

The refugee crisis: A global perspective

(Remarks prepared for delivery to the Canadian Friends of Hebrew University, December 2nd, 2015, Winnipeg, Manitoba)

by David Matas

Refugee numbers are at record highs. There are urgent efforts to address the Syrian refugee outflow. The large overall numbers and the Syrian crisis require reconsideration of the global refugee protection system.

Refugees flee danger at home and end up either inside or outside their own country. They are either internally or externally displaced.

The externally displaced arrive in two different sorts of countries - signatories to the Refugee Convention and non-signatories. Signatory countries, like Canada, engage in refugee determination. Those determined to be refugees have to be protected and are allowed to stay. Those determined not to be refugees or found ineligible to make a claim are typically removed back home.

Non-signatory countries provide temporary refuge while a United Nations agency, the Office United Nations High Commissioner for Refugees or UNHCR, makes a refugee determination. The UNHCR seeks to resettle as best it can those the agency determines to be refugees. The rest are left for potential removal by the government of temporary refuge.

At the end of 2014, there were

- 14.4 million refugees under the mandate of the UNHCR. That figures consists of refugees and registered refugee claimants awaiting determination in countries which are not signatories to the Refugee Convention as well as recognized refugees in Convention signatory countries.

- 1.8 million asylum seekers in Convention refugee signatory countries,
- 3.5 million stateless persons under the mandate of the UNHCR,
- 38.2 million internally displaced, and
- 5.1 million Palestinian refugees under the mandate of the United Nations Relief and Works Agency (UNRWA).

Add these all up and we get to 63 million people, the largest group of displaced people needing protection since World War II.

UNRWA numbers

Most of those under the mandate of UNRWA, I acknowledge, would not fit within the international law definition of refugees. The number of 5.1 million includes those who are locally integrated, those who have the substantive rights of nationality in the country in which they live, those who have dual nationality, and those who have a durable solution where they are.

This number further encompasses former temporary residents of British Mandate Palestine. It includes as well descendants of the original refugee population without reference to whether the descendants meet international law refugee criteria.

The number is also artificially inflated by the refusal of this population to accept resettlement. Contrary to the international law of refugees, the number encompasses those who refuse to renounce armed activity as well as those complicit in acts of terrorism.

Even if we do not include the bulk of the population under the mandate of the UNRWA in the overall global total, the global figures for refugees and internally displaced are still astonishingly high. The question is what is to be done. Recognizing that the bulk of the population under the mandate of the UNRWA are not really refugees goes only a small way to addressing the global refugee problem.

Temporary solutions

Solutions for this massive population are first temporary and then ideally permanent. The permanent solutions do not come quickly. Temporary solutions need consideration first.

People who flee are easily gulled by smugglers and traffickers. Temporary solutions have to be appealing enough to discourage the displaced from falling prey to traffickers and smugglers.

The primary force driving refugees to flee even temporary locations of first arrival is the insufficiency of food and shelter. The most immediate and urgent response to the current refugee crisis is to provide sufficient funds for food and shelter for the refugees where they are so that they do not feel compelled to move on simply to survive.

The UNHCR for 2015 has estimated its financial needs at \$6.2 billion. The UNHCR has identified the funding gap between what it had and what it needed in 2013 as 45 % of overall requirements. For 2015, that same gap would amount to 2.8 billion dollars, a huge sum.

The displaced need also proper treatment by the countries where they are located. An indication of the problems refugees face beyond food and shelter can be illustrated by the Sri Lankan Tamil refugee population in Malaysia and the Iranian refugee population in Iraq.

I went to Malaysia also in February 2015. Sri Lankan Tamil refugees awaiting registration with the United Nations High Commissioner for Refugees, at the end of 2014 consisted of approximately 4,000 Sri Lankans. Those awaiting refugee status determination or appeals, as of the end December 2014 consisted of 2,610 Sri Lankans. Those who have succeeded in their applications but have yet to resettle, consisted of 1,586 Sri Lankans. The total of the three groups is 8,200 people.

