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Refugee Law as a Means of Control

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International refugee law has evolved as a means of control over the refugee. The first principles on which it has been built place the rights of the state above those of the refugee. Insofar as there is such a thing as a 'right of asylum', it is a right vested in the state rather than the refugee. As such, from the perspective of seeking a protection regime that places the needs of the refugee at its centre, it is a system that is fundamentally unreformable. My argument rests upon the historical development of the first principles developed by jurists from the seventeenth century through to the twentieth century, on the basis of historical development of refugee law between the two world wars, and on the drafting history of the 1951 Refugee Convention and its subsequent implementation.

Keywords: right of asylum, legal history, 1951 Refugee Convention, refugee subject

Introduction

In judging any imperfect system, there is always the question of whether it can be reformed from within, tweaked for improvements or whether the problems are foundational and thus unreformable. Precious few would argue that international refugee law, underpinned by the 1951 Refugee Convention, is problem-free.[1] However, the overwhelming majority of those who believe in advancing the rights of refugees appear to think that international refugee law is at least a break on the capricious attitude of states towards asylum seekers, and therefore serves as a positive basis on which rights and protection can be extended to people seeking refuge across borders. In this article, I argue the opposite: international refugee law has evolved as a means of control over the refugee. The first principles on which it has been built place the rights of the state *above* those of the refugee. As such, from the perspective of seeking a protection regime that places the needs of the refugee at its centre, it is a system that is fundamentally unreformable.

But surely, the basic elements of legal reasoning and interpretive dexterity can and do develop the law in progressive and more inclusive directions? The answer to that question is yes, but only within a very narrow scope (Behrman 2014a, 2014b). That is, any legal framework sets the limits within which legal

arguments can be held. This is true of international refugee law, which assumes an objective concept of the 'refugee'. So, while refugee law has come a long way since 1951 via juridical interpretations of the Refugee Convention and developments in human rights law, what has not changed are certain key aspects that remain fundamental:

1. there is no right of asylum, only a right to claim it;
2. that the starting point is always that states have an inherent right to decide on access to their territories;
3. that it is up to the refugee to prove their claim;
4. that states retain the right to decide on the procedures for assessing any asylum claim.

These aspects are key to the functioning of refugee law, and underpin the foundation of international law in general. The effect is inescapably to place the refugee at the mercy of a whole series of controls over their movements, where the presumption is that they have no right of access to asylum—a presumption that they must bear the burden of overcoming.

There are, of course, many subsidiary rights that flow from the 1951 Convention and from which refugees do benefit. A commonly made joke is that refugee lawyers cannot count; they appear to begin with 1, with the next number counted as 33. The reference is to the fact that refugee lawyers almost always discuss Articles 1 (which defines those who are and are not eligible for refugee status) and 33 (which lays out the principle of *non-refoulement*) of the 1951 Convention, while appearing to be oblivious to the many substantive rights contained between them, which guarantee rights to employment, welfare and non-discrimination in their countries of refuge. These rights provide real benefits and protection, and are worth preserving. However, the critical point about Articles 1 and 33 is that they act as effective gatekeepers to all the other rights bestowed by the Convention. Without reaching the evidential barrier set by them, the rest of the Convention becomes superfluous.

The strict terms of Article 33 have been superseded by that principle's elevation to a customary norm in international law and, in doing so, it has broken free of many of the restrictions contained in the Convention, in particular those found in the second paragraph of Article 33. Yet, as customary law, *non-refoulement* alone does not guarantee the right to refugee status, much less any of the subsidiary rights contained in the Convention. At best, it simply prevents return to the country of origin, but does not protect one from detention or other such indignities. While the landmark case of *M.S.S. v Belgium and Greece* has often been cited as evidence that the law will protect against return not just to the state of persecution, but also to states that maltreat asylum seekers, the extremely poor standard of treatment and evidential proof required in that case suggests that protection is only extended to very few, and only those experiencing the very worst conditions.[2]

I return to the arguments about the effects of human rights law in general towards the end of this article.

