Refugees and Partition in a Migrants' World[1]

By

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The Refugee Condition in a World of Nation-States: Bordering and Nationalization

In the development of the international refugee laws adopted by Western countries after the Second World War, accurate use of the term 'refugee' -...- implies a need for international protection. Consequently, in the 1951 Convention relating to the Status of Refugees, a refugee is defined as: a person who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of their nationality, and is unable to or, owing to such fear, is unwilling to avail him/herself of the protection of that country". This meaning was limited to the "events occurring in Europe or elsewhere before 1 January 1951", a meaning that follows the concerns of Western democracies in the aftermath of the war, when «the limited numbers who managed to flee were automatically granted asylum» (Chimni 2000 : 270-277). In a paper released by UNHCR, "the original framers had not expected refugee issues to be a major international problem for very long" (UNHCR, A 'Timeless' Treaty Under Attack).

Critical analysis of 1951 Convention show that the *political* truth underwritten in this understanding of the law, and the right as applied during the Cold War, was the assumption that all, but the Western countries were despotic, and so the Western hegemony was seen as a sanctuary for asylum seekers on the assumption that only a few Easterners would come into Western Europe. In the following decades, the direct role of the two power-blocks in the Third World countries and the de-colonization process have immensely fed the flux of refugees, completely changing the post

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WWII picture of refugee law and leading to a revision in the definition of a refugee by removing the geographical and temporal restrictions from the original Convention with the passing of the 1967 Protocol. In recent decades, a major flux of migrants – demographically different from the regulated workers' program of the European takeoff and from the former limited refugee flux – have reached the now united borders of Europe, the Schengen Area. This changing demographic situation has created a situation in which the right to asylum, as long as it has been recognized as an individual right, is subjected to collective restriction in the Schengen area.

A report from MSF dated 2004 shows how state practice differs from the written law and, for instance in Italy, the State authorities almost automatically reject asylum demands from migrants from the Maghreb region of North Africa (MSF 2004, 131).

While in practice the definition of refuges is at stake, as the given example shows, its application has (also) reached an unexpected situation, as the refugees from partitions were initially an unpredicted consequence that resulted from decolonization. In any instance the main question that has to be considered is the relationship between the concept of refugee and the specific legal status inside the framework created by the postcolonial states. As a consequence, different developments of the use and the meaning of the term share a common core relating to the fact that "The regularised system of international protection came in the wake of the development of a unified notion of unilateral sovereign capacity - of the States - to grant asylum" (Samaddar 2003, 40). In other words, the handling of the refugee question went hand in hand with the notion of the nation-state and the expansion of this notion from Europe to the postcolonial world. As Gérard Noiriel and Michael Marrus have described, the history of the right to asylum in Europe has developed in the shadow of the nation, of what Noiriel calls the 'tyranny of the national'; thus, we see how in the postcolonial era this has been *translated* in a new world and the same history of the former colonies has been rewritten and narrated inside the larger history of the nation-state movement (Marrus 1985; Noiriel 1991).

The use of the word refugee has always been confusing, but in the particular situation of the partition and nation-building the 'myth' of the 'nation' has been used with a selective attribution as a kind of honour related to the fact of being part of this process. For example in Pakistan, from the arabic meaning of 'emigrant', in Pakistan the term Mohajir literally means "a person who has moved into Pakistan as a result of Partition or for fear of disturbances connected therewith", but the term is commonly referred "to those who came from the rest of India and choose to settle in Sindh" and not to others that fit the first definition, such as the East Punjabis. Leaving aside the specific dimensions of the bureaucratic presence of the Mohajir, what is relevant here is the construction of the Mohajir myth as part of the post-Partition nation building: "the sense of systematic discrimination, -...- the myth that they are creators of Pakistan and are therefore more Pakistani than the Sindhis and others, -...- the myth that all those who crossed the

borders suffered great personal loss and sacrifice for the new country"(Bose 2001). Yet, this same 'honour' has not been conceded to others who also crossed the borders. Thus, the myth creates new commonalities that leave others outside.