There is a huge indigenous Tamil population in Malaysia, an estimated 1.7 million. There are 523 Tamil language schools, many with insufficient students. Yet, Sri Lankan Tamil refugee children are not allowed to go to these schools.

Sri Lankan Tamil refugees work in Malaysia, but work illegally. There are enough local Tamil employers to give the refugees work, should they want to work. However, their illegality means that they can be underpaid, poorly treated and abused by employers without legal recourse. Moreover, they can be harassed by the police for bribes or arbitrarily detained.

The Iranian refugees in Iraq I draw to your attention are members of an Iranian opposition group, the People's Mujahadeen of Iran (PMOI), located at Camp Liberty. The Camp is, in effect, a poorly maintained prison.

The residents at Liberty face appalling conditions. Delivery of food, drinking water and medical supplies as well as removal of sewage has been periodically obstructed. Access of residents to legal help as well as visiting family members is restricted.

In July 2009, Iraqi forces attacked Camp Ashraf, where the PMOI were located before Liberty, killing eleven residents and abducting 36. The 36 were released after 72 days, near death. An April 2011 attack left 36 dead and more than 350 injured. In September 2013,

Iraqi forces attacked Camp Ashraf, killing fifty two residents. Seven were taken hostage and remain in arbitrary detention at an undisclosed location.

Camp Liberty has also been targeted with missiles on five different occasions, the most recent in October 2015, killing 24 and wounding hundreds. The Iraqi regime, after each attack, imposed obstacles to the proper treatment of the wounded. Over twenty of the wounded have lost their lives because of lack of timely access to medical care.

The Malaysian and Iraqi examples show situations which should not occur, but are, regrettably, part of the global refugee experience. Any temporary solution to the refugee crisis should protect refugees from corruption, arbitrary detention, harassment, cruel treatment, denial of medical care and murderous politicized armed attack.

Permanent solutions

Permanent solutions vary with the country of arrival. If the country of arrival is a non-signatory state to the Refugee Convention, there are three solutions - voluntary repatriation, local integration and resettlement. If the country of arrival is a signatory state to the Refugee Convention, there is one seemingly simple solution - protection.

i) Voluntary repatriation

Voluntary repatriation requires an end to the human rights violations which caused the refugees to flee. Working towards voluntary repatriation means working towards ending those violations. Where the perpetrators remain in power, that is no easy task.

Ending human rights violations in countries with massive refugee outflows is a long term goal rather than an immediate solution. It is, nonetheless, a solution which should be

pursued. Even if all the effort achieves is mitigation rather than resolution, that mitigation may mean that some, if not all, refugees would be willing to be repatriated, those least in the sights of the perpetrating marauders.

Let me take some examples - from Iran, Sri Lanka and China, all of whom have generated substantial refugee outflows. For Iran, I remain convinced that the failure even to attempt to include a human rights component in the nuclear accord was a mistake of the first order. But there are other avenues to pursue.

Canada continues this year to propose, as it has in past years, a resolution to the United Nations General Assembly about human rights in Iran. The draft of that resolution goes on for five pages, highlighting a wide variety of human rights violations, expressing concern and calling upon Iran to end them. Passing this resolution is not going to end human rights violations in Iran. But at least it reminds the victims that we have not forgotten them, that we continue to be concerned with their plight.

With China, we are not even that far. There is no United Nations General Assembly resolution on the situation of human rights in China. This has more to do with the political weight in China than the human rights situation in China.

I was just in Geneva this past month because China is a signatory to the United Nations Convention against Torture. As such, it has to report periodically to an expert Committee established under the Convention.

In November, the Committee considered the fifth periodic report. After consideration in Geneva in 2008 of the fourth report, a consideration I also attended, the Committee expressed concern about the torture and ill treatment of practitioners of the spiritually based set of exercises Falun Gong. Since the abuse of China of Falun Gong practitioners

continues unabated, I went to Geneva to encourage the Committee to continue its expression of concern.

For Sri Lanka, there were, according to the Internal Displacement Monitoring Centre, up to 73,700 internally displaced persons in Sri Lanka as of July 2015. For refugees to go back home in this context runs the risk of just adding to the internal displacement problem. The continuing displacement are the consequences of a variety of long running human rights violations against the displaced populations, including land seizures and security violations, which need a remedy.