There is much careless talk in forced migration studies and elsewhere about a 'right of asylum'. Usually this is framed in terms of its supposed grounding in international refugee law. As a result, it is commonly assumed that this legal regime, underpinned by the 1951 Convention, and supplemented by the customary principle of *non-refoulement* and various human rights treaties, represents the *sine qua non* of protection for forced migrants today. Yet the Convention makes only a passing reference to asylum and, even then, it is relegated to the Preamble in the context of identifying it as a burden for states rather than a right of the refugee. A right to asylum is included in the 1948 Universal Declaration of Human Rights, but it is both non-binding and ambiguously phrased. By contrast, those human rights instruments that *are* binding (e.g. European Convention on Human Rights, International Covenant on Civil and Political Rights, etc.) do not include references to asylum, with the sole exception of Article 18 of the Charter of Fundamental Rights of the European Union, and this simply reaffirms the rights contained in the 1951 Convention. During the drafting process of the Universal Declaration on Human Rights, states insisted on changing the original draft of Article 14, which referred to a right to be 'granted' asylum and was changed to the mere right to 'seek and enjoy' it. Indeed, I would argue, how could it be otherwise in a system of international law underpinned by the fundamental principle of state sovereignty?

In short, the phrase 'right of asylum' creates a misleading assumption that refugees have a right of entry to putative countries of asylum, and this in turn feeds the erroneous and dangerous narrative of 'floods' of refugees washing up on our shores, with little legal regulation to stem the tide. Instead, the whole way in which international law has configured asylum is in complete opposition to any possibility of claiming such a right; instead, the emphasis has been primarily on ensuring control over the refugee's rights of movement.

While refugee lawyers spend their professional lives mining the possibilities of the 1951 Convention and certain human rights norms, in the real world, the vast majority of refugees are forced to seek protection outside of that legal system. Of the three top hosting states for refugees in the world at the time of writing, two—Pakistan and Lebanon—are not parties to the major refugee treaties and the third—Turkey—while a party to the 1951 Convention, maintains a reservation excluding non-Europeans, i.e. almost all refugees in the world today, from eligibility for refugee status under that treaty. In contrast, many states that were founding signatories to the Convention, such as the United Kingdom, Australia and France, have some of the smallest numbers of refugees, together with the tightest controls over refugee admissions.[3] The most recent statistics suggest a global population of internally displaced persons of 40.3 million people, who are also excluded from the refugee law regime.[4] On the horizon are growing numbers of persons displaced across borders due to environmental factors, including climate

change, who also do not qualify for a right to move to other countries for protection under the refugee law regime, or indeed under any other current international legal instrument (Kent and Behrman 2018). This should only be surprising if one assumes that refugee law was founded on the basis of expanding the scope of protection, when in fact it was driven by a desire to restrict it. But the basic point is this: *for most people* forcibly displaced around the world, refugee law is at best an irrelevance and at worst a barrier to protection.

What follows is a sketch of the historical development of international refugee law. I begin by showing how modern jurists from the seventeenth century through to the late twentieth century have clearly delineated the right of asylum as being vested in the state rather than the refugee. Next I deal with three key stages in the evolution of international refugee: the interwar period; post-1945; and the drafting and implementation of the 1951 Convention. In short, I argue that the underlying principles and aims of contemporary refugee law lie squarely within the desire of states to manage and control the movements of forced migrants, rather than 'humanitarian' concern for them.

Right of Asylum = Right of the State

From the earliest days of international law, there has been a concern to delineate the refugee subject through exclusions and restrictions. The founding theorists of international law laid out certain key principles in relation to asylum, which have remained at the heart of refugee law today. Hugo Grotius sought asylum in France and was one of the first modern jurists to call for a right of asylum to be recognized in international law (Grotius 1962: ii.2.XVI). Yet he qualified this by denying such a right to the undeserving, namely those guilty of having done something 'injurious to human society or to other men' (Grotius 1962: ii.21.V). Christian Wolff set out a natural law by which 'in primitive society any man is allowed to dwell anywhere in the world', whilst, on the other hand considering the right of the sovereign to decide 'whether or not he desires to receive an outsider into his State'. On balance, the right of the state in civilized society must be preferred: 'if admittance is refused, that must be endured' (Wolff 1934: sections 147, 148). Samuel von Pufendorf also believed that it was a matter exclusively for the state to decide whether or not it was in its own interests to allow entry for the refugee in question (quoted in Einarsen 2011: 42) and Emmerich de Vattel perhaps expressed the problem from the viewpoint of states most clearly when he wrote:

