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Updates from Inter-Governmental Organizations

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The EU acknowledged its international obligations under the Convention by adopting the Policy Plan on Asylum and the European Pact on Immigration and Asylum to increase its cooperation with the UNHCR in the resettlement of third country refugees within Europe. These instruments aim to “meet the protection needs of refugees in third countries and to show solidarity with third countries of first asylum.” It also created the European Refugee Fund to increase resettlement capacity across Europe. However, the choice to resettle refugees remains a sovereign decision. Resettlement within Europe lags severely behind other developed signatories to the Convention as well as UNHCR’s needs. In 2010, the U.S. and Canada resettled 54,077 and 6,732 persons, respectively. In total, the top five EU countries resettled 4,019 persons.

Most countries face general financial and social difficulties of integrating refugees into unfamiliar societies. The UNHCR recognizes that Europe faces the added challenge of managing increasingly diverse countries with greater migration and mobility due to the EU’s borderless nature, placing “a strain on existing social structures.” However, nations with far fewer resources, such as Tunisia and Egypt, often bear the burden of providing asylum when developed states shirk their responsibilities. In addition, the Convention specifically states that its provisions shall apply to all refugees regardless of race, religion or country of origin, rendering social cohesion an invalid excuse for refusing to resettle refugees and asylum-seekers.

Europe’s obligation to resettlerrefugees and asylum-seekers displaced by the Libyan conflict is also a moral one. The EU’s desire to stem illegal migration from Libya caused it to seek cooperation with Libya to combat illegal migration, which allowed Libya, a non-signatory to the Convention, to use a heavy hand against refugees and asylum-seekers attempting to flee to the EU. The EU even contributed financially to Libya’s “management of migration flows.” When the uprising against the Qadhafi regime escalated, EU members played a significant role in drafting Security Council Resolution 1973. The resolution authorized a no fly zone and bombing campaign in Libya to which eleven EU member states contributed. The fighting across the country caused thousands of people to flee to transit camps in Egypt and Tunisia.

Although the Convention does not force signatories to accept displaced persons, the refusal of developed countries to do so hinders the work of UNHCR and the spirit of the Convention. The EU can meet its commitment to increase both its cooperation with UNHCR and to provide “greater … support to the international protection of refugees” by increasing its resettlement of refugees and asylum-seekers fleeing Libya. Furthermore, allowing refugees a legal means to enter the European Union through a formal and efficient registration process could significantly decrease the flow of illegal migrants and asylum-seekers, which has plagued some members of the EU since the conflict in Libya began.
UN to establish an accountability mechanism. As many of the Report’s recommendations have gone unheeded, victims have attempted to turn to other means for justice.

Article 3 of the Fourth Geneva Convention and customary international law oblige all belligerents to protect non-combatants in areas of armed conflict. The Report, mandated to address the final stage of the conflict from September 2008 through May 2009, found that up to 40,000 civilians may have been killed by both widespread government shelling of civilian-populated areas and the LTTE’s executions of those attempting to flee. In the Report, which the Sri Lankan government immediately rejected, Panel members wrote that under international humanitarian law, the government has a legal duty to conduct genuine investigations and to prosecute those most responsible.

Because Sri Lanka refuses to follow through on the Report’s recommendations and is not a member of the International Criminal Court, the Panel called on the Secretary-General to establish an international mechanism to verify the alleged crimes. The Secretary-General said that other UN organs, namely the HRC, have the authority to create such an investigative mechanism. In May 2009, the HRC adopted Resolution S-11/1 calling on Sri Lanka to respect human rights and welcoming its commitment to do so, without directly addressing the alleged crimes. The Panel said this decision may have been based on incomplete information and invited the HRC to reconsider it. Despite this recommendation and its capacity to establish commissions to investigate human rights abuses, the HRC failed to address Sri Lanka altogether in its eighteenth session that concluded on September 30.

Six months after the release of the Report, the Secretary-General complied with the Panel’s recommendation to conduct a review of the UN’s actions during the war in Sri Lanka. The Panel found that the UN, namely OCHA, the UN’s humanitarian coordination organ, abrogated its responsibility to advocate for victims. During the war, UN staff compiled a document estimating that 7,721 people had been killed. The Panel found that public use of casualty figures by the UN would have strengthened the call for protection of civilians as the events were unfolding, but that the UN, due to pressure from the Sri Lankan Government and fear of losing humanitarian access, failed to use these figures publicly. As the UN organs await the findings of the review, war victims lack a means for accountability for the crimes committed within Sri Lanka.

With the doors to justice through international mechanisms all but entirely closed, families of the victims are turning to other outlets. In September, American University Washington College of Law’s UNROW Human Rights Impact Litigation Clinic filed a lawsuit against retired Sri Lankan General Shavendra Silva, currently the country’s deputy ambassador to the UN. General Silva is charged in the Southern District of New York under the Alien Tort Claims Act and the Torture Victim Protection Act for extrajudicial killings committed under his command of the 58th division during the conflict period in early 2009. General Silva must respond to the allegations, however, he is likely to claim diplomatic immunity under the Convention on the Privileges and Immunities of the United Nations (Convention). Thus far, the Secretary-General has not exercised his right and duty, according to Section 20 of Article V of the Convention, to waive the immunity where, “in his opinion, the immunity would impede the course of justice.” If General Silva is found to enjoy diplomatic immunity from the court’s civil proceedings, yet another avenue for justice for the victims of the war in Sri Lanka will have closed.

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