This is consistent with the long history of nation building; the myth of a common past, common sufferance and common experience has been traced back to the 18th century by the main historians of nationalism (Gellner 1983, Hobsbawn 1990). Thus, we can observe how the role played by the notion of the new 'old' Pakistani identity in post-partition Pakistan *nationalized* the partition's refugees. Conceptual accounts of the relationship between the nation, the State, and the role of its subjects, shows that the process of creating state sovereignty goes together with the bordering/defining of geographical and political spaces: along with physical borders, *citizenship* is the legal mark of a political border that crosses the internal space of a state. The link between the state and the nation is the background for the construction of an ethnic core for the nation that re-invents the past in terms of *imagined communities*, and constantly produces the *other* as a counterbalance (Mezzadra 2007, Anderson 1983, Balibar - Wallerstein 1991). This is the political and geographical framework in which the partition refugees could be situated. In our discourse, seen more widely, this is the framework in which all refugees stand, and above all it is the framework that defines international attitudes toward refugees and their legal definition: refugees are such *vis-a-vis* the States, the group, the state is incapable of protecting (and more often prosecutes), and yet the group the state is supposed to host by giving them the status of refugee.

Partition, Migrations and Transnationality in Post-Colonial World

We must now go back to a question that lies beyond our comparison, between partition and other state processes and ask whether the question of partition refugees must be considered a unique case. That is, should we consider them a particular dimension of the refugee dynamics, with its own logic, to be seen separately from other refugees and other migrants? To answer this question, one might first realize that different perspectives can bring us to different conclusions. From the point of view of historical reality, partition refugees in the Asian subcontinent are the outcome of political and institutional processes that happened during a defined time. Although Partition continues to reveal its fruits with time, formally it happened with the creation of India and Pakistan, and then of Bangladesh. Unlike other kinds of refugees, one can say that the nationalization of an area relegated them to a very particular condition, in which the right to return sometimes seems meaningless, as the very reason for their migration was the creation of nationally homogeneous states. The historical narratives of the nation, moreover, has a part for partition refugees as well, by giving them a role in the new nation, and often leading them to

be overwhelmed by the nationalized narrative of their condition. At the same time, Partition refugees are different from other refugees and migrants partly because they (although not all of them) are scheduled to become part of the construction of the new nations. But looking through the wider lens of a nation's history, we can say that all refugees, at some point and in some instances, are part of the nation-building process because they are defined exactly by the semantics of the nation. What makes a difference for partition refugees is their double identity: they are not only part, but internal to the space of the nation precisely because they are external to it. In this sense we can state that partition generates a complicated process in which the other that is necessarily part of the nation building duplicates into an external other and an internal one: the external other being the refugee of foreign nationality, the internal one being the refugee of the same nationality. Following this nationalist semantic, thus, the refugee in India can thus be considered as the external other in the making of the Indian nation, while the Indian refugee outside India can be considered the internal other. Both of them are part of the nation building, but outside the space of citizenship.

This is not to replicate/repeat the obvious truth of the internality of the external, but to say that the refugee, although in some instances rejected by the nation system, is part of it not only as one of its creations, but as complement for the nation. As a comparative analysis of partitions suggests, partition is "the nationalist resolution of a nationalist problematic", in the sense that it splits the state in order to save the logic of the state; it divides the nations in order to save the logic of the nation (Bianchini – Chaturvedi – Ivekovic – Samaddar 2005). What is left aside in this process is the political other in respect to the nation-state logic, and the political community (and subjects) that exceed the space of the nation-state. Although refugees' rights originated inside this space, its internal logic and its very process, in most instances, makes the enjoyment of those rights difficult. Put in this way, while the language of the nation produces the light of a sense of nationalist belonging and the images of these rights, the refugees are trapped in the shadow of this light. In some instances we can say that the truth of their condition (and their subjectivity) is deleted, or erased to the view of the nation itself. What makes a substantial difference between refugees and other migrants is that refugees are legally trapped in this shadow, and the paternalistic state defines its own virtue and rightness vìs-a-vìs the refugees, particularly in South Asia and in India, where the goodness of the state is considered part of its biography (Samaddar 2001).

