



REVIEW OF RESEARCH

ISSN: 2249-894X

IMPACT FACTOR : 5.7631 (UIF)

VOLUME - 11 | ISSUE - 6 | MARCH - 2022



REFUGEES AND REGIONALISATION OF EUROPE: A STUDY FROM THE 17TH CENTURY TILL THE PRESENT

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ABSTRACT

The phenomenon of refugees existed in the European continent for a long time and can be traced back to the seventeenth century. Back then, it was mainly due to religious persecutions and there was no conceptualisation of the term refugee. So, there were no norms and mechanisms to deal with the issue. With the different waves of refugees in the European region over the years, different norms and mechanisms relating to the aspect of the refugees were initiated in different periods resulting in a separate regional framework that exists today. This study will examine the chronological process of these refugee movements in the European region and how it resulted in the regionalisation of the framework as well as how the refugees are treated under it.



KEYWORDS : *Refugees, Region, Norms and Mechanisms, Europe, development.*

INTRODUCTION

The issue of refugees existed in the European region for a long time. The earliest refugees can be traced back to the seventeenth century. But refugee crisis till World War-I did not have any political character, and they were accepted liberally and treated the same as the migrants. However, with different waves of refugees that Europe witnessed over the years, different norms and mechanisms were initiated in different periods for the protection of refugees. The study divides the different waves of refugees in Europe into three different periods- the first-period covers from seventeenth-century till the beginning of World War-I period which will be termed as traditional period, the second period covers mainly the 20th century until the end of the Cold War period and the third period which covers the period after till present. Throughout these different periods, the European region became more integrated into a region.

REFUGEES IN THE TRADITIONAL PERIOD

The phenomenon of refugees existed in the European continent for a long time. The first recorded major wave of refugees was the Huguenots, the French Protestants, who were forced to flee in 1685. It was King Louis XIV who motivated the movement by nullifying the Edict of Nantes, which was a declaration by King Henry IV in 1598 to tolerate the religious minorities under Catholic rule (Barnett 2002: 239). With the withdrawal of the Edict of Nantes, the imperial rulings against migration were adopted which resulted in the escape of 200, 000 Huguenots who fled from France to the Netherlands, Switzerland, England, Germany, Denmark, and the US. There was no proper definition of refugees in that period and no norms for the protection of the refugees. Each nation reacted in its way. However,

this was the first case where the refugees received proper reception. Refugees during this period was mainly due to religious persecutions. Till the 19th century, refugees and immigrants were not seen separately, and the laws for both categories were similar. This was because there was no definite legal term regarding refugees until the 1951 UN Refugee Convention.

TRADITIONAL REFUGEE NORMS AND MECHANISMS

Before the establishment of the League of Nations, there was neither an international nor regional refugee framework for the European countries to follow. Refugee movements depended upon national laws of individual states or customary laws that existed during that period. Most of the states had individual means of dealing with the refugees. Some of the norms of this period was the non-refoulement which guaranteed that a refugee could not be sent back to a country unless that country guarantees safety for him. Another norm of this period was the policy of non-extradition which stated that refugees could not be returned to the countries of their origin through an extradition process. As such, it shifted the law of extradition from its realm and created a provision that became an institution for the refugees (Orchard 2008: 147). Free Border Choice was one of the primary norms relating to refugees which was much celebrated by the liberals as it expressed the individual liberty of the refugees to cross the borders without any checks (Aprile and Diaz 2016: 1). The right to asylum granted the Huguenots of French Protestants the right to reside in his territories with the Edict of Potsdam in 1685. (Moreno-Lax 2017: 337-338). However, the right to asylum was not a universal right and it depended upon the interest of the State whether or not it provided the right to the asylum seekers. (Walther 2016: 1).

Apart from these norms, there were also certain mechanisms to deal with refugees that existed before the 20th century. Religious proclamations were a common way through which refugees were welcomed before the establishment of the League of Nations. These religious declarations helped the refugees to settle in a different territory before the formation of the League of Nations (Orchard 2016: 286). Domestic legislation is another mechanism which advocated that refugee were to be registered upon arrival with the justice of the peace, the local officer appointed under the judicial system. Resettlement agencies were offices that voluntarily worked for the resettlement of the refugees in the 19th century.

TREATMENT OF REFUGEES IN THE TRADITIONAL PERIOD

Liberalism was an influential theory and it had its influence on the manner refugees were treated. A refugee could choose their way to a border without getting extradited. Aliens could seek asylum without deportation. Refugees enjoyed being at par with the citizens, but they did not enjoy any political rights. Refugee policy however changed at the end of the 19th century when state control over the refugees increased. Unwanted refugees were confronted, and there was an increase in policing. When the refugees were expelled from the first country of asylum, they were deported back to their own country of origin, which goes against the principle of non-refoulement. By the end of the 19th century, the distinction between a citizen and a refugee became more prominent. The transformed states catered mainly to their citizens than outsiders. This political change resulted in the increased expulsion of the refugees. Although there was no regional framework that catered to the entire European region, most of the countries more or less followed the prevailing norms as customs and legacies.

