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Review Article

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Refugee Law and Policy: International and U.S. Responses. Ved P. Nanda (Ed.). New York: Greenwood Press, 1989. Pp. 228.

The plight of approximately 15 million displaced, uprooted men, women and children, refugees fleeing from war, torture, and economic deprivation has aroused global concern among scholars, human rights advocates, international lawyers, and politicians. While responses have been sympathetic, action to alleviate this crisis has been largely inadequate. Indeed, it could be argued that the refugee crisis has brought forth both the best and the worst traits in human nature. On the one hand, individuals, groups, and nations have generously donated the bare necessities for physical survival for thousands of displaced people. On the other hand, governments have failed to cope with the task of limiting refugee flows and have effectively restricted entry into their own countries to all but the most "desirable" refugees. As the refugee problem continues to get worse, the traditional countries of refuge are slamming their doors in the faces of helpless individuals.

The fourteen authors who have contributed to *Refugee Law and Policy* share a deep concern about the global nature of this tragedy. From a scholarly perspective, the book contributes to a burgeoning literature on the subject, a literature which demonstrates the widespread sympathy for the suffering of so many innocent victims. The book's editor, Ved P. Nanda, has also elicited a number of practical suggestions from the book's contributors. In these pragmatic formulations the book goes beyond scholarly interest and becomes useful to politicians and international lawyers. Professionally, the contributors represent the disciplines of law, theology, political science, and international studies. Some of the articles reflect personal knowledge of refugee programs via first-hand work experience. The book is recommended for students of political science, history, and international law, and for those interested in the Third World.

I. A Human Response

Nanda believes that "[t]he refugee challenge demands passionate as well as rational responses."¹ The irrational nature of warfare, particularly in

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1. *Preface* to *REFUGEE LAW AND POLICY: INTERNATIONAL AND U.S. RESPONSES* at ix (Studies in Human Rights No. 9, V. Nanda ed. 1989) [hereinafter *REFUGEE LAW*].

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this century, with the deliberate brutalization of civilians, may be the most significant cause of refugee flows. Recently, the world was shocked when Iraq invaded Kuwait, causing thousands of innocent civilians to flee to the questionable safety of the open desert where they suffered from thirst, hunger, scorpion stings, heat, and sand storms. The faces of human tragedy, victims of inhuman greed and rapacity, could not but evoke a passionate response as they appeared on television screens around the world. The refugees fleeing from Kuwait are, however, only the most recent victims of modern warfare. They were preceded by those who have escaped civil war and foreign intervention, death squads, and terrorists in Afghanistan, Sri Lanka, El Salvador, Guatemala, and Cambodia, to name only a few countries where such upheavals have occurred.

II. Some Reasons for the Refugee Problem

The refugee flows are a consequence of severe political instability in the second half of our century, an instability that on occasion occurs because of external interference in small Third World nations. Because of the disappearance of traditional patterns of government during the imperial era, the devastation of indigenous cultural systems, and the confusion of values caused by foreign ideas, many countries in Africa and Asia have yet to evolve systems of rule that can reconcile the requirements of twentieth-century life with the heritage of an ancient past. The process of political freedom from colonial rule overlooked these subtle cultural nuances in creating arbitrary national boundaries and forms of government which paid little heed to local considerations. Civil wars and political instability enabled opportunistic dictators such as Pol Pot in Cambodia and Idi Amin in Uganda to make their mark in terror and tyranny. Such tinpot dictators have generated huge refugee flows making their victims the world's responsibility. Nanda observes, "Once refugee flows tended to be intermittent; now they have become steadier and more prolonged."²

The foreign policies of the Great Powers have also contributed considerably to the refugee crisis. The USSR's intervention in Afghanistan resulted in the flight of millions of Afghans. One recent estimate places the number of refugees in Pakistan at three million.³ Some of the contributors to *Refugee Law and Policy* focus their attention on the role of the United States in generating refugee flows from Central America. In a critical analysis, political scientist Angela Delli Sante explains the plight of refugees from Guatemala and Salvador by detailing the deliberate victimization of civilians in those countries. Delli Sante believes that the influence of the U.S. and Israel in training and supplying the repressive