      If we confine ourselves to the logic of the state, we are thus trapped inside this picture, and the risk we face is to run after solutions that can never happen. Thus we need to change our perspective: First, realizing that Partition itself must be seen as an ongoing process, a process which, since it creates its own logic, transforms and transfigures social realities and the meanings of political discourse. The concepts of responsibility and reparation, for example, show their elusiveness in the context of Partition, because in the new dimension their meaning becomes unclear. The

pretension of control of political meaning that is embodied in the nation crashes in this "sensitive frontier between the truth of the nation and the political knowledge that critiques it" (Bianchini – Chaturvedi – Ivekovic – Samaddar 2005, 11). Translated into the rhetoric of refugees' rights, again we see different questions: what does 'right to return' means for a Hindu family that lived in Pakistan, or for a Bangladeshi that works in Karachi? And what about people with an uncertain identity, stateless sons of Partition or divided families? What kind of reparation can be made to a poor displaced family now leaving in Howrah, whose old home is now home to another poor family in Bangladesh, and whose land gives subsistence to children, yet unborn during the time of Partition? A critical analysis of this complex situation suggests that refugees are, with relatively few exceptions, among the poorest and most disadvantaged in the places where they now live. Their destiny is related to the destiny of other poor groups, new refugees and internally displaced people. Thus, we realize that beyond the nostalgia of an impossible past and of a return to a place that exists no more there, there are demands for justice, respect and rights that these people can only enjoy where they are.2

        With that in mind, we must then consider the social reality of Partition's refugee vis-a-vìs other migrants. As I suggested, their condition shows common patterns with the conditions of others migrants. In some cases the political condition of partition's refugee's points out that the central issue is not citizenship, but rather the creation of a state's internal hierarchies. The laws made by the State in Pakistan, for example, put together a system of internal hierarchy using language laws to impose Urdu as the official language, and the quota system as a tool to enforce the Mohajir presence in the growing bureaucracy. Once other groups came to power, they tried to reverse the situation using similar tools. In both cases, the central issue was power sharing in a diverse state. The construction of internal hierarchies has been a fundamental element of the European State-system since the beginning, as shown in historical accounts of the colonial world. This has been reflected in the history of Partitions in the post-colonial world, through the nationalization of the movements that occurred during this period (Banerjee in Samaddar, eds 2003: 69-105). Young states, as Samaddar explains, 'can survive only on the basis of a continuing and permanent agenda for building an 'ethnic core' and thereby marginalizing the others', that is the reason why, notwithstanding the Mohajir's example above, migrants and refugees share a common condition as they «always remain on the margins of the system -...- but they are required to define the system» (Samadddar 1999: 41-44).