> if in the abstract this right [of asylum] is a necessary and perfect one...it is only an imperfect one relative to each individual country; for...every Nation has the right to refuse to admit an alien into its territory when to do so would expose it to evident danger or cause it serious trouble...By reason of its natural liberty it

> is for each Nation to decide whether it is or is not in opposition to receive an alien. Hence an exile has no absolute right to choose a country at will and settle himself there as he pleases (Quoted in Grahl-Madsen 1972: 14).

If the individual right of asylum is imperfect, then the classic authors on international law are much clearer in asserting a far more 'perfect' and secure right of asylum when understood as that which belongs to the state. Amongst more contemporary scholars, Atle Grahl-Madsen recognizes this when citing Vattel: a state is 'free to act as it pleases, so far as its acts do not affect the perfect rights of another Nation' (Grahl-Madsen 1972: 14). Léopold Bolesta-Koziebrodzki has pointed out that the right of asylum is founded upon the inherent right of the state to territorial integrity and the right to admit into its domain whomever it so wishes (Bolesta-Koziebrodzki 1962: 79), whereas Gérard Noiriel identifies the modern principle of state sovereignty as the link between the destruction of the ancient sanctuaries and the modern law of asylum:

> From the beginning of the 16th Century, the right of asylum became the prerogative of royal power. It presupposed the sovereignty of the refugee's state of origin (the principle of territorial plenitude excluding the possibility of the domestic spaces which had constituted the religious refuges of earlier centuries) and the sovereignty of the state of reception (which alone decided whether or not to receive the exile). The right of asylum was therefore a consequence and not a limitation of the principle of sovereignty (Noiriel 1998: 20, footnote 1).

Henri Coursier describes very well the transformation following the French Revolution:

> With the new regime, the right of asylum ceases to be a right which the person can claim, relying on the principles of humanity as being above the law of the State, to become instead a right which, while it operates in the interests of the individual on the basis of humanitarian norms, is one that the State asserts for itself (Coursier 1950: 911).

What Coursier identifies is that, while humanitarianism *might* be a function of modern refugee law, it is at bottom based on the rights of states, not of the refugee. Put another way, Richard J. Fruchterman has written that the birth of the modern age brought with it

> a shift away from the idea that the individual had a right to territorial asylum and toward the concept that it was solely the right of the State to grant or deny territorial asylum (Fruchterman 1972: 171).

The repeated insistence over the centuries by jurists and commentators on international law that the right of asylum, insofar as it actually exists, is one that belongs to the state, not the refugee, is reflected in the formation of the current regime of international refugee law. In the original draft of the 1951 Convention, what is now paragraph 4 of the Preamble referred to the 'right

of asylum' and the consequent burden it placed on states of refuge. During the *travaux préparatoires*, concern was expressed by a number of delegates at this wording. But the president of the conference reassured them that the right being described was that of the state to grant asylum, not of the individual who benefits from it (Weiss 1995: 30). Nonetheless, perhaps to avoid any confusion on the question, the phrase did not make it into the final draft.[5]

Therefore, it should not be surprising that contemporary refugee law, instead of being the institutional expression of humanitarian concern for the refugee, has revealed itself to be 'a basis for rationalizing the decisions of states to refuse protection' (Hathaway 1990: 130). In answer to those who would maintain that international law represents some kind of higher authority descending from the heavens to mitigate the power of the nation state, James Hathaway puts his finger on the critical point when he writes that international law 'must be agreed to by, rather than imposed upon, states' (Hathaway 1990: 134). More specifically, Fruchterman is correct to point out that:

> The ... [1951] Convention is not in derogation of the State-supremacy doctrine, but is rather a voluntary undertaking by the signatories to provide assistance to refugees. The states still retain full authority to grant or deny asylum to persons who do not qualify as refugees as that word is used in the Convention (Fruchterman 1972: 177).

