A CRITICAL SYNTHESIS OF REFUGEE POLICY IMPLEMENTATION AND PRACTICE: EXCLUSION AND CONTAINMENT OF REFUGEES IN GLOBAL CONTEXT

BY

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Summary

The paper analyzes the discourse of refugee containment policy initiatives and how they violate established international human rights and refugee law. The issues fostering containment and forced repatriation of African refugees are explored by examining the inequitable socio-political relationships that help explain the growing acceptance of containment framework and practice. The author utilized the resources in the Centre for Refugee Studies at York University, Toronto, Canada; Library Resources (Books); Academic Journals and Internet; and the Newspaper Articles to theorizes about and reviews the relevant literature dealing with the theoretical framework of containment policy issues to engage in a critical synthesis of refugee policy implementations and practices of exclusion and containment of refugees in global context. The paper’s objective is to critically interrogate issues impeding refugees’ rights, and shows how containment and exclusion policy not an option for most European refugee’s resettlement endeavors. The author uses the attacks of September 11, 2001 in the United States of America as one of the case studies to demonstrate how it is perpetually exploited by most countries in the North to practice refoulement, exclusion and containment of refugees. The findings explicitly show how the anti-terrorist measures undertaken by most countries in the North have severely degraded the UN Refugee Conventions, and assert that the United States and United Kingdom anti-terrorism acts permit arbitrary and indefinite imprisonment of refugees, and immigrants suspected of terrorist act – without proper legal representation and adequate appeal rights under the law.

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Out-rightly, the paper interrogates the manifestations and challenges of refugee policy implementations and practices of exclusion and containment of refugees in
global context. The academic task is to tease-out forced migration and refugee settlement issues in order to capture the multiplicity, intricacy and the intersections of refugee issues as they relate to the controversy in pursuing effective policy to address forced displacement, and refugee resettlement issues. Also, the paper examines global refugee policy implementation and practice in order to offer a critical interrogative perspectives on issues impeding refugees’ rights, and specifically ask why containment and exclusion policy not an option for European refugees’ resettlement.

Refugee and immigration policy in many countries have changed significantly since the early 1990s, particularly in countries of the North (Euro/North America Nations). The post-cold war era continues to witness most nations in the North slowly and radically closing their borders to refugees in search of safety and protection. For example, in Euro/North America, refugees continue to experience a difficult reality, as they are subjected to stringent immigration policy and inhumane treatment. This inhumane treatment is particularly vivid and blatant since the event of September 11, 2001 in the United States. Most countries of the North continue to formulate restrictive immigration and refugee policy to ensure firm control of their borders, and they justify these callous policies as anti-terrorist measures.

Conceptually, the attacks of September 11, 2001 in the United States of America is perpetually been exploited by most countries in the North to practice refoulement, exclusion and containment of refugees. Unquestionably, the anti-terrorist measures undertaken by most countries in the North have severely degraded the UN Refugee Conventions. For example, the United States and United Kingdom anti-terrorism acts permit for the arbitrary and indefinite imprisonment of refugees, asylum seekers and immigrants suspected of terrorist act – without proper legal representation and adequate appeal rights under the law.

In fact, the United States and the United Kingdom anti-terrorism acts include not just implicit, but explicit indistinguishable characterization of terrorism that consist of people with unsubstantiated associations to terrorist organizations. The implicit veracity is that they are determined to exclude and contain refugees in conflict zones. In some cases, refugees are treated as if they are normal immigrants in an attempt to weaken the 1951 UN Refugee Convention by linking refugees with terrorist groups.

The deliberate linking of refugees to terrorism demands critical conceptualization of what constitute a genuine refugee by differentiating them from normal migrants and terrorist groups. According to United Nations Refugee Convention Article 1A (2), a refugee is a person who is outside his or her own country, who has a well-founded fear of persecution for reasons of race, religion,
nationality, membership of a particular social group or political opinion, and who as a result of that fear is unable or unwilling to return to his or her country or to avail himself/herself of its protection. The United Nations Convention relating to the status of refugees was drafted in 1951 and the terms of the Convention were limited to the political events taking place in Europe prior to 1951. However, the Protocol of 1967 amended the provisions of the Convention by removing both the time and geographical requirements. Theoretically this modification signified that from this time onward all refugees, regardless of background, are automatically qualified for the protection provided by the 1951 United Nations Convention and 1967 protocol.

In 1969, the Organization of African Unity (OAU – now AU) drafted supplementary recommendations and procedures for dealing with the increasing refugee problem in Africa. The AU Convention was designed to supplement existing procedures concerning refugees. Article 1 (2) of the AU Refugee Convention broadens the United Nations refugee definition to include all persons who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of their country of origin or nationality, are compelled to leave their place of habitual residence in order to seek refuge outside their country of origin.

