

When can refugee flows become a compelling enough enabler for the UNSC to react?]

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Refugee flows have always represented a sensitive issue in the field of International relations. However, the responses by the international community and the various interpretations which were given to the movement of populations from conflict zones change. This depends on the international, regional and national contexts in which a given crisis is unfolding and how it is being analyzed by key stakeholders.

Not since the Second World War has the world experienced such a high number of refugees - over 50 million according to a recent UNHCR Report.ⁱ This high number further exacerbates the paradoxes and complexities encountered when addressing refugee flows. The flow of refugees to any given country has a direct impact, not only on the receiving country, but subsequently, the entire region. As is often the case, these receiving countries may also be facing serious internal problems themselves, be it economically, politically or socially. Consequently, the addition of an influx of refugees only serves to add further strain on government and administrative structures.

The international community has espoused shifting attitudes to the problems posed by refugee flows in the face of intra-state conflicts. In recent years there has been a reluctance to undertake the most promising, effective measures, which very often need to stretch into the realm of coercive operations, not simply diplomatic measures.

In spite of two major changes which have occurred in the last two of decades, large scale human rights violations continue to occur. First, several studies looking into the standing and functions of international law have been produced, emphasizing the need for having a minimum set of human rights standards which must be respected internationally and domestically. Second, there are now various instruments, such as the UN HR Declaration, the ICRC, and the Responsibility to Protect (R2P) principle, which compel states to adhere to an international, minimum set of standards.

The reaction of the UNSC to the Syrian crisis has proven that sovereignty can still trump human rights, and that the notion of 'sovereignty as responsibility' has unfortunately dwindled down.ⁱⁱ The issue of refugees and refugee flows, even though they illustrate the most disastrous consequences of intra-state human rights violations, which can lead to the

internationalization of a crisis, is currently not a compelling enough enabler for the international community.

This article seeks to address this conundrum by comparing three cases in which conflicts have led to a large number of refugee flows: the conflict in East Pakistan from 1971, the repression undertaken by Saddam's forces towards the Kurdish population in Iraq in 1991 and lastly, the current ongoing Syrian crisis. The aim is to analyze these situations and examine the responses given by the UNSC and its readiness to include an operative clause in a resolution which make reference to Chapter seven of the UN Charter.

East Pakistan

The conflict in East Pakistan from 1971 was sparked by the Bangladesh Liberation Movement, which escalated after the elections in Pakistan from 1970. The elections gave power to the Awami League to establish a national government.ⁱⁱⁱ Furthermore, the political elite in West Pakistan feared that the Awami League might undertake measures which would ensure greater autonomy for East Pakistan. The conflict erupted when Sheikh Mujibur Rahman, the leader of the Awami League, presented the 'six points manifesto' to the President of Pakistan, Yahya Khan, which stipulated that enhanced powers would be transferred at the provincial level to East Pakistan.^{iv}

The subsequent politics of repression led to severe human rights abuses in East Pakistan, resulting in approximately 10 million Bengalis fleeing West-Pakistani repression.^v The international community considered these incidents as an internal crisis of Pakistan's government. In the initial stages there was a general consensus that the crisis in Pakistan fell under the scope of Article 2(7) of the UN Charter, i.e. the principle of non-interference in the internal affairs of a given state. However, the ever-increasing number of refugees fleeing to India suggested that this internal crisis might have spill-over effects into India, thus risking elevating it to a regional, even international level.

The city of Calcutta became one of the major destinations for Bengali refugees. The significant increase in the city's population soared during that period of time, leading to substantial economic and social tensions. In July 1971 UN Secretary General U-Thant confided to UNSC members, issuing a warning that the conflict in East Pakistan risked engulfing the entire Indian Subcontinent.^{vi} Hostilities between India and Pakistan continued to escalate, resulting in the outbreak of war in December 1971. Throughout the UNSC meetings, India sought to justify its military actions in East Pakistan as an act of self-defence, however there were accusations of gross humanitarian abuses, with the Indian Foreign