Indeed, the point about determining asylum on the basis of who is or is not deemed to be a refugee, 'as that word is used in the Convention', has been crucial to the ability of states to police the reception of forced migrants.

The Birth and Development of International Refugee Law

International refugee law has its origins in the chaotic conditions that followed the First World War. In particular, the huge numbers of people forced to flee as a result of the Russian Revolution and the breakup of the Ottoman empire demanded some kind of response. In 1926, the number of refugees in Europe was estimated to be around 9.5 million (Marrus 2002: 51). The first initiative was the creation by the League of Nations of the office of High Commissioner for Refugees, with the Norwegian Fridtjof Nansen appointed to the role. He in turn created the Nansen Passport system, based on a temporary document issued to refugees in order to allow them at least some limited travel in exile.

Hathaway describes this period as one in which 'refugees were defined in largely *juridical* terms', so as to remedy the fact that a mass of stateless persons in Europe was creating 'a malfunction in the international legal system' (Hathaway 1984: 348–349, 358, emphasis in original). While Claudena Skran suggests that, as well as assisting some refugees to travel, the Nansen Passport 'would help governments to count and monitor their refugee

populations' (Skran 2011: 7), Noiriel argues that the relative ease with which the Nansen Passport was instituted in the years after the First World War was possible only because European states believed that it would facilitate the mass repatriation of refugees caused by the war and the revolutionary upheavals in Russia (Noiriel 1998: 106). In short, the Nansen Passport system, the precursor of modern refugee law, was primarily about stabilizing, monitoring and controlling the movement of refugees. Insofar as it had a humanitarian effect in facilitating greater ease of movement to refugees who would otherwise have been without travel documents, this was, at least from the perspective of states, a secondary aim. Moreover, it must be stressed that such a scheme was only necessary because of the plethora of border controls that had become the norm across Europe over the preceding decades. In essence, states having artificially created the problem now found that they had to provide some kind of a solution to those who fell between the cracks of the nation-state paradigm.

The ad hoc and 'rudimentary' (Weiss 1954: 194) arrangements of the 1920s were followed by more formal and far-reaching attempts to create a system of international refugee law with the 1933 Convention and a further international agreement at Evian in 1938.[6] The 1933 Convention was the first legally binding international treaty on asylum and would form the basis for the 1951 Convention (Skran 2011: 14). A major impetus for the creation of the 1933 Convention was to put in place a framework of international law that could deal with refugees beyond the anticipated lifetime of the Nansen Office (Simpson 1938: 86).[7] Only Russians, Armenians and a few other small groups such as Christian minorities from the former Ottoman empire were included. The plight of those forced to flee the new Nazi government in Germany was completely ignored, in spite of some 50,000 refugees fleeing the country in the early part of that year (Simpson 1938: 59; Skran 2011: 18). The 1933 Convention also allowed signatories to derogate from all aspects except for one: Chapter XI, General Provisions (Skran 2011: 24). By the outbreak of the Second World War, however, only eight countries had ratified the Convention and many of them had derogated from some of the most important provisions such as Article 3 on *non-refoulement* (Skran 2011: 24–25). This was the first enunciation of this principle, which has since become a central plank of international refugee law. However, the Convention still allowed states to expel refugees for 'reasons of national security or public order'.[8] The United Kingdom made a reservation to Article 3 stating that 'public order' could include criminal or 'moral' issues (Jennings 1939: 105, footnote 3). Similar exclusion clauses were later included in the 1936 Arrangement and in Article 5 of the 1938 Evian Convention (Simpson 1938: 106).

