Questioning the Geneva Refugee Convention: Irregular versus Regular Migration?

Facing a daily growing number of refugees and with worldwide already more than 100 million people displaced, we are meanwhile urgently forced to dispute the operation and effectiveness of the Geneva Refugee Convention. If necessary, it will require adaptation to a new reality.

However, change is hard and risky, especially if there are clear benefits like the current convention's non-refoulement clause. Many of us may therefore think that it is better to keep in place what we have reached unanimity on, and to try to slowly amend it. Still, international agreements age and can hollow out by changed circumstances, thus becoming ineffective. Since it is very difficult and time consuming to reach a new international consensus, at some point in time we will therefore need to act more radically and start finding a new approach or a new basis. This is what my short article is about.

The origin of the current convention can be found in the aftermath of WWII. The refugee group the agreement addressed was already living in another country. The design of the convention was thus not about crossing borders. It was meant for people who, due to the Second World War got displaced elsewhere and did not want to be sent or returned "home" against their will.

However, in 2022, most focus in relation to refugees is on border crossing. There are two sides to this story. On one side there is the situation of temporary protection, freely letting some groups of people in through "open" borders as a way to fight a potential unmanageable influx. On the other side there is the current European discussion about anti "political instrumentalisation" measures as a method to reduce migration in case people are arriving from countries like Belarus and now possibly Russia, derogating from the convention.

Both ways are unfortunately only fighting symptoms and do not address the root of the problem. People are increasingly becoming displaced and are in need for a solution. The existing requirement to first cross a border before one can apply for asylum is extremely difficult or impossible to fulfill if these frontiers are fully closed and guarded. This principle, at present, therefore causes irregularity and criminality issues.

What thus urgently needs to happen is that we create a new definition of what a refugee is, followed by overhauling the convention. The reality is that a refugee is no longer exclusively someone who has crossed a border and is unable to safely return. A refugee is, in my opinion, by now "*anyone in acute or foreseeable need of refuge*" regardless of location, destination, or the reason for their displacement.

Instead of strengthening and investing in Frontex, fences, thermal cameras, drones and pushbacks, we need to implement a mechanism to regulate border crossing and become much more proactive in finding hosting capacity. There is no excuse for the current irregularity. It is only caused by offering vastly insufficient legal options to find refuge. This is forcing migrants to use smugglers and arrive at few selected/preferred destinations they choose and pay for, instead of at properly prepared locations that are organized and optimized for their reception or possible reinclusion.

To illustrate and summarize this; we see a development from previously being unquestioned guests after WWII to being uninvited guests arriving at locations where it is difficult to handle their influx due to a lack of capacity. For example, the current reception crisis in The Netherlands is caused by a lack of social housing where Dutch citizens, who are entitled to such housing, have to, on average, wait for seven years. In such a situation it may still be possible to create temporary emergency solutions, but this temporality approach is doomed longer-term because structural offerings are lacking, resulting in insufficient flow through the asylum system, causing refugees to get stuck.

The solution I propose is to become proactive and prevent any further traveling of refugees as soon as they reach a safe emergency situation, a facility that can be created almost anywhere. From this temporality we need to spread people and create "burden sharing". This means a flow to those destinations where there is structural capacity available or can be created. Here we can start to optimize reinclusion.

I have written three long read articles (20 minutes each) detailing my reinclusion, dignity and cultural adaptation approaches, you can find them by clicking on the links or at www.docs.refival.org.

Yes, the above requires structural empathy and solidarity, also with people we face culturally more difficulties to identify with. However, all people on the move are humans and entitled to live a dignified life. This goal can be accomplished, but it will have to be based on cooperation instead of avoidance of collective and/or personal responsibility.