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Minister Sawaran Singh arguing that genocide was being carried out in East Pakistan.^{vii} The US at that time shared the general opinion that this was an internal problem faced by the Pakistani government. In addition, the Nixon administration continued to supply the Pakistani army with arms. Eventually, India made the claim that Pakistan had struck first, therefore it was entitled to act under Article 51 of the UN Charter. India chose not to turn its justification discourse into a series of arguments describing its military operation in East Pakistan as a 'humanitarian intervention'. Initially, India sought to justify its actions by claiming that it was merely responding to Pakistan's military and refugee aggression. The latter implied that the strain the refugees were putting on India's social and economic structures, were as devastating as the consequences of a war.^{viii} However, as the crisis unfolded India did make the attempt to call its operation a form of 'rescue', since the plight of the Bengali's represented a 'shock to the conscience of mankind'.^{ix} This argumentation might have been facilitated by the fact that India was and is hosting its own Hindu-Bengali population in its West Bengal province. Nevertheless, the UNSC was unwilling to overstretch the human rights norm, and India's claim to a unilateral humanitarian intervention was quickly rejected. The conflict eventually led to a secession of East Pakistan, resulting in the establishment of the state of Bangladesh. In hindsight, it is now regarded as a unilateral humanitarian intervention, rather than a deliberate military strike aimed at dismembering Pakistan, by political scientists such as Michael Walzer and Nicholas Wheeler.^x

Iraq

In the 1980s there were more than four million Kurds in Iraq, out of a population of about 18 million people.^{xi} Due to Iraq's ongoing war with Iran in the 1980's (the First Persian Gulf War, 1980-1988), there were growing concerns that the Kurdish insurgency might seize this opportunity to claim autonomy of the predominately Kurdish region in northern Iraq. Saddam Hussein's regime wanted to monitor all Kurdish activities in order to prevent a rebellion and thus ordered all Kurds from rural areas to be moved into collective centers^{xii}, this being his primary strategy for defeating the Kurdish rebellion.^{xiii} The initial position of the US was to regard this repression as an internal affair, even though they had evidence of the use of chemical weapons by Saddam's regime. In 1987 UNSC Resolution 598 was adopted with regard to the Iraq- Iran war, which 'deplored the use of chemical weapons in Iraq' among other issues.^{xiv} In spite of this, chemical weapons were still being used against the civilian population in operations such as the Anfal Campaign or the Halabja Attack from 1988. Several US newspapers such as *The Washington Post*, *The New York Times* and *The Los*

Angeles Times covered the story on their front pages. Amnesty International also circulated pictures of victims and a list of disappeared persons.^{xv} Due to ongoing attacks, the remaining Kurdish population fled into the mountains bordering Iran and Turkey.

France and Turkey were the first countries to bring this humanitarian emergency to the attention of the UNSC on the 5 April 1991. Turkey, which has a large Kurdish minority living within its borders, feared the exodus of refugees might produce considerable agitations and instability. During that time, the PKK (the separatist Kurdistan Workers Party) had several bases in Northern Iraq.^{xvi} Turkey was leading a campaign against the PKK, and furthermore, the Kurdish refugees from Northern Iraq were heading towards Kurdish dominated regions of South-Eastern Turkey.^{xvii} France argued that the plight of the Kurds represented an unacceptable breach of human rights, comparable to the Nazi genocide against the Jews.^{xviii}

Humanitarian claims put forward by France failed to receive support from other UNSC members, who did not want to weaken the non-intervention principle. However, it became apparent that it was necessary to react to Iraq's internal crisis, as Iran and Turkey had explicitly expressed their fears concerning the influx of refugees coming out of Iraq. Resolution 688^{xix}, submitted to the UNSC by France and Belgium, and co-sponsored by the UK and USA, was adopted with a ratio of 10-3 with two abstentions.^{xx} The resolution referred to the situation in Iraq as 'a threat to international peace and security', without specifically mentioning the Chapter seven enforcement provisions. Several developing countries, such as Yemen, Zimbabwe and Cuba, disagreed with this outcome arguing that the situation of the Kurds was a strictly domestic matter concerning the Iraqi state alone and therefore outside the scope of action of the UNSC.^{xxi} France and the UK were the only states to have made explicit reference to humanitarian claims during the UNSC deliberations.^{xxii} However, Yemen, Zimbabwe and Cuba feared that the situation could set a precedent for great powers such as the US to pursue their own strategic interests in the states of the global South by using the human rights mantra.