By 1938, it was clear that there needed to be a more significant response to the exodus of Jews and others fleeing Nazi Germany. The matter became even more urgent following the annexation of Austria in March of that year. So, at the instigation of the United States government, a meeting was convened at Evian in July. Although the Evian conference has gone down in

history as one of the more shameful episodes in the closing of doors by Western countries to the Jewish refugees, it did result in a new Convention specifically to deal with assisting them.[9] Article 1 defined 'refugees coming from Germany' as:

> a) Persons possessing or having possessed German nationality and not possessing any other nationality who are *proved* not to enjoy, in law or in fact, the protection of the German Government;
> b) Stateless persons not covered by previous Conventions or Agreements who have left German territory after being established therein and who are *proved* not to enjoy, in law or in fact, the protection of the German Government.
>
> 2. Persons who leave Germany *for reasons of purely personal convenience* are not included in this definition.[10]

Two things are most striking about this definition. First, it is the first time that an international agreement insists on proof that the person being helped is a refugee as so defined. We have here the inauguration of a key aspect of contemporary refugee law, namely that assistance is conditional upon the offering of proof by the refugee that they fit the juridical definition of a refugee. In addition, the second clause, excluding those who have left Germany 'for reasons of purely personal convenience', is also the first time in international law that a group are specifically excluded from protection. Skran writes: 'This clause makes a distinction inherent in refugee law as a whole—that refugees were a separate, special, and deserving category of international law' (Skran 2011: 31). I would add to that that it also assumes such a distinction is clear and can be expressed in law without in fact denying protection to those who need and deserve it. One can easily imagine Germans, Jewish or otherwise, who, having felt merely harassed or uncomfortable living under the Nazi regime, had chosen for reasons of 'personal convenience' to move elsewhere. The concept of 'personal convenience' is certainly not an objective one. But what such a clause does is not simply to make a distinction between two objectively pre-determined groups; it also necessarily involves a level of suspicion or scepticism about *all* claims for protection, for it becomes necessary to judge all as to whether or not they are 'genuine' refugees or merely people who have migrated for personal convenience. It is therefore easy to accept Gil Loescher's claim that 'the term *economic refugees* was first used to describe Jews leaving Germany in the 1930s; they were referred to as the *Wirtschaftsemigranten*' (Loescher 1993: 17, emphasis in original).

In sum, it can be said that 'the interwar years … helped to establish refugees as a special category of migrant' (Skran 2011: 36). For most commentators at the time and since, this was a sign of progress, as it appeared to create special privileges for refugees in the context of closing borders and more stringent measures on entry. Certainly, in the context of the specific needs of the refugees fleeing Nazi Germany, and with hindsight refracted back through the Holocaust, such a view is understandable. However, in

light of over 60 years' experience of solid legal regimes at both international and domestic levels that specifically categorize the refugee as distinct from other types of migrants, such a positive spin on these interwar developments are at least questionable when one considers the fact that many groups of refugees, from the Hungarians in 1956 through to those fleeing the vicious civil wars in Central America in the 1980s to those from Syria in recent years, have fallen outside of the category of refugee, as defined in international law. Moreover, much of the detail of the legal provisions discussed so far suggests a far greater concern even at the time with control of the refugee rather than assistance or protection.

Writing in 1938, Louise W. Holborn, later to be the official historian of the United Nations High Commissioner for Refugees (UNHCR), accurately identified the key problem from the point of view of nation states:

> Disorganized groups of refugees are more difficult ... to deal with than are organized groups, even if the latter are larger in number. A clearly defined status for refugees would aid efforts to make refugee status transitory in character and would facilitate settlement. If coupled with adequate technical organization, refugees would be under more direct control than at present, and the possibility of subversive political activity against governments responsible for their exile would be greatly lessened. The political complications often connected with aiding refugees would be practically eliminated also, particularly if the local offices concerned with refugees were qualified to decide which people fell within the accepted definition of 'refugee' (Holborn 1938: 703).

