to the UNHCR, “84 per cent of those arriving in Europe came from the world’s top 10 refugee producing countries, reflecting that most of the people arriving in Europe were fleeing war and persecution”.²⁵ Therefore, Syrians, who are fleeing the extremities of the Islamic State and the Assad regime, clearly fall under this category.

As for the other case, UNHCR declares Rohingyas to be one the most persecuted communities in the world. One study reports that the treatment of Rohingyas in Myanmar reflects early warning signs of genocide that should not be neglected.²⁶ Hence, both of these communities taking to the sea fall under the category of convention refugees. This elicits obligations of “non-refoulement” on the part of the state they reach to seek shelter. However, as can be seen in the consequent sections, this has not been followed in practice. States tend to circumvent, and sometimes even blatantly violate, their obligations.

State responses to the refugees at sea

The Mediterranean crisis and the EU’s response

While there has been irregular migration across the Mediterranean to Europe for a long time, particularly from the Maghreb region, the numbers were perennially low. It was only in 2013, when the capsizing of two migrant vessels led to the loss of many lives at sea, that this issue was triggered into a humanitarian issue. This led to the search and rescue (SAR) operation *Mare Nostrum* in the Mediterranean Sea by the Italian Navy. However, it did not receive much support from the EU, which replaced it, after one year of operation, with Operation Triton, led by a smaller fleet. This gave a militaristic undertone to the EU’s response, as it overlooked its duty of rescue as enshrined in the UNCLOS. A smaller fleet was aimed to act as a deterrent for migrants crossing the sea. However, this ended up in poorer rescue operations, resulting in more deaths at sea. In contrast, there was a huge leap from approximately 60,000 arrivals in 2013 to more than 200,000 in 2014. Moreover, the total number of deaths at sea in 2014–2015 exceeded 7000.²⁷

A deadly shipwreck in April 2015 in the Mediterranean, that killed approximately 800 persons and was dubbed the worst disaster in the Mediterranean since World War II, attracted the attention of the international community towards the unfolding humanitarian crisis at Europe’s shores.²⁸ The EU then became the primary actor in responding to the crisis; it has stepped up its SAR in the Mediterranean and increased budgetary allocation to the FRONTEX, its external borders agency, and has expanded the Operation Triton to Libyan waters.²⁹ It also launched EU Naval Force Mediterranean (EU NavFor Med), its second naval operation since Operation Atlanta in 2008.

Phased into three parts, the operation aimed to tackle human smugglers at sea. By damaging their operations, the EU targeted the elimination of the role of non-state actors and the incentive of illegal and risky routes to take asylum. However, it must be remembered that these actors came to the forefront only due to the lack of legal avenues to reach Europe. Also, a critical balance needs to be maintained to disrupt the operations of people smugglers without inhibiting asylum seekers' access to protection, as asylum seekers take the risky step of a perilous journey only as a last resort.³⁰ This can be difficult to achieve, as one report shows, as the distinction between the perpetrators and the victims may not be quite clear.³¹ Further, the report notes that since the smugglers, though criminals, are not combatants, there is an element of extra-legality in case of loss of lives. Finally, destroying smuggler vessels in another state's territory, as specified in the final phase of the EU NavFor Med, can be perceived as a violation of international law and state sovereignty.³²

However, the burden of the migrants and refugees fell disproportionately on EU states with maritime borders in the Mediterranean. The most used route was the Eastern Mediterranean route, where arrivals primarily reached Greek islands. The EU, along with North Atlantic Treaty Organization, also launched a joint naval operation in March 2016 in Aegean Sea in the Mediterranean, between Greece and Turkey, which quickly grew to become the route experiencing maximum traffic.³³ Apart from that, Italy, Malta and Hungary were other states hosting a large number of refugees.³⁴ Once within the EU, freedom of mobility allowed many asylum seekers to go farther inwards via land routes to seek refuge. The lack of efficient management at the regional level of the sudden inflow of migrants and asylum seekers pushed many states to protect their sovereignty. The crisis temporarily threatened one of the landmark achievements of the Union, the Schengen area, as states threatened to close their borders. States such as the UK, Austria and Hungary have been reluctant to open their borders to asylum seekers; instead, they proposed monetary compensation to share the burden.