2. Nanda, *Refugee Law and Policy*, *id.* at 5.

3. Hocké, *Beyond Humanitarianism: The Need for Political Will to Resolve Today's Refugee Problem*, in *REFUGEES AND INTERNATIONAL RELATIONS* 37 (G. Loescher & L. Monahan eds. 1989).

forces has led to the current situation.⁴ As she explains:

[A]lthough the internal repressive forces must be held responsible for their direct acts of repression, the United States government, and to a lesser extent the government of Israel, cannot escape responsibility for their part in the tragedy of the Guatemalan and Salvadoran people—a tragedy that has caused hundreds of thousands to seek safety from persecution.⁵

Contributor Peter Koehn echoes this observation: “U.S. political and military interventions abroad also contribute to the formation of refugees.”⁶ Koehn, a political scientist, continues, “In Iran, Ethiopia, Central America, and elsewhere in the Third World, extensive U.S. military aid has provided repressive regimes with the tools of political persecution and with the means of forcibly resisting popular movements and pressures for change.”⁷

Although agreeing that “[r]efugees are, in fact, a by-product of political turmoil,”⁸ contributor Robert Gorman, another political scientist, is more positive about U.S. initiatives on behalf of refugees. “In general,” Gorman concludes, “U.S. refugee policy in Africa is based on a genuine concern for the welfare of refugees and a desire to find lasting solutions to their predicament.”⁹ Analyzing the crisis in Africa, Gorman estimates that there are approximately 3.5 million refugees in that continent¹⁰ and states provocatively, “Nor are most African refugees candidates for resettlement to a Western country.”¹¹ In his explanation of U.S. efforts to alleviate the plight of African refugees, Gorman also admits that “in some cases U.S. government policies may have contributed indirectly to the exacerbation of conflicts that have produced refugees.”¹²

III. Resettlement of Refugees: The Western Nations' Record

The issue of the ultimate fate of refugees is of primary concern to scholars and human rights activists throughout the world. Though self-evident solutions to the refugee crisis include “voluntary repatriation, resettlement in a third country or integration in the host country,”¹³ implementation is fraught with political footdragging, bureaucratic red-

4. Delli Sante, *Central American Refugees: A Consequence of War and Social Upheaval*, in *REFUGEE LAW*, *supra* note 1, at 92.

5. *Id.* at 93.

6. Koehn, *Persistent Problems and Political Issues in U.S. Immigration Law and Policy*, in *REFUGEE LAW*, *supra* note 1, at 78.

7. *Id.*

8. Gorman, *U.S. Refugee Policy in Africa*, in *REFUGEE LAW*, *supra* note 1, at 123.

9. *Id.* at 123.

10. *Id.* at 116.

11. *Id.* at 122.

12. *Id.* at 125.

13. Cels, *The Refugee Policy of West European Governments: A Human Rights Challenge at Our Doorstep*, in *HUMAN RIGHTS AND FOREIGN POLICY* 165 (D. Hill ed. 1989).

tape, and unwillingness on the part of nations of traditional refuge to accommodate the huge new influx of alien populations.

Contributor Karen Jorgensen's analysis of the implementation of the U.S. Refugee Act of 1980¹⁴ reveals the chasm between the intent of Congress to treat refugees fairly and equally,¹⁵ and the Act's actual application to refugees which has resulted in the "near impotence of the Act today."¹⁶ In an attempt to highlight the failure of the U.S. government to deal fairly with the refugee crisis, contributor Angela Delli Sante contrasts "the discriminatory policy of the U.S. government toward Salvadorans and Guatemalans (and Latin Americans in general) . . ."¹⁷ with the attitude of the Canadian government which she feels "has been sympathetic and helpful."¹⁸

However positive Canada's approach may appear in a contrasting exercise, Canadians themselves have very mixed feelings about their government's refugee policy. In a recent book, Canadian lawyer and refugee expert David Matas criticizes Canada's policy and asserts that "[n]ow Canada is setting a negative example."¹⁹ He explains that the Canadian Council for Refugees has condemned governmental legislation "for denying an appeal on fact, allowing access to courts of law by leave rather than by right, and providing for forced return of refugee claimants by group to third countries."²⁰

The existence of serious discrimination in Canada is proven by the statistics. Matas explains, for example, that "in 1987, out of 19,000 refugees accepted by Canada, only 2,660, or fourteen percent, were female heads of families. A mere ten were single mothers whose lives were in danger."²¹ Canadian government policy in recent years clearly demonstrates that refugee women are a "forgotten majority."²²

Contributor Bruce Bailey analyzes the legal structures for determining refugee status in France, West Germany and the United Kingdom.²³ Bailey concludes that "France still accords, by most standards, the most favorable treatment to refugees, while the United Kingdom is perhaps the least generous in its treatment of refugees."²⁴

The restrictive nature of European responses to the refugee crisis

14. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980).