Syria

The war in Syria started in March 2011 after large public protests against Bashar al - Assad's government erupted in several cities. The army reacted to these movements with massive crackdowns, and the protests quickly escalated into a nation-wide rebellion.

A UN report from 2012 on the situation in Syria described the conflict as a having an 'overly sectarian nature' drawing in ethnic and religious minorities, including Sunni and Shia militants

as well as Hezbollah.^{xxiii} Furthermore, states such as Turkey, Saudi Arabia and Qatar have openly admitted to be funding rebel factions.^{xxiv} The conflict in Syria has received widespread media coverage, also facilitated by modern communication technology and social media. Images of civilian victims, including women and children, destroyed infrastructure and collapsed buildings have been constantly circulated by news channels and on the Internet. The UNSC has adopted countless resolutions condemning the ongoing human rights abuses, the dire situation faced by refugees and by the civilian population entrapped in the conflict zone.^{xxv} After a failed 6-Point Plan proposed by Kofi Annan in 2012 and the resignation of two UN Special Envoys, Annan and Lakhdar Brahimi (a prominent Algerian diplomat and academic who also served as Head of UNAMA from 2001-2004), which had been given the task to mediate the crisis and facilitate talks between representatives of the Assad regime and the rebels, very little has changed. The situation has continued to deteriorate to the point that several radical Islamist terrorist groups have now infiltrated Syria, making it even more difficult for the international spectators to draw the line between the victims and the perpetrators.

In spite of this dire humanitarian catastrophe concerning Syrian refugees and IDP's the UNSC has failed to reach the much needed consensus which would authorize a Chapter seven military operation. Even after concrete evidence was received attesting that chemical weapons had been used in Syria by Assad's forces, the permanent five members of the UNSC have failed to reach consensus with regard to a UNSC resolution. No country or coalition of the willing has pushed forward for a unilateral intervention, due to fears of entanglement in a protracted conflict and its implicit military and economic consequences, and international condemnation. Furthermore, states such as the UK and the US, which in the past decades have been among the first to endorse principles of humanitarianism justifying such an operation, have failed to gain the approval of their national assemblies for a military intervention in Syria. This was because of the general reluctance to engage into high military spending operations and the fear of yet another protracted conflict after Iraq and Afghanistan.

According to a statistical snapshot from UNHCR on the Syrian situation from January 2014, there are over 6, 5 million internally displaced persons in Syria, and almost 2, 5 million refugees and 41,000 asylum seekers have originated from the country.^{xxvi} Syria itself has its own population of Palestinian refugees, mainly concentrated in the Yarmouk Camp, located only two miles away from Damascus. These refugees have been entrapped in the fighting and have often been cut off from any kind of humanitarian assistance.^{xxvii}

Syrian refugees are mostly concentrated in their neighboring countries: 1 million in Lebanon, around 650, 000 in Jordan, over half a million in Turkey.^{xxviii} Smaller numbers can also be found in Iraq and Egypt.

The current state of affairs regarding Syria demonstrates that regress, instead of progress, has been made towards the internalization of a minimum standard of human rights which needs to be upheld by the collective understandings of the international community, concerning the international rules and obligations to which they are bound. Thomas Franck conducted a study in 1990 on the *Power of Legitimacy among Nations*, in which he examined the issue as to why rules obligate in some instances, and do not obligate in others.^{xxix} By looking at this dilemma Franck argued that a critical analysis of international law needs to entail a philosophical inquiry into the suitable limits of an international system of obligations, and into the basic notions concerning global rights. Almost a quarter of a century later, Franck's arguments are as valid as ever.^{xxx}

With regard to the examples of Iraq and East Pakistan, it is important to bear in mind that a multitude of factors influence the development of a conflict, and the way in which the international community chooses to tackle it. In the case of the Indo-Pakistani war from 1971, geopolitics represented a decisive factor which facilitated India's military operation, and last but not least, India's military superiority.