Turton (2002) notes that, “This gave potential receiving states a good deal of flexibility in deciding whom to admit to their territory on ‘humanitarian’ grounds – on a voluntary basis, rather than in accordance with their obligation under international law” (32). The AU Convention accentuates the non-discriminatory provisions, which means that no refugee should be denied recognition by reason of religion, racial-cultural affiliation, political association, and those escaping violence of any type. To guarantee that countries were not compelled by considerations of their own socio-political relations with the countries of origin to deny political asylum to refugees, the AU Convention defines the granting of political asylum to refugees as a peaceful and humanitarian act that shall not be looked upon as an unfriendly act by any Member State (See Article 2 (2)).

According to Turton (2002), “The Convention was also a powerful weapon in the Cold War Armoury of the Western Powers” (32). The AU Refugee Convention, unlike the 1951 UN Refugee Convention, explicitly provides that the standard of non-refoulement include both non-refusal at the border and non-repatriation, and applies equally to individuals who are within the states where they fear persecution. Malarek (1997) asserts that, “The definition describes the backgrounds of most asylum-seekers fleeing to the sanctuary of Europe and North America in recent years– people from Afghanistan, Sri Lanka, Iran, Iraq, Ethiopia, Chile, and Lebanon” (1987: 97).
In spite of the 1951 UN Convention rule that fear of persecution is a fundamental and satisfactory condition for a person to attain refugee status; the emphasis is on political persecution. Therefore, by augmenting the theory of political persecution from the 1951 UN Convention to include asylum seekers, and by making clear the mechanism of voluntary repatriation, the 1969 AU Convention seems more equitable for refugees in Africa and elsewhere.

The spirit of both the United Nations and the Organization of African Unity Conventions can be succinctly articulated in the subsequent passage. Without exception, every human being is entitled to fundamental rights and freedom from political, ethno-racial and religious persecution, and anyone victimized should receive protection and support from the international community in order to affect that freedom. The second meaningful result of the 1951 Convention is the notion that no person must be forcibly repatriated (a theory of refoulement) to their country of origin, the primary source of their fear of persecution. However, some of the salient constraints within the provisions of the UN Convention are that individuals seeking refugee status must have crossed a sovereign state boundary in order to be officially recognized as a refugee, and proved that their fear of persecution is well-founded (see Turton 2002; Zolberg, Suhrke, and Aguayo 1989).

In fact, the United Nations Convention and Protocol are conceived to be strictly binding within the territory of the contracting country. According to the Convention, the signatory countries are bound to bring their domestic provisions in harmony with their international commitments. This would signify alteration to the existing immigration policy or formulation of new regulations to enforce the mandate of the Convention and Protocol. In reality, the United Nations requires formal policy statements from signatory states regarding their procedures for implementing UN Conventions.

The liberty of the signatory countries in inaugurating the 1951 Convention is noteworthy. One of the noticeable problems in achieving the objective of the UN Convention is the ambiguous definition of the phrases ‘well founded fear of persecution’ and ‘the right to political asylum’. The process to determine if someone is a Convention refugee is very complex and tedious, especially for those who claim to have escaped persecution in their country, as compared to people who are part of a mass movement exacerbated by wars, natural disasters or other types of political cruelty. The first group will definitely have enormous problems in proving that their fear of persecution is well-founded before they can be deemed, or recognized, as refugees. While on the contrary, the latter category may be readily granted refugee status depending on other intricate factors such as race, gender, geography, religion, and class.

Seeking political asylum or refugee status is a very complicated and stressful endeavor because of the bureaucratic uncertainty, racial discrimination,
religious and class discrimination, and groundless delay in the process. As noted by Malarek:

The problem with the UN definition is that most refugees today cannot prove that they personally have a ‘well-founded fear of being persecuted.’ While they may not as individuals be a target of deliberate persecution, they may well become the hapless victims of random violence or roaming death squads. To put it more crudely, for a person to prove he was individually persecuted, harassed, tortured or imprisoned for his beliefs, he would have to establish that the bomb or missile that devastated his village, killing 650 people and wounding another 1,500, was meant specifically for him (1987: 97).

Given the aforementioned argument, it is absolutely feasible for a country to have perfect immigration and refugee policy on paper through the incorporation of the UN Convention and Protocol, and still narrow-mindedly reject admission to the most vulnerable victims of political persecution. This kind of racial ethnic difference-based discrimination is perplexing given the fact that refoulement is not a standard procedure in refugee situations. It is, however, a common practice in many so-called liberal countries.