15. Jorgensen, *The Role of the U.S. Congress and Courts in the Application of the Refugee Act of 1980*, in *REFUGEE LAW*, *supra* note 1, at 131.

16. *Id.* at 136.

17. Delli Sante, *supra* note 4, at 101.

18. *Id.* at 102.

19. D. MATAS & I. SIMON, *CLOSING THE DOORS: THE FAILURE OF REFUGEE PROTECTION* 248 (1989).

20. *Id.* at 250.

21. *Id.* at 289.

22. See Camus-Jacques, *Refugee Women: The Forgotten Majority*, in *REFUGEES AND INTERNATIONAL RELATIONS*, *supra* note 3, at 141.

23. Bailey, *Conflicting Trends in Western European Refugee Policies*, in *REFUGEE LAW*, *supra* note 1, at 58.

24. *Id.* at 62.

has also been analyzed in *Human Rights and Foreign Policy*.²⁵ In that volume, Johan Cels argues:

As long as the refugee issue coincided with a country's domestic and foreign-policy interests a liberal and humane asylum policy has been possible. However, in recent years a discrepancy between both has appeared and consequently led to the adoption of restrictive and deterrent measures.²⁶

Cels believes that the scope of the crisis has resulted in "compassion-fatigue."²⁷ In West Germany, for example, torture does not guarantee refugee status unless it is politically motivated.²⁸

A careful review of the refugee crisis reveals that all countries have been found wanting in their approach to this global problem. The U.S., because of its sheer size and influence, undoubtedly draws the most criticism. But no nation can feel totally proud of its refugee policy. To suggest that Western governments have been incapacitated by the sheer magnitude of the problem is to state the obvious. Clearly, national initiatives have been inadequate to meet this challenge. An international approach is now not only a moral imperative but the only practical hope for a solution equal to the problem.

IV. Inadequacies of Existing Refugee Law

Nanda is convinced that "existing refugee law suffers from serious inadequacies."²⁹ Though there are numerous international instruments, adherence to and application of these by governments is neither wholehearted nor enthusiastic. Domestic law chips away daily at the human rights of displaced peoples. The very word "refugee" has led to a veritable barrage of bureaucratic definitions and qualifications which pay little heed to the extent of physical, mental and emotional pain felt by those driven from their homes.

Most regrettable of all is the politicization of the refugee crisis. Gil Loescher explains that "[r]efugee policy, like human rights policy, can be used to embarrass or destabilize enemy governments,"³⁰ a view shared by a number of contributors to Nanda's book. For instance, Charles Milligan, Professor of Theology, explains that refugees from states classified as friendly to the U.S. are not accorded the same favorable treatment as claimants from communist or unfriendly states. "From 1981 to 1983 the United States admitted 244,000 Indochinese and 47,000 Soviets and East Europeans, but only 3,000 Latin Ameri-

25. *Supra* note 13.

26. Cels, *supra* note 13, at 171.

27. *Id.* at 168.

28. *Id.* at 173.

29. Nanda, *supra* note 2, at 9.

30. Loescher, *Refugees and Foreign Policy*, in *HUMAN RIGHTS AND FOREIGN POLICY*, *supra* note 13, at 12.

cans, a disproportionate number of them Cubans.”³¹ Indeed, Salvadorans have been sent back by the U.S. Government in clear violation of international law. As to the fate of those returnees, the American Civil Liberties Union has catalogued the fact that over a hundred former Salvadoran refugees have been killed.³² A.C.L.U. claims have been challenged by the U.S. Government.³³ Angela Delli Sante’s article echoes the charge of discrimination:

[D]espite the intensification of the violence against civilians between 1980 and 1983 in both El Salvador and Guatemala, in 1983 a ceiling of 2,000 was placed on Latin Americans. For the same period, a ceiling was placed at 3,000 for Africans, 64,000 for Asians, 15,000 for Eastern Europeans and refugees from the USSR, and 6,000 for applicants from the Near East. In 1984 and 1985 the ceiling for applicants from Latin America was further reduced to 1,000.³⁴