Here, in essence, is revealed the cynical approach that was evidently current in the pre-war period: the focus of refugee law was to be on managing refugees, rather than assisting them. At around the same time, another commentator, R. Yewdall Jennings, made a similar point that, for there to be an effective legal system governing refugees, the 'first step' would have to be 'a definition of the term ''refugee'' (Jennings 1939: 99) . The definition he offered was of one who had lost the protection of their state and for whom therefore 'the link between him and international law' had broken down (Jennings 1939: ibid). Also writing in 1938, although from perhaps a less cynical perspective, John Hope Simpson, as part of his survey into the refugee crisis in Europe, argued that refugee assistance had been hobbled by political partisanship (Simpson 1938: 97). Specifically, he criticized as 'political sectionalism' attempts made by refugees themselves to add to the refugee programme of the League an anti-fascist aim in order to address the root cause of refugee problems. Instead, Simpson proposed that refugee assistance be made, as far as possible, a technical procedure. Repeatedly, then, the concerns expressed by leading commentators on the refugee question—those moreover who tended to be sympathetic to the plight of the refugees, at the close of this first period of the development of international refugee law—are all to do with controlling, managing and depoliticizing asylum, their solution being to make it more a juridical and administrative affair.

Post 1945

During the Second World War, the first step towards the creation of a global refugee relief organization was created and then voluntarily placed itself, curiously enough, under the direct control of the military Supreme Commander of Allied Forces (Noiriel 1998: 120; Marrus 2002: 319). And they appeared most concerned not for the welfare of the refugees, but rather for the disruption that might be caused by 'uncontrolled self-repatriation of displaced persons who might form themselves into roving bands of vengeful pillaging looters on trek to their homes' (quoted in Malkki 1995: 499).[11] Following the end of the war, many former Nazi concentration camps were turned into 'Assembly Centres' for refugees. Liisa H. Malkki argues that it was in these centres that the bureaucratic monitoring and documenting of refugees were first initiated, out of which the 'postwar figure of the modern refugee largely took shape' (Malkki 1995: 500). Further, the bureaucratization of refugee assistance has led to the 'leaching-out' of the politics that lays behind refugee movements; this depoliticization has in turn become pervasive amongst the various humanitarian and policy organizations concerned with refugees today (Malkki 1995: 505). In addition, the initial placing of the military in control suggested that, with an emerging Cold War, European security and reconstruction became the prime motivation behind the development of refugee policy.

In the initial post-Second-World-War period, the distinction between refugees and what were known as 'surplus workers' was unclear, with many of the former being lumped in with the latter. Reiko Karatani argues that the emerging refugee regime essentially reflected the concerns of states that this 'surplus population' should not endanger post-war political stability and economic recovery (Karatani 2005: 519). Thus, many of the discussions on the various instruments of international law, culminating in the 1951 Convention, were dominated by state representatives emphasizing the defence of national interests and the need for a strict codification in law of the category of refugee, so as to enable a filtering process for the 'surplus population' (Noiriel 1998: 212). In June 1946, for example, the French delegate to the United Nations remarked that the question of the refugee definition was far from being a merely academic one. A broad definition, he argued, such as the one proposed initially by the United Kingdom, would lead to a potential difference in the number of refugees entitled to protection ranging from 200,000 to 1 million (Noiriel 1998: 123). In the following month, the United Nations Relief and Rehabilitation Administration (UNRRA), which had been set up in 1943 to manage aid and resettlement for refugees, compelled those seeking refugee status to provide 'concrete evidence' of persecution in order to receive assistance and protection (Hathaway 1984: 373). Thus, states and international bodies were quickly latching onto the notion that a formal legal definition of the refugee would assist in controlling population movements.

The International Refugee Organisation (IRO), successor to UNRRA, also introduced or reinforced prior concepts that would become key elements of the definition of the refugee in the post-war period. The Preamble of the IRO's Constitution makes repeated reference to '*genuine* refugees and displaced persons'.[12] Annex 1 then lists those worthy or not of being refugees. In the main, this referred to former Nazis or their collaborators,[13] but economic migrants were also specifically excluded.[14] The IRO Constitution further excluded from the remit of protection those who:

> (a) have participated in any organization having as one of its purposes the overthrow by armed force of the Government of their country of origin, being a Member of the United Nations; or the overthrow by armed force of the Government of any other Member of the United Nations, or have participated in any terrorist organization;
>
> (b) have become leaders of movements hostile to the Government of their country of origin being a Member of the United Nations or sponsors of movements encouraging refugees not to return to their country of origin.[15]

At a time when national liberation movements were reaching a critical moment of intensity in India, Algeria, Indochina and elsewhere, this must be understood as a means to shore up the integrity of the imperial states of Europe.