Europe was faced with handling the crisis in a way that it gives protection to those who need protection, deters those who violate or misuse the international asylum regime, and warns those engaged in people smuggling, while also safeguarding its external boundaries, so that not only is security maintained, but one of the Union's landmark achievements, freedom in internal mobility, is also upheld.³⁵ But freedom in internal mobility necessitated deeper scrutiny at the external boundaries, and demarcating who could enter Europe.

To reduce the scope for illegal arrivals, the EU adopted the "hotspot" approach aimed at reducing disproportionate pressure from frontline asylum states such as Italy and Greece by setting up asylum application centres, increasing interoperability between key EU agencies such as the European Asylum Support Office (EASO), EU Border Agency (Frontex) EU Police Cooperation Agency (Europol) and EU Judicial Cooperation Agency (Eurojust) to speedily process incoming asylum applications, to help in the relocation of legitimate asylum applications and repatriation of rejected applications and reduce incentives for illegal migration and people smugglers.³⁶

The EU practices a Central European Asylum System, in which the registration of asylum seekers happens in the state in which they first reach European territory. The maritime nature of the issue put immense pressure on states of the EU with maritime borders and restricted the mobility of asylum seekers, as the processing of these voluminous

applications could potentially take years.³⁷ To resolve this disproportionate challenge, the EU resorted to burden sharing by adopting a quota system for all EU states, through which all member states, irrespective of whether or not they were directly affected by the inflow of asylum seekers, had to intake a specified quota of persons. This distributes some of the disproportionate burden from first-asylum states in Europe such as Italy and Greece.

However, the March 2016 EU–Turkey deal is an agreement to prevent further flow of asylum seekers to Europe via the Aegean Sea. The EU declared Turkey a safe third country for taking refuge, despite it being ill-equipped to handle the enormous refugee flows, further reflecting the “neo-refoulement” of asylum seekers, and their reduced agency in their application of asylum. The deal, which gives Turkey political and diplomatic gains, in addition to financial aid for hosting refugees, raises questions on the legitimacy of this practice. This is especially confusing as the Refugee Convention is vague on whether an asylum seeker can choose his/her country of refuge.³⁸ The situation raises the questions of burden sharing and the right to and freedom of mobility of asylum seekers, and exposes many grey areas in international law. According to some scholars, such practices are where the “protection of refugees is invoked not by law”, instead by policies to externalise asylum to developing states, such as “ad hoc decisions of governments made through offshore processing centres, bilateral readmission agreements, and other tools of the transnational state that aim to prevent asylum seekers from ever landing on the territory of a signatory to the 1951 Refugee Convention or the 1967 Protocol”.³⁹ The EU also responded militarily, as the non-traditional challenge knocked at its doors.

The strategies of developed and Convention-signatory states reflect their aim to prevent asylum seekers from even reaching their territory to claim asylum. There is an increased tendency to support human rights and the asylum regime from afar. By re-locating both the origins of the conflict and the place of refuge in the developing countries, these states seek to physically demarcate the safe and the unsafe zones, and prevent the spilling over of the latter into the former. As the majority of the world’s refugees are hosted by the developing nations, the developed states limit their role to that of providing funding and aid, projecting the benign image of a pro-poor benefactor, away from all the mess and the consequent socio-cultural, ethnic, economic and political integration with the host society. Humanitarian “aid” thus has deep political shades in helping maintain the status quo in terms of the spatialisation of security.⁴⁰

As the Mediterranean crisis disrupted this idea at its core, Europe had to adapt the principles it projected to the rest of the world. Despite opposition and disagreements within, it tried to assimilate and absorb the increasing numbers of asylum seekers that came to its shores. However, asylum practices and policies are not similarly adhered to in other parts of the world, particularly in Asia, where states are driven by principles of sovereignty and non-interference, rather than normative principles such as human rights. Unfortunately, such an approach does not inhibit a non-traditional security issue such as this from manifesting transnationally and regionally. The following section will look at state and regional responses to the Rohingyas at sea.