Contributing writers Peter Van Arsdale and Laurel Bagan reiterate the charge of ideological bias in favor of refugees from communist societies.³⁵ As contributor Richard Falk explains, the grant of refugee status can be construed as “a kind of judgment on the foreign government that may undermine foreign policy efforts to support that government.”³⁶ Falk believes:

[R]efugee laws have been loosely applied in relation to those who flee communist rule because we seek to emphasize and manifest disapproval, yet are rigidly applied in relation to anticommunist regimes because we have not wanted to erode their claims of legitimacy or to lessen grounds for support.³⁷

V. Some Solutions to the Problem

It is therefore evident that on the national level, precise, clear laws with fair non-discriminatory application will provide the only equitable response. Less emphasis on the political features of the refugee issue and more on the human and humanitarian aspects would create greater harmony between the avowed ideals of democratic states and their practices. Contributor Karen Parker asserts, “Human rights and humanitarian law can be useful sources of rights for refugees.”³⁸

Refugee flows also need to be prevented before they occur if at all possible. In the recent refugee crisis caused by the Iraqi invasion of

31. Milligan, *Ethical Aspects of Refugee Issues and U.S. Policy*, in REFUGEE LAW, *supra* note 1, at 180.

32. *Id.* at 181.

33. *Id.*

34. Delli Sante, *supra* note 4, at 101.

35. Van Arsdale & Bagan, *The Development of Refugee Policy and Mental Health Programming in Colorado*, in REFUGEE LAW, *supra* note 1, at 151.

36. Falk, *Accountability, Asylum, and Sanctuary: Challenging Our Political and Legal Imagination*, in REFUGEE LAW, *supra* note 1, at 29.

37. *Id.*

38. Parker, *The Rights of Refugees under International Humanitarian Law*, in REFUGEE LAW, *supra* note 1, at 39.

Kuwait, had the world demonstrated more cohesiveness *before* rather than *after* the occupation, Iraq's President might have had second thoughts before engaging in that venture. Nanda suggests that "the United Nations must increase its efforts at addressing the causes of refugee flows, in order to avert such flows."³⁹ Contributor Gorman calls for renewed American and European "efforts to resolve the political conflicts that have spawned refugees."⁴⁰

Contributor Daniel Derby supports the suggestion that states which generate refugee flows compensate refugees and receiving states.⁴¹ It would be interesting to speculate on the possible reaction of Saddam Hussein to any such demand for monetary compensation. Derby also believes that "if states were merely to apply normal rules of jurisdiction to crimes that cause them to be burdened with displaced persons, a major gap in criminal law coverage would be closed."⁴²

Although governments have responded inadequately, individuals, church groups, non-governmental organizations, municipalities and states have rallied to support the human rights of refugees. Contributors Howland and Garcia describe the "City Sanctuary" movement and highlight the very important fact that "[i]n a very real sense, the United States is a land of sanctuary."⁴³

Conclusion

Given the scale of suffering involved, the plight of teeming millions, there is a very real danger of our forgetting that each of those people represents an individual life with all the hope and despair, joy and sorrow which form part of the phenomenon of human existence. It is necessary to emphasize that mass misery has to be dealt with by alleviation of the distress of each individual. It is only by humanizing our conception of the problem that we may truly feel the searing anguish of forcible uprooting from one's home, loss of family, loss of cultural identity, economic deprivation, psychological trauma, and emotional anguish which mars every refugee's life. As we work to help each individual we remember the words of the Jewish Talmud, "Whoever preserves one life, it is as if he has saved a complete world."⁴⁴

39. Nanda, *The Challenge: Averting Flows of Refugees and Providing Effective Protection and Durable Solutions*, in REFUGEE LAW, *supra* note 1, at 205.

40. Gorman, *supra* note 8, at 126.

41. Derby, *Deterring Refugee-Generating Conduct*, in REFUGEE LAW, *supra* note 1, at 44.

42. *Id.* at 49.

43. Howland & Garcia, *The Refugee Crisis and the Law: The "City Sanctuary" Response*, in REFUGEE LAW, *supra* note 1, at 189.

44. D. MATAS & I. SIMON, *supra* note 19, at 305.

