Statelessness: A Responsibility to Protect?

The sight of numerous over-packed boats landing on the shores of Europe in recent weeks signals not just a looming debate on migration policy among the member states of the European Union, but raises again questions of the responsibility to protect of both states and the international community at large, albeit this time in a different form. In the midst of the rhetoric about universal human rights and the framing of the discussion about migrants in these terms, the question of statelessness arises. The most important legal status of any individual is nationality, determined by a passport or identity card. This status not only outlines what social benefits and protections an individual is entitled to, it also affects the extent of their freedom to travel. However, many of the migrants seeking refuge and asylum have no identity papers or passports, rendering them 'de jure stateless' (according to Article 1 of the 1954 Convention relating to the Status of Stateless Persons), and meaning that their protection falls under the 'Responsibility to Protect' (R2P) mandate. Others may have a passport from a failed state, rendering them 'de facto stateless'. In either case, the protection of migrants calls for another look at how the issue of statelessness should be brought under the mantel of R2P.

The issue of who is responsible for the welfare of the migrants highlights again the plight of both sets of stateless peoples. Article 1 of the 1954 United Nations Convention relating to the Status of Stateless Persons, defines a stateless person as "a person who is not considered as a national by any State under the operation of its law." A person can be born stateless or can become stateless during their lives, either due to migration from a dysfunctional state, or even when they remain within the territory where they were born, they may be rendered stateless when problems arise around the implementation of nationality laws in their country of origin. The UNHCR estimates that there are currently 670,000 stateless people in Europe and 10 million worldwide. Statelessness is a key issue in the current crisis facing the European Union regarding migration questions as many of the migrants who try to cross the Mediterranean to come to Europe, or who actually make it, hail from countries with weak rule of law or so called 'failed states'. With the ongoing conflicts in Libya, Egypt and growing insurgency in Iraq, Yemen, and Sudan, the internally displaced persons (IDPs) and refugees have a high likelihood of being rendered stateless. When we consider that migrants from these countries also often hail originally from Somalia, Eritrea and Democratic Republic of Congo, where civil conflicts are ongoing and there is little or no functioning government, the problem becomes even more pronounced.

In September 2014, the United Nations High Commissioner Refugees (UNHCR), in association with the Statelessness Programme of Tilburg University in the Netherlands, hosted the first ever global forum on statelessness in The Hague. The forum brought together policymakers, government officials, academics and civil society actors to discuss the issue of statelessness in three categories: Stateless Children, Statelessness and Security and Responses to Statelessness. It aimed not just to debate new approaches to the problem but crucially, also to 'provide a platform for the voices of stateless persons in the development of new research and policy directions.' The conference came at a pertinent moment, in fact foreshadowing the resurgence of this problem for European states. The question that arises is why the UNHCR has decided to highlight this issue so explicitly, even before the current crisis, and what has been the record of action on this problem?

Statelessness in its modern form emerged as an international dilemma following the First World War. The movement of peoples during the war, and displacement of many ethnic groups from their countries of origin produced a refugee crisis unlike anything with which international law had previously been confronted. The problem was recognized

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internationally by the League of Nations which founded an office for refugees and created the Nansen passport, an internationally recognized travel document which was granted to stateless refugees from Russia, Armenia, Assyria and Turkey between 1922-1933. The establishment of the UN in 1945, with its constituent agency the UNHCR formed five years later, led to a cohesive effort to address the plight of stateless people. The 1954 Convention which recognized, legally for the first time, the status of statelessness was quickly followed in 1961 by the Convention on the Reduction of Statelessness. As Laura Van Waas has previously argued, the Convention drew little support from states, rendering policy on statelessness an area of underdevelopment, in comparison with the related fields of refugee law and human rights. As the process of decolonization wound down during the late 1960s and into the 1970s, international cooperation in these areas became focused on fortifying new nation-states and consolidating borders, leaving stateless peoples without much recourse to action, and rendering thousands of others newly stateless.

The collapse of the Soviet Union and the massive displacement and migration processes that occurred in Eastern Europe in the 1990s exposed to the world again the problem of dealing with statelessness and the associated challenges of human rights abuses. Despite the humanitarian and moralistic discourse which pervaded international relations during these years, little further empowerment of the UNHCR took place to address this issue. In 1995 and 1996, although the mandate of the office was expanded, the General Assembly referred the problem back to the member states in a resolution which "call[ed] upon States to adopt nationality legislation with a view to reducing statelessness, consistent with fundamental principles of international law, in particular by preventing arbitrary deprivation of nationality and by eliminating provisions which permit the renunciation of a nationality without the prior possession or acquisition of another nationality."

Between 1996 and 2012, the UNHCR continued to emphasize the responsibility of member states to reform nationality laws to tackle statelessness, which was recognized in 2002 as being a root cause of displacement and refugee crises. Promoting reform in 71 states and providing technical advice to 41 others, the message from the UNHCR is clear: the solution to the statelessness problem lies with national legal regimes, rather than the international legal system. However, why the organization has not sought to use the language and the moralist discourse of responsibility to protect in addressing this problem is debatable. Although the responsibility to protect doctrine has met with criticism in terms of its success in resolving international security dilemmas, what it has achieved, is keeping the international focus on issues of human security. Statelessness falls directly into that category and is a problem which should be addressed primarily through invoking the responsibility of states towards the people within their borders, whether they are citizens or not. Given the clear mandate of the UNHCR in activating and reinvigorating the agency of states in tackling this issue, and the technical assistance they provide to do so, the debate around inaction on statelessness would benefit from an injection of moralism, especially as the problem rears its head again on European soil. For its part, R2P is currently blind towards the passports that those in this situation may or may not hold.

The most obvious role for European states is greater participation in and commitment to the UNHCR and its decrees. However, the problem goes beyond a humanitarian appeal, striking as it does at both domestic and foreign policies of European states. The damaging political rhetoric that has emanated from certain European states on tougher immigration laws and consolidation of borders seems to indicate that nationality laws are likely to become tougher, which does not bode well for those in a legal identity vacuum. However, the looming crisis also presents an opportunity to bring national and European policies and laws closer in line with the international agreements in this area. Moreover, the institution of the first global forum on statelessness points to the agenda-setting ability of the UN on humanitarian issues and provides a pathway towards cooperation between the various actors concerned with this problem. While the agency of the UNHCR appears to be growing, this may also now be the moment to make statelessness a humanitarian question which can be confronted most effectively by raising the discourse of responsibility to protect around this issue. If pictures of over-crowded boats filled with desperate migrants result only in disquiet and plans in European capitals to strengthen borders, then invoking the legal obligations and the moral discourse of an internationally accepted policy may be the best way forward. In the process it should serve to highlight the often under-played agency of UN bodies at the forefront of the human security agenda.

Select Bibliography

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For more on 'failed states', see (among others) Noam Chomsky, Failed States, The Abuse of Power and the Assault on Democracy (New York, Henry Holt and Company, 2006). Herbst, J. and Joseph R. 1997. Responding to State Failure in Africa, International Security 22(2) 175-184. Robert I. Rotberg, When States Fail, Causes and Consequences (Princeton NJ.; Princeton University Press, 2004).

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