The Sri Lankan situation highlights what may be obvious. We can not expect refugees to repatriate voluntarily to the country they originally fled while there remains in that country internally displaced. Addressing the problems of the internally displaced is a pre-condition for encouraging repatriation.

The UNHCR does a lot for refugees, but one activity in which it does not engage is public human rights advocacy in the country of origin fled. That work has to be done elsewhere.

ii) Local integration

The second solution, local integration, must also be actively promoted. The bulk of the world's refugees are found in countries of proximate refugees not party to the Refugee Convention. Many of these refugees sit for years, decades and some cases for generations in refugee camps. Often those countries have similar ethnic and linguistic populations which could easily integrate the refugees and should do so.

That is an obvious solution for most of those under the jurisdiction of UNRWA, even those few who would meet the UN Refugee Convention definition. Of the 5.1 million refugees

under the mandate of UNRWA, 760,000 are in the West Bank, 1,260,000 are in Gaza, 530,000 are in Syria, 450,000 are in Lebanon, and 2,100,000 are in Jordan. The Syrian Palestinian population are potentially refugees not because they are Palestinians, but because of the Syrian civil war. The rest can and should be locally integrated where they are.

For Sri Lankan Tamil refugees, local integration is an obvious solution both in India and Malaysia. I already mentioned the situation in Malaysia. I was in Tamil Nadu, India in February this year. At the time, there were 65,000 refugees living in 107 camps strewn throughout Tamil Nadu.

There were an additional 40,000 refugees living outside the camps. Overall, since the start of the civil war in Sri Lanka in 1983, about 335,000 refugees had come from Sri Lanka to Tamil Nadu.

In Tamil Nadu, Sri Lankan Tamils can work, go to school and access medical care. In that state, they are amongst people who speak the same language they do. The overall population of Tamil Nadu is 69 million.

Sri Lankan Tamil refugees have some restrictions in terms of work and education. They can access private sector jobs but not government jobs. This is a substantial limitation, given the size of the public sector. As well, government jobs tend to be more stable and better paying than private sector jobs. Sri Lankan Tamil refugees also can not access medical school education.

About 30% of the Sri Lankan Tamil refugees in the camps in Tamil Nadu consist of stateless up country Tamils, brought from Tamil Nadu to Sri Lanka by the British during colonial days to work plantations. If they want to remain in India, they should be given Indian

citizenship. Adult Sri Lankan Tamil refugees born in India should be allowed to choose between Sri Lankan and Indian citizenship. Long staying Sri Lankan Tamil refugees in Tamil Nadu should be given an option of acquiring Indian citizenship.

iii) Resettlement

Resettlement globally is done almost entirely through the UNHCR. There are 28 countries out of 193 which accept refugees for resettlement.

UNHCR does not attempt to resettle every refugee because it is unrealistic to do so. There are just too many. Most refugees are left in holding pattern, in temporary situations indefinitely. The UNHCR attempts to resettle only those who do not have a temporary solution where they are. Even this number is alarmingly high. The UNHCR estimates this figure, its target for resettlement, for 2016 to 1,150,000 people. It will be a challenge finding that many places.

One drag on global resettlement is the absence of effective resettlement programs. Resettlement countries, for the most part, accept some of the refugees the UNHCR is trying to resettle and do nothing further.

Canada, by way of exception, has a private sponsorship resettlement program which does not depend on refugee recognition by the United Nations High Commissioner for Refugees. Refugee resettlement could be expanded by allowing for private sponsorship in other countries. None of the European countries has such a program now.

The Government of Australia started a community sponsorship pilot program in June 2013 offering 500 places a year. The Government in June 2015 published a discussion paper which raised the possibility of community support program similar to the Canadian

sponsorship program.

The United States had, from 1987 to 1995, a Private Sector Initiative to fund the processing, travel, medical care, and resettlement costs for refugees. The program processed more than 8,000 refugees, mostly Cubans. In 1990, a pilot program allowed two non-profit organizations to privately finance the admission and resettlement of 8,000 Soviet Jews.