REFUGEES IN THE 20TH CENTURY

The 20th century witnessed two World wars which resulted in thousands of refugees. While World War-I created a significant number of refugees, World War- II created the largest refugee movements in European history. Following the World War, the refugee policy changed significantly due to the emergence of the Cold War. The refugees from the Eastern bloc were very liberally accepted by the Western European countries. This was to show the Eastern bloc about the power and generosity of the West over the East. Major refugee crises started with the Hungarian crisis of 1956 and the

Czechoslovakian crisis of 1968. However, by the decade of the 1970s, a shift had been seen in the flow of refugees as more and more refugees began to move to Europe from the developing countries. By the late 1970s, the flow became larger and increasingly complicated with the difference between refugees and migrants becoming less coherent. During the late 1980s, a momentous flow of refugees from Eastern European countries started with the collapse of the Berlin Wall.

REFUGEES NORMS IN THE 20TH CENTURY

The first refugee mechanism in this period was the Nansen International Office for Refugees which focused on voluntary repatriation and developed Nansen passport which was a legal document for the refugees to move freely. However, this office stopped operating with the outbreak of World War II. The Allied powers created the United Nations Relief and Reconstruction Agency (UNRRA) in 1944 to deal with the new refugee flows, but it was hindered by Cold War politics. Its mandate expired in 1947, and it was replaced by the International Refugee Organization (IRO) which was established by the United Nations to deal with the refugees of Eastern European countries. The IRO was an agency dominated by the Western powers, and they insisted on accommodating refugees from Eastern Europe to enable them to make an ideological point against Communism (Bessa 2009: 94). In 1952, operations of the IRO ceased, and its tasks were taken over by the Office of the United Nations High Commissioner for Refugees (UNHCR), which was established in 1950. UNHCR serves as the “guardian” of the 1951 UN Convention on Refugee and its 1967 Protocol. However, the UNHCR was an institution of the Cold War and was heavily politicised by the Cold War era.

This post World War II period also resulted in regionalisation of Europe as economic and trade areas were created. With the integration of the economic area in the region, the need was felt to establish certain norms and mechanisms for the refugees which will cater to the specific needs of the region.

EUROPEAN REGIONAL REFUGEE NORMS AND MECHANISMS

Although the international refugee regime applied to the European countries, a regional regime was established for the European countries in the Cold War era. This led to the rise of a supranational entity where Europe as a region started acting like one. The European nations felt the need of creating regional instruments that would cater to the needs of the region. The 20th century was marked by world wars, regional conflicts, which brought millions of refugees. As such, the issue of refugees became a major humanitarian and political issue for the first time. The major problem of the treatment of refugees was that the politics of the Cold War ensured that there was relative international protection of the refugees (Chiusiwa 1999: 4).

Apart from the Cold War politics of dealing with the refugees, there were many other reasons as to why the West accepted some refugees from the Communist countries during the Cold War period. Firstly, the number of refugees until the 1980s was very minimal. Moreover, those who came to the West were easily integrated as they were European and had similar cultural values. (Thränhardt 1996:14). Secondly, the refugees from the Communist countries were encouraged due to the economic conditions after World War II (Esther 2004: 34).

The regional instruments of Europe like the European Convention on Human Rights were also used for the liberal movement of the refugees during the Cold War era (Madsen 2007: 140). The ECHR constitutes norms like non-refoulement, right to asylum, and prohibits torture of the refugees. And the regional norms often provided better protection than the 1951 Refugee Convention as the regional rights were enforceable through mechanisms like the European Court of Human Rights. However, the regional instruments played a far less prominent role in the region than the international instruments like the UNHCR. This is because most of the European member countries were members of UNHCR and contributed much in the fund of UNHCR for its proper functioning. As such, the so-called universal or international refugee regime was also European and was guided by European liberal values (Selm 2005: 1-5).

Europe went through the process of regionalisation with the establishment of the Single European Act of 1986 that resulted in the elimination of the internal borders and facilitated the freedom of movement in the entire region. The treaty removed all the external barriers between the member states and eased the movement of the trade and people. According to this policy, all citizens possess a common passport, and the members of the third countries can get this visa for a maximum period of three months (Kengerlinsky 2007: 2). However, this created a dilemma for the member countries regarding the movement of asylum seekers in the region. Member countries wanted to protect themselves from the unwanted asylum seekers but also wanted to maintain a system that did not hamper the freedom movement in the European internal market. It was felt that common policies and mechanisms and ideas would lead to better integration of the refugees in the region. The Single European Act abolished all the borders, and it was initiated with the motive of mutual recognition of asylum decisions within the region. However, since the initiation of this Act, despite the elimination of individual state control, the refugee movement became restrictive. Each of the governments had attached different interests to the movement of refugees in the region, and proper cooperation among the member states was not possible. This resulted in the gradual restrictive treatment of the refugees. More checks were set up at the borders, and refugee arrivals became fewer. The idea of fortress Europe started expanding from this period (Kengerlinsky 2007: 1-2).