Conclusion

In this essay, I have tried to show how a world of nation-states creates the condition in which both partition's refugees and other refugees and migrants are trapped. To confront this, we need to open our perspective and learn from the actual practices of cross-border migration and the demands that migrants and refugees develop in different areas of the world. Migrants' subjectivity suggests that the reality goes beyond the borders of citizenship, and that citizenship constantly replicates the inclusion/exclusion vortex that creates the internal and external hierarchies that stand at the core of discrimination: the answer to discrimination can not be a victimization that produces the same kind of political erasure of the challenges that population flows bring. And we have seen how, from the very beginning, to be a victim is the first characteristic that is requested to recognize the status of refugee. What I want to add here is that, once this status is recognized, this becomes the social role and, in some instances, duty of the refugee. In Michel Mauss' work (Mauss 1925), we can easily understand how asylum, conceived as a 'gift' due to the victim, became one pole of an ambiguous relationship between power and subjection: far from being an act of pure care, the shelter and protection as defined by international laws and states agencies are a specific way to order and discipline social relations towards the cross-border movement of people by defining some of them as 'fearful subjects' (Nyers 2006, 43; see also Barbara Harrell-Bond 2005). Thus, not only do we observe that in order to be granted asylum one has to be recognized as the ideal refugee, but that this very recognition is a process of definition and disciplining of the migrants' subjectivity. Politically speaking, when entering into the defined field of refugees' rights, the migrant loses his political right to clame rights (Isin 2009) and becomes an 'object' of a care system that is virtually external to his capacity of agency. The physical dimensions of refugee camps are thus reflected in a wider political dimension that creates a «humanity in excess», of which the camps are only part of a process, acting as markers of the inferior dimensions of the refugee and the illegal, enclosed in similar spaces although under different juridical conditions (Rahola 2003; Marchetti 2006). As we observe in Indian and Chinese SEZs, in the management of internal migration, and in what happened in the Gulf region after the economic takeoff of the Emirates and other states of the region, the camps and their identifying function goes beyond the containment of the excess, to became the political marker of those outside the political discourse concerning rights, development and so on. I think we can say that in the last decades, the untold, the thing that cannot be said and is erased with the political erasure of migrants, has been work. It is not by chance that migration policies can be considered as part of the laws regulating work in Europe as in Asia, and that some of the functions that we have seen relating to the camps, not forgetting the differences between detention camps and refugee camps, can be observed also in the 'new' forms of capitalistic organization that lay behind some of

the more impressive accumulation performances of the last decades, as SEZs can be considered (Raimondi – Ricciardi 2004; Gambino 2003; Goswami 2007; Samaddar 2008; Sanyal 2007; Mezzadra 2008).

Although it is not my intention to go further into this point, what I wish to suggest is that while we are talking about refugees and migration of Partition in a comparative way with the history of the nation-state and its relation with migrations, we should be able to evaluate our observations within a wider picture. This picture must include the economic dimensions, symbolic functions, and moral and ethic implications of the discourses and policies we address. This essay suggests that in order to address the issues of care, responsibility and justice in a productive way, we need to adopt not just an international approach and use of international treaties, agreements and protocols useful in addressing these issues, but also a transnational approach: a strategy capable of seeing politically from the point of view of migrants and refugees and using this agenda in the multifarious forms of State and non-State structures.

Recent scholarship has developed in this direction, which can help us to address a situation in which categorization lacks the ability to grasp the social reality of migrations; especially when taking into account the statement made by Hannah Arendt more than fifty years ago: that with the rooting of rights in national States, only people of the same national origin could enjoy the full protection of legal institutions (Arendt 1968, 267-303). This will be particularly helpful in post-Partition regions, as the population flows here 'have continued to defy national States' (Samaddar 1999, 66). That does not mean that we do not need to continually struggle for policies of care, reparation, shelter and the state's responsibility, but rather than we must learn from the lessons of the concrete dimensions of these issues, and look to migrants and refugees in general not only as victims of crimes, but as people that develop demands, practices and political agendas. To put it simply, assuming the point of view of the migrant and the "border as method" as suggested by Mezzadra and Neilsen (2008), can be a more productive way to address the multifarious demands for justice, freedom and equality that arise from the post-colonial world.

Notes

[1] I use the term Partition with multiple meanings: while it refers to the "infamous event" of the partitioning of Indian sub-continent, partition is also a political logic that "reshapes states and mind" as in Bianchini – Chaturvedi – Ivekovic – Samaddar 2005.
[2] I am in debt for this discussion, among others, to Professor Samir Kumar Das and his lectures during the 6th Winter Course on Forced Migration held in Kolkata in December 2008.

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