The mass Syrian refugee resettlement programs raise questions about screening and integration. Concerns are expressed that refugees from a region which is so infected with terrorism will have terrorists amongst the refugee population.

The risk of importing terrorists through refugee resettlement can be lessened by screening. Terrorists are not typically refugees seeking resettlement, partly because resettlement traditionally has been such a slow, haphazard process bedeviled by hardships along the way.

Combating terrorism means focusing on the real threat. When terrorist threats in the past have been overlooked, the reason often has been white noise, the difficulty of picking out the threat from all the other information security services receive. Targeting terrorism effectively means targeting terrorism specifically. Casting too wide a net has a perverse effect, making identification of real threats less likely because harder to discern. If you are searching for a needle, try, if you can, to avoid looking in a haystack.

Local terrorists are typically home grown. They may come from immigrant communities. But often they are second generation. What distinguishes terrorists from others is not their immigration status but rather their susceptibility to incitement. Targeting both the purveyors of incitement to hatred and terrorism, glorification of terrorism and war propaganda and those who fall prey to them is more specific than targeting refugees from

an area of the world prone to terrorism.

Integration is a legitimate concern independently of terrorism. Syrian refugees come from a part of the world where antisemitism and anti-Zionism are standard discourse. Gender equality is uncommon. Discrimination based on sexual orientation is rife.

Yet, pervasive bigotry in refugee populations, even if it exists, is not a reason to deny protection. Part of local integration should be human rights education. To reject all refugees from Syria or anywhere else because of a fear that they may be bigoted is itself a form of bigotry. If we want Syrians not to discriminate against us, we should not discriminate against them.

The Syrian refugee influx raises another question, what about all the other refugees? While Syrian refugees are being processed in priority, others remain languishing, waiting forever for resettlement processing. It is hard to deny the urgency of the Syrian refugee situation. But other situations are equally grave. The refugees at Camp Liberty are an example. While Canada has committed to taking in 25,000 refugees, the commitment of Canada to the resettlement of refugees at Camp Liberty is a grand total of zero.

iv) Protection

Signatory countries to the Refugee Convention offer protection to those who arrive in their countries, make refugee claims and are accepted. The Refugee Convention requires this protection and provides a solution to those who manage to invoke it.

There are a number of problems globally with the network of protection offered in theory by signatory countries. One of these is visa requirements and carrier sanctions.

Refugee Convention signatory countries impose visa requirements on refugee producing countries. Those who want to come to a Refugee Convention signatory country to make a refugee claim or who are suspected of wanting to come to make a refugee claim are denied visas. Carriers - air, bus, ship and train lines - are all penalized by the government of a Convention refugee signatory country if they transport a person to the country without proper documentation. These penalties make the carriers front line enforcers of the border controls of the countries of destination, making it difficult or impossible for refugees without proper documentation to arrive and make claims.

A second problem is interdiction. The United States in the past has attempted to prevent Haitians from coming to the US to make refugee claims by stopping their boats on the high seas. Australia still does this sort of thing, intercepting boats coming from Indonesia.

A third problem is safe third country agreements. Canada has such an agreement with the US. Virtually all of Europe is committed to these agreements. The agreements provide that, with exceptions, refugee claims must be made in the first country of arrival. The agreements have the consequence of piling up claims in the countries where most refugees arrive, overwhelming the systems of countries of first arrival. For Europe, Italy and Greece, which are countries of first arrival for refugees from the Middle East and Africa have ended up with far more refugee claimants than they could handle.

Mistreatment of refugees does not just happen in countries of temporary refuge. It also happens in Convention signatory countries while claims are being processed. Refugee claimants are often arbitrarily detained. If not detained, they may be denied freedom of movement or the right to work.

Systemic detention of refugee claimants has been a problem both in Australia and the United States. This detention is a direct contravention of the Refugee Convention. Denial to

asylum seekers of freedom of movement and the right to work has been a problem in many European countries.