Stranded at sea: the Rohingya Boat People – state and ASEAN response

Impoverished and without livelihoods at home, the Rohingyas are lured by human smugglers and human traffickers operating in the Indian Ocean, who smuggle them mainly to

Thailand, Malaysia and Indonesia. They are often exploited and extorted for money, without regard for their safety or life. The nature of these movements at sea is often mixed with the larger economic illegal migration, thus making *prima facie* analysis of asylum difficult. According to the International Organization for Migration (IOM), irregular migration “takes place outside the norms and procedures established by States to manage the orderly flow of migrants into, through, and out of their territories”.⁴¹

The number of boats increased following ethnic clashes with the Buddhist majority, or crackdown by the government authorities.⁴² Eventually, the situation peaked in 2014–2015, when around 5000 people were left stranded at sea, neglected by states and regional actors.⁴³

The IOM reported that actors in the region were playing “maritime ping-pong” with refugees at sea, as they are denied disembarkation, and when business gets unprofitable due to crackdown by state authorities, the smugglers leave them stranded at sea, without any food, fuel or direction.⁴⁴

Rohingyas pay the smugglers a hefty sum of money, usually almost all of their savings, sometimes even promising money while having none, as they expect to get absorbed into the illegal labour market and return the money in instalments. Further, “increased competition pushed smugglers into kidnapping – for ransom or forced labour.”⁴⁵ What often happens in the organised crime networks is that in order to maximise their profits or to avoid troubles with the authorities, these people are trafficked – rerouted without their knowledge, often lacking adequate supplies, and there have even been instances where they have been dumped in the forests and outlands. The traffickers even call relatives back at home while torturing them, to extract further money or the sum decided on earlier that couldn’t be paid off immediately.⁴⁶

The Rohingya crisis cuts across the regions of South Asia and South East Asia and is primarily focused in the Bay of Bengal and Andaman Sea. It is a transnational challenge, yet there has been hardly any regional initiative to address this crisis. ASEAN is the key regional actor. However, two factors inhibit the issue from being taken up at the level of ASEAN; firstly, this problem concerns only few of the member-states. Not many ASEAN member states have interests at stake with the Rohingya issue, and those who do, do not prioritise the issue on their agenda.

Secondly, the fundamental principle of non-interference in ASEAN member states inherently makes this an internal issue of Myanmar, even though its effects are spilling over to other states. The present government in Myanmar, which does not even recognise the Rohingya as a separate ethnic group, makes it difficult for any fruitful regional solution to be effectively achieved and implemented through ASEAN.⁴⁷ Efforts to resolve the issue through ASEAN have been introduced, but without concrete response to tackle the problem, or to pressure Myanmar to curb human rights violations.⁴⁸ However, one notable effort towards regional recognition and consolidation of human rights by ASEAN can be seen in the recent signing of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children in December 2015.⁴⁹

Individual states facing the maritime arrivals of Rohingyas have responded differently depending upon the context. Thailand has been fairly consistent in its low tolerance for illegal boat arrivals. The humanitarian crisis in April 2015 was in part triggered by efforts by Thai authorities to combat organised crime at sea.⁵⁰ In its efforts to crack down on multimillion-dollar drug and smuggling networks at its shores, Thailand

perceives these mixed migration movements at sea under national security; therefore, it has intercepted and returned vessels at sea, and for those vessels that have been allowed to disembark, their passengers have been taken to mandatory detention. The detention policies are arbitrary, and the disembarked persons have also experienced abuse by the Thai authorities.⁵¹ Despite having ratified the UNCLOS, SOLAS and SAR convention, Thailand did not rescue those vessels stranded at sea, even with international pressure.

After joint pressure from UNHCR, the United Nations Office of the High Commissioner for Human Rights (UNOHCHR), and other international non-state actors, Malaysia and Indonesia agreed to conduct SAR for vessels in distress carrying Rohingya asylum seekers and allow disembarkation for those at their shores.⁵² Since the ethnic clashes in Myanmar are driven by communalism, Rohingyas find appeal in these South-East Asian states where Islam is the dominant religion.⁵³ Although Malaysia hosts a few hundred thousand Rohingyas, it has not been very forthcoming in addressing their rights. Many Rohingyas get absorbed in the informal sector in Malaysia, and the Malaysian government has not been particularly helpful to the Rohingyas, except for providing some registration documents, with which they can exercise very limited socio-economic rights, that recognise their political identity, basics that they are denied in their homeland.⁵⁴