Operation Provide Comfort in Northern Iraq, carried out by the UK, the US and their allies, was facilitated by several factors. The end of the Cold War marked a new era for humanitarian intervention, as the traditional spheres of influence between the USSR and the US had become blurred. The most widely cited explanation for the shift in the behaviour of states, is that the media was instrumental in putting pressure on governments to put a stop to the plight of the Kurds.^{xxxi} Additionally, UNSC Res. 688 also brought about a legitimizing environment which covered military actions that were conducive to the establishment of safe heavens.

Conclusion

Refugee flows are undeniably a symptom of a large-scale conflict and a manifestation of a humanitarian catastrophe. In the context of UNSC deliberations, states often use this as a legitimizing argument for a humanitarian intervention. The UNSC's willingness to accept this stance depends on various interrelating factors, such as the regional security dimension or the prevalence of human rights norms. In view of the three case studies discussed in this article, it is possible to argue that refugee flows alone are not a sufficient enough enabler for

the UNSC to react. Hence, the security of another state needs to be put at risk for the UN to use its Chapter seven machinery.

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ⁱⁱ F. M. Deng, 'From Sovereignty as Responsibility to the Responsibility to Protect', *Global Responsibility to Protect*, Vol. 2, 2010, pp. 353-370

ⁱⁱⁱ N. Wheeler, *Saving Strangers*, Milton Keynes, Oxford University Press, 2000, p. 55-56.

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^v D. Myard, *Sadrudin Aga Khan and the 1971 East Pakistani Crisis: Refugees and Mediation in light of the Records of the Office of the High Commissioner for Refugees*, Global Migration Research Paper No 1, the Graduate Institute Geneva, 2010, p.6.

^{vi} N. Wheeler, *Saving Strangers*, Milton Keynes, Oxford University Press, 2000, p. 59.

^{vii} *The Events in East Pakistan, 1971*, Review of the International Commission of Jurists, Geneva, 1972, p. 31-32.

^{viii} *ibid.*, p. 61.

^{ix} *ibid.*, p. 63- 74.

^x M. Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 4th ed., USA, Basic Books, 1977, p. 105 and N. Wheeler also makes this argument in *Saving Strangers*, 2000, pp. 67-73

^{xi} S. Power, *A Problem from Hell: America and the Age of Genocide*, New York, Harper Perennial, 2003, p. 171

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^{xiii} *Ibid.*

^{xiv} For more information please consult: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/524/70/IMG/NR052470.pdf?OpenElement> (accessed on the 16th of July).

^{xv} S. Power, *A Problem from Hell: America and the Age of Genocide*, New York, Harper Perennial, 2003, p. 195.

^{xvi} K. Yildiz, *The Kurds in Turkey, EU Accession and Human Rights*, London, Pluto Press, 2005, p. 119.

^{xvii} M. Gunther, 'The Kurdish Question in Perspective', *World Affairs*, vol. 166, no. 4, 2004, pp. 199-202.

^{xviii} N. Wheeler, *Saving Strangers*, Oxford University Press: Milton Keynes, 2000, p. 141.

^{xix} For more information please see: <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/596/24/IMG/NR059624.pdf?OpenElement> (accessed on the 16th of July 2014).

^{xx} N. Wheeler, *Saving Strangers*, Oxford University Press: Milton Keynes, 2000, p. 143.

^{xxi} Ibid., p. 143.

^{xxii} Ibid., 145.

^{xxiii} For more information please consult: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/Ghe12/106/13/PDF/G1210613.pdf?OpenElement> (accessed on the 17th of July 2014).

^{xxiv} For more information please see: <http://www.britannica.com/EBchecked/topic/1781371/Syrian-Civil-War/309009/Civil-war> (accessed on the 17th of July 2014).

^{xxv} For more information please consult: <http://www.securitycouncilreport.org/un-documents/search.php?IncludeBlogs=10&limit=15&tag=%22Security%20Council%20Resolutions%22+AND+%22Syria%22&ctype=Syria&rtype=Security%20Council%20Resolutions&cbtype=syria> (accessed on the 17th of July 2014).

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