The massive Syrian inflow into Europe requires reconsideration of the intake system. I applaud the generosity of spirit of Germany in general and of Chancellor Angela Merkel in particular. All the same, this "open the doors, everybody welcome" approach is not sustainable, and, in fact in Europe, is ending. There are just too many refugees for that sort of open invitation to work.

As well, an open invitation precludes even the most rudimentary selection, both security screening and determinations about the need for protection. Those selections can be done after arrival. But for security screening it may be too late.

Even refugee determinations, if done fairly, are better done abroad, so that refugees arrive with status and do not, if they fail selection, have to be removed after they have already established ties. A better option is the alternative to which Europe belatedly arrived, providing for humanitarian needs in the country of first arrival, in this case Turkey, while security screening and refugee determinations are done.

Recommendations

Well, that is the bird's eye view of the current global refugee situation. What can we do to address the current crisis? I have twelve suggestions.

First of all, the fact that the problem is so large and difficult, can not be an excuse for throwing up our hands and doing nothing. Even if we help only one person, that is a contribution. Not being able to do everything is not a justification for doing nothing.

Second, we must target human rights violations in the country of danger fled. Admittedly, of all the problems refugees face, removing the human rights violations in the countries of danger fled may be the most difficult. Yet, those violations can not be ignored. We can not truly hope to solve the refugee crisis unless we end those violations.

The converse is also true. Those concerned about human rights violations in the country of danger fled must also be concerned about refugees. It is an exercise in hypocrisy to express concern about human rights violations in the country of danger fled and do nothing for the victims. Ignoring refugees undermines human rights work in the country of danger fled because it sends a message to the perpetrators that the advocates do not really care about the victims.

Third, there needs to be more funding for humanitarian needs, for food and shelter. Refugees need to be dissuaded from moving on simply to survive.

Fourth, countries of proximate refugee should make more of an effort to integrate refugees. Children should be allowed to go to school. Adults should be allowed to work.

Fifth, corrupt and violent practices targeting refugees in situations of temporary refuge should stop. This, at the level of principle, is common sense. At the operational level, it requires a targeted effort by the governments of the countries in which refugees are found, because of the vulnerability of this population.

Sixth, we need more resettlement countries and more resettlement places.

Seventh, the private sponsorship system which Canada has developed should be adopted by other countries. The advantage of this expansion is not just that it opens up more resettlement places. It also increases processing capacity by engaging visa posts of

resettlement countries in refugee determinations. The prospect of private sponsorship refugee resettlement can be a factor in encouraging refugees in countries of temporary refuge to remain where they are until their cases are properly processed.

Eighth, safe third country agreements either need to be abandoned or reworked. Bunching up refugees in countries of first arrival creates the problems we now see, of countries of first arrival not being able to cope. Insofar as the system continues, there needs to be an equitable allocation of arrivals amongst the countries who sign on to these agreements, rather than just expecting virtually all to stay in the country of first arrival.

Ninth, interdiction on the high seas should not happen under any circumstances. Refugees should be allowed to flee and seek protection. That is a basic human right.

Tenth, the denial of access through carrier sanctions and visa denial needs an exception for refugees. The system may be justifiable to keep would be immigrants out of the country of destination. Carriers should not be penalized for arrivals without visas who make refugee claims and are determined to be refugees.

Eleventh, refugee claimants should not be detained in Convention refugee signatory countries simply because they are refugee claimants. They should not be denied freedom of movement nor the right to work.

Twelfth, the focus on Syrian refugees should not lead us to forget the many other refugee populations who also need our help. We should do what we can to protect Syrian refugees. We must also do what we can to help all the world's refugees, Syrian or not.

Conclusion

The large overall numbers and the Syrian crisis are a myriad of tragedies. They require us not only to respond but to re-examine the refugee system in place. The system, as a whole, is not working as it should. It is inadequate to the response needed from it. We need to make changes to the global refugee protection system so that the planet can cope with the gravity of the refugee situation with which we are faced.

.....
David Matas is a lawyer practising in Winnipeg, Manitoba, Canada. He is a former president of the Canadian Council for Refugees and senior honorary counsel to B'nai Brith Canada.