As can be seen, in Asia, the priorities of both states and refugee communities tilt primarily towards economic security rather than political rights. This can be seen by how many refugees choose to go beyond the UNHCR refugee camps, into the underground work force, aiming for de facto integration into the host society.⁵⁵ Life in refugee camps is more of a long-term, instead of a temporary, short-term feature.⁵⁶ Hence, many refugees look for avenues of income and integration beyond refugee camps, putting them in a complex position, outside the easy reach of UNHCR, and often mixed with economic migrants. Since political recognition of refugees is in any case a distant dream, many refugees aim for economic integration for survival.

To expect the Rohingyas to take legal recourse for asylum would be illusory. The lack of identity and documentation shuts down legal routes, and further banning of alternative options, under the protocol to convention of transnational organised crime, renders them at the mercy of illegal people smugglers.

Here, it is important to note that the 1951 Convention specifies that states should not penalise asylum seekers for their mode of arrival, keeping in mind the circumstances in which they are fleeing.

Conclusion

The objective of this paper was to address the novel challenge of asylum seekers at sea that the world is facing today. This non-traditional challenge cuts across a range of themes – from maritime security, national security, peace and conflict studies to international law and human rights. The interplay of international human rights law, international maritime law, international refugee law and international humanitarian law confers certain rights upon asylum seekers and obligations on states.⁵⁷ However, for this to be effective and more robust, states need to ratify various instruments of international law. For instance, states in Southeast Asia are not party to the 1951 Refugee Convention, Malaysia has not acceded to the SAR Convention, and states do not necessarily comply with IMO guidelines while performing rescue operations at sea.

Further, as can be seen in the case of the EU, the pre-existence of a strong foundational architecture of norms and human rights goes a long way in enabling compliance, and a regional response distributes (albeit unevenly) the response to the challenge. On the other hand, as is the case in South East Asian states, it may be observed that “outside of a strong and enforceable institutional framework, states will act in accordance with their immediate self-interest rather than cooperate”,⁵⁸ putting the lives of a persecuted community at risk, neglecting a potential regional security threat in the long run. Therefore, strong regional and international foundations are the key to long-term solutions. Solutions at the regional or multilateral level are better than at the national or global level, because states and actors that are directly affected by the issue come together to resolve it, and they have an incentive to come to a practical and productive solution.

Secondly, rescue operations should be swift and effective. To incentivise states towards effective rescue, it is crucial to have thorough screening processes at the preliminary stages of refugee status determination, and to speed up the process of registration. This has manifold benefits: shorter processing periods will make return and repatriation easier for those whose asylum applications are rejected; and actual enforcement of return will discourage economic migrants from taking perilous journeys.⁵⁹ It then becomes unprofitable and difficult for human smugglers and traffickers to lure economically vulnerable people in search of better lives.⁶⁰

Thirdly, opening up of legal channels for asylum, as mentioned above, would significantly reduce the illegal nature of the problem, the use of the sea route, and taking the services of smugglers. States should be more accommodating of the conditions which compel these groups to leave their homes, and should not put disproportionate restrictions or conditions for documentation.

Fourthly, international law on asylum is still frozen in the context of a post-Second World War era. It needs to be evolved and expounded upon by states and by the UNHCR in many grey areas, that have come into practice, but whose legitimacy still remains a question. The policy of neo-refoulement to remote territories of states or as a part of an arranged solution with lesser developed states, which are ill-equipped to handle such refugee populations, is one such area where the human rights of refugees are potentially violated in the guise of protection.

Finally, the funding and the work of UNHCR need to be increased exponentially in states that have not signed the 1951 Refugee Convention, because in these territories, displaced people already find an institution for protection lacking. The work of UNHCR needs to be further integrated with local resources and capacities to hasten the process of access to protection and strengthen their reach beyond the refugee camps in cognisance of the fact that refugee camps can have relatively long durations and stagnating and isolating tendencies, which pushes many refugees to move outside the “protection” of camps to mainstream society, where they may undertake the role of economic migrants.

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Notes

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