Martin (2002), argues that the struggle to search durable solutions for displaced people also comes from the declining readiness of states to offer refuge. This is largely so because of social difference-based discrimination and misinformation about refugees, particularly those who are racially different and from countries in the South. Also, refugees may suffer additional drawbacks if immigration officials have inadequate knowledge of the political background surrounding refugee migration from their homeland. Moreover, some immigration officials tend to blame their inequity policy practices on the vague interpretation of the phrase “well-founded fear of persecution”.

A critical interrogation suggests there is no confusion about the term “well-founded fear of persecution”. Generally, the definition refers to people whose life and freedom are in danger and who solicit protection from political and other forms of persecution. Martin (2002), argues that states have no agreed upon criteria for determining whether situations justify deportation or repatriation, especially in post-conflict society. In theory, one of the foremost protections promised to refugees is the right to request asylum and the pledge that they shall not be forcibly repatriated. In this context, Turton (2002) argues that:

Refugees are defined under international law as falling outside both the protection of their state and its international borders, and as therefore requiring, and being in a position to receive, the protection of international community. The 138 states which by the end of 1999 had signed the 1951 UN Convention Relating to the Status of
Refugees and/or its 1967 Protocol, are legally bound not to return a refugee to a situation in which he or she could be put at further risk (21).

The above quotes not only directly confront the containment and forced repatriation policy advanced by Crisp (2000); Bayefsky and Doyle (1998), but also contradict the international definition of a refugee and the pragmatic interpretations signatory states must implement to protect refugees. Under international law, the granting of political asylum is based on humanitarian and compassionate grounds. In practice, the eagerness of host governments to welcome refugees is generally influenced by political, social, cultural, economic and ethno-racial considerations.

Robinson (2002), Turton (2002), Malarek (1987), Cernea and Mcdowell (2000) argue that compounding the refugee problem are various confusing categorizations and phrases. These classifications have taken on a terminology all its own. Uprooted people are known or classified by various governments and agencies as refugees, Convention refugees, defacto refugees, political refugees, exiles, mandate refugees, asylum-seekers, displaced persons, humanitarian cases, expellees, returnees, economic refugees, and forced resettlers. At the root of the confusion is the United Nations 1951 Convention and the 1967 Protocol Relating to the Status of Refugees which fail to deal with the current refugee realities. Many signatory countries have blatantly and deliberately violated the UN Convention and Protocol. This is done based, in large part, on the argument that the deportation of foreigners is a sovereign state’s right (see Adelman 1999; Martin 2002; and Turton 2002).

The United Nations High Commissioner for Refugees (UNHCR) continues to express serious concern regarding the contemporary threats to refugee protection and resettlement issues. Notably since the 1980s, Western nations have been demonstrating less commitment to the 1951 United Nations refugee obligations. At present, the resistance of Western nations to addressing refugee problems and resettlement issues is even more pronounced, particularly through evolving restrictive immigration and refugee policy that overtly fosters inhospitable treatment of refugees in their resettlement endeavor.

The antipathy of Western nations toward addressing the resettlement issues of refugees stems from the fact that they not only have the facilities to control the movement of people into their nation-state boundaries, but also have the means to sustain sophisticated refugee determination systems that have redefined the criteria of what constitutes a genuine refugee. The outcomes of such a cruel policy shift are “containment” of refugees in the country where they fear persecution and imposed insecurity of a potential “deportation” for those who already have the opportunity to make their refugee claims.

Fitzpatrick (1994), observed that in the 1990s political asylum applications in Europe dropped drastically by two-thirds, while combined refugee applications
in Western Europe, Australia, and North America plummeted by half – from about 825,000 applications in 1992 to 425,000 in 1994. In spite of these abrupt declines, Fitzpatrick asserts that political pressure has intensified to impede refugee admission to safety. Li (2003), contends that refugee/immigrant admission also involves receiving countries guarding their gates – setting policies to separate desirable from undesirable refugees in order to close the door to the latter.

In this context, African refugees are barely offered any protection given to white skin refugees. In fact, African refugees have not been treated equitably within the 1951 UN Refugee Convention and 1967 Protocol since its inception. Most advanced countries have successful excluded Africans from seeking refugee status in their country, and few African refugee claims are being adjudicated under regular immigration laws, with the aim of repatriating them to Africa as early as possible. Undeniably, most countries that are signatory to the UN Refugee Convention are blatantly repudiating the protection granted to refugees under the UN Refugee Convention.

It is perturbing of how the so-called advanced nations are able to use equity and non-discriminatory language to blame the victims of discrimination and continue to treat refugees inequitably along socio-racial difference lines, even though discrimination is categorically prohibited in international human rights law.