REFUGEES IN THE POST-COLD WAR PERIOD

The post-Cold War period saw a shift in the attitude of the European countries towards the refugees. With the disintegration of the Soviet Union, an influx of around 2.7 million refugees and internally displaced persons took place. The traditional concepts like borders and sovereignty became less important, and it became easier to move for people between nations in Europe under the Schengen agreement. Instead of the liberal attitude that existed during the Cold War era, the European countries started to adopt a very regressive policy towards the refugees (Cooper 2011: 11). The need for a proper regional refugee policy was felt by the European countries because of the influx of refugees from Eastern Europe and more so later with the development of the other refugee crises. The development of the asylum policy went through several phases in the post-Cold War era, starting from the norms under the Dublin Convention to the formation of the Common European Asylum System (CEAS) in 2004 (Angenendt 2013: 1). These norms included the controversial first country asylum, authorisation principle, and safe third country.

REFUGEE NORMS AND MECHANISMS IN THE POST-COLD WAR PERIOD

The establishment of the CEAS was completed in two phases. The first phase which focused on minimum asylum measures for the refugees in the member countries was during the years 2000-2005 while the second phase which focused more on the uniformity of the asylum measures was from 2006 to 2013 (Barnes et al 2016: 17). The current structure of the Common European Asylum System (CEAS) is divided into five major parts. The Asylum Procedures Directive summarises the steps for processing the asylum seekers for their process of admission. It aims at a fair and efficient procedure for asylum applications after arrival. The Reception Conditions Directives summarise the provision of the materials that are necessary for the refugees while they are waiting for their process. The major objective of this directive is to ensure better and uniform reception conditions to the asylum seekers upon their arrival to Europe. The Qualification Directive states the criteria for whether or not an asylum seeker should be granted protection. It is a framework for stateless persons which provides the minimum standards for those who need international protection. The Eurodac Regulation is a fingerprint database which is an EU-wide system of taking fingerprints of asylum seekers. It set up an EU-wide system of taking fingerprints which documents the point of first entry for the asylum seeker. No matter where they are in the EU, their fingerprints are transmitted to the Eurodac central system. (Malmström 2014: 1). Dublin Regulation was initiated in the year 1990 was later added to the CEAS. The Dublin Regulation is used to determine which member country will be responsible for asylum protection. It has the

responsibility of ascertaining the first country of an asylum seeker through the fingerprint system of Eurodac and to accommodate them accordingly (European Commission, 2014).

Apart from the CEAS framework, the major sources of asylum laws that are relevant for the European Union are The Treaty on the Functioning of the European Union (TFEU), the European Social Charter, and the Charter of the Fundamental Rights (CFREU). TFEU is one of the two major sources of European asylum law. Formerly known as the Treaty of Rome, it lays down the norms like equality of the third-country nationals and the visa for long-term residence and other rights of the third-country nationals (European Union 2008). CFREU is another instrument that was initiated in the year 2001 and it was adopted mainly as an instrument that will bind the EU member countries to follow this single document for human rights. European Social Charter is a regional instrument that guarantees economic and social rights. Other than the rights on housing, education, and other welfare rights, the Charter also protects against discrimination, especially to the asylum seekers.

TREATMENT OF THE REFUGEES IN THE POST-COLD WAR PERIOD

The end of the Cold War resulted in the negative attitude of the Western countries towards the refugees and adopted measures that helped in keeping the asylum seekers and refugees out. Racial discrimination of refugees was very nominal in the post-Cold War era and not so prominent in the Cold War period. However, in the post-Cold war period, despite Europe presenting itself as a diverse multicultural environment, there have been increasing cases of refugees from non-European continents facing racial discrimination in the post-Cold War. The European countries have adopted a more restrictive approach for asylum seekers from outside Europe. The 9/11 attack had made the Western countries more vocal against the Muslim refugees, and a negative attitude can be seen in the case of accepting refugees from Afghanistan and Iraq. The same disparity was also seen in the case of much-talked-about Syrian refugees where they were not accepted with open arms. However, refugees from Ukraine during the 2014 crisis with their European identity are not even recognised as refugees and instead taken as jobseekers to be recruited immediately. The same can be seen in the present Russia-Ukraine war when refugees have been accepted in Poland, Romania, and other Eastern European countries. Thus, it can be seen that a clear difference exists in the attitude of the public and government of the European countries towards refugees coming from non-European countries.

CONCLUSION

Europe has witnessed different waves of refugees in different periods starting from the seventeenth century till the present. Each period has resulted in the initiation of different norms and mechanisms that catered to the refugees. While the traditional norms and mechanisms were not a part of any framework but these were common customary laws that gave identity to the region. The norms and mechanisms in the 20th century were much developed but they were a reflection of the Cold War politics while the norms and mechanisms in the post-Cold War era gave a proper framework to the region. The three periods have different characteristics and different norms and mechanisms. However, all these periods further strengthened the structure of the refugee framework in Europe and helped in the integration of the region.

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