Frank Krenz, a former member of the Legal Division of the UNHCR, offers us a heroic description of the post-war evolution of refugee law:

> From [the end of the Second World War] onward the concept of 'Freedom of Movement' gained impetus, and rebellion took place against the supremacy of State sovereignty in matters relating to the release of subjects or the admission of aliens (Krenz 1966: 90).

Sadly, this rather overblown description does not fit the reality of what happened then. The state-centred concept of asylum that arose in the seventeenth century remained. A leading textbook on international law, in an edition published in 1948, stated that

> the so-called right of asylum is certainly not a right possessed by the alien to demand that the State into whose territory he has entered with the intention of escaping persecution in some other State should grant these things (Quoted in Bevan 1986: 214).

In more positive terms, the prevailing view at the time on the law of asylum is best summed up in the description offered by the Institute of International Law in 1950:

> Asylum is the protection which a State grants on its territory or in some other place under the control of certain of its organs, to a person who comes to seek it.[16]

The institute further declared that the state has the right to expel the asylee, that such an expulsion might be impossible if other states refused to accept them and that, in situations involving mass refugee flows, it was up to states to best manage these on the basis of 'the most equitable way of sharing between their respective territories'.[17] Nowhere does this declaration on international law, by one of the leading authorities in the field, refer to the rights of the refugee. In other words, in the year before the adoption of the 1951 Convention, a leading body of international jurists identified the right of asylum as fundamentally vested in the putative host state, not the refugee herself. In discussing the same description given by the Institute of International Law, Grahl-Madsen makes the point that asylum can be understood within the framework of the

> territorial supremacy and integrity of States … in the sense that [the refugee] is no longer subject to (lawful) seizure by the authorities of the country from which he has fled (Grahl-Madsen 1972: 4).

That is, the territorial integrity of the country of asylum must be respected vis-à-vis the state seeking custody of the asylee. Felice Morgenstern, writing on the eve of the 1951 Convention, concurs:

> There is an undisputed rule of international law to the effect that every State has exclusive control over the individuals on its territory …. A competence to grant asylum thus derives directly from the territorial sovereignty of states (Morgenstern 1949: 327).

Further, Noiriel argues that the 1951 Convention was only acceded to by so many states and has therefore succeeded over the past 60 years in becoming an established part of international law, precisely because it preserves the prerogatives of the nation state to be the final arbiter of who can or cannot enter its territory (Noiriel 1998: 151). Indeed, the mechanism of individualization and control, the techniques involved in determining eligibility, that is the veracity of the claim for asylum, are the foundation without which a law of asylum could not exist within the context of a world hegemonized by the nation state (Noiriel 1998: 152).

The Drafting of the 1951 Convention

Drafting of the 1951 Convention began in early 1946. Loescher argues that, for Western governments, the negotiations were mainly about 'limiting their legal obligations to refugees' (Loescher 1993: 57). Discussions on the refugee definition were perhaps the most extensive of the entire process, with over 500 pages of official documents devoted to it alone (Einarsen 2011: 49). There were many drafts of the refugee definition and arguments over the exact wording that lasted right up until the end of the drafting process five years later. The definition eventually agreed entailed 'substantial limitations' on

who would be included, leaving out internally displaced persons, economic refugees, people made stateless for reasons not related to persecution, those fleeing general situations of violence or war and those fleeing natural or ecological disasters (Einarsen 2011: 52).

Stephanie Schmahl, citing the French and Italian delegates to the Conference of Plenipotentiaries that drafted the 1951 Convention, describes the concern of European states as being to create a legal regime 'primarily designed to create secure conditions such as would facilitate the sharing of the refugee burden' (Schmahl 2011: 469). Indeed, there appears to have been a trade-off in the negotiations over Article 1, the 'key' to the system of rights for refugees under international law (Einarsen 2011: 40). In return for a settled universal definition of a refugee, the temporal and geographical limitations (relating to events in Europe prior to 1951) had to be put in place (Einarsen 2011: 55