International human rights law asserts that all people are equal before the law and are entitled without any discrimination to the equal protection of the law (see Article 1(3), UN Charter, 1945; Article 2, Universal Declaration of Human Rights, 1948; and Article 26, International Covenant on Civil and Political Rights, 1966). Why are African refugees facing containment and exclusion instead of protection and durable resettlement? Why is containment and exclusion not an option for most European refugees?

It is important to conceptualize and understand both the implications of containment practices and key refugee protection principles, such as the right to request asylum and the promise that refugee will not be return to places where they fear persecution. But, the present policy discourse is shifting to a regional protection framework that addresses issues of forced displacement and refugee migration. Its underlying ideologies, deep-rooted in forced repatriation and containment, are very much the work of certain academics and government leaders who influences policy decisions that produce more refugees.

The work of Crisp (2000), promotes the forced repatriation of refugees and other containment policy initiatives. His policy approach states that: displaced people do not necessarily have to leave their own country to find protection and, in some instances, it may be legitimate to dissuade or prevent them leaving to seek asylum elsewhere; those who do leave their own country to find asylum in another state should be kept in the same region; asylum should not be equated with
permanent settlement and integration; people who leave their home country to find asylum in another state should return home as quickly as possible; to achieve these objectives, it is legitimate to deny refugees freedom of movement, access to land, and income-generating opportunities; and it is legitimate to require, or even forced, refugees to return to their homeland if they prove reluctant to do so (Crisp 2000; Turton 2002: 36).

Crisp is joined by other scholars who have to shift refugee theory and practice in a direction that serve dominant Western elites while ignoring the real needs of refugees. At this point, a comprehensive analysis of different systemic mechanisms and principles that legitimize the current voluntary and force repatriation of African refugees is necessary. As well, we must examine how the pervasiveness of racism and social difference among ethnic and other groupings – especially the inequitable socio-political relationship between Western and African countries – contributes to the growing acceptance of current refugee theory and practice.

The principle of imposed return articulated by Dennis McNamara, the former Director of the UNHCR’s Division of International Protection, clearly states that, in certain situations – the UNHCR and its branches should not be expected to uphold the standard of the 1951 UN Convention relating to the status of refugees. The acceptance of such doctrine and practice is equivalent to acceptance and practice of contemporary genocide. It relies on McNamara’s authority and the power of the UN to systematically execute the racist mandate of exterminating ethno-racial and socio-cultural group that have hegemonic paradigm that allocate superiority and inferiority among races and strives to exploit African political, ethnic and religious antagonisms in order to achieve colonial and hegemonic objectives.

One of the most serious dangers of this re-theories voluntary and imposed repatriation is that, as soon as it is widely accepted and made sensitive to context and region, issues confronting Third World refugee – particularly those confronting African refugees – are likely to be ignored. And it can pave the way for racist intellectuals to develop explicit resettlement theories and initiative along ethno-racial and regional line, leaving refugee producing area of the world to deal with refugee issues on their own. Such theories and initiatives can lead to international agreements that assure refugees are contained in their own regions.

Within this context, Turton (2002: 33), observes that repatriation was simply not an option for European refugees, and that the work of UNHCR consisted of arranging for the permanent resettlement of refugees from Europe to countries of immigration which included the United States, Canada and Australia, as the best way of normalizing the figure of the refugee. The forgoing refugee settlement practices shifted to containment and exclusion when it involves refugees from the South (see UNHCR 2000; Robinson 2002 and Turton 2002).
More so, during and after the civil wars in both Somalia and the former Yugoslavia in the 1990s, relative progress was made in fostering global frameworks for protection and settlement of refugees. However, these frameworks were categorically racist, selective, and regionally based. The former Yugoslavia refugees’ situation was highly influential and the policy framework and practice (though not perfect) on behalf of refugees were straightforwardly accepted and sustained, and the African refugee problems (Somalia, Rwanda, Sudan and the Democratic Republic of the Congo) were deliberately overlooked by the international community. One of the explanations is that the theory of forced repatriation, exclusion and containment policy is being implemented.

Furthermore, the preceding framework is akin to the voluntary and forced repatriation of refugees, which is viewed as the option for refugee protection. This theory is powerfully linked with a strong desire to prevent the migration of refugees. The case in point is the policy initiative of an “internal flight alternative” implemented in Northern Iraq and Turkey where refugees in search of protection do not have to cross an international border to seek refuge. One of the implications of this policy is that it allows countries that are signatory to the UN Refugee Convention an overt justification for rejecting political asylum claims. Given the systemic shift in refugee protection issues, it is critical for social scientists—particularly critical anti-racism sociologists—to place more emphasis on the praxis of containment, exclusion and forced repatriation of refugees to foster better understanding of forced displacement, refugee migration and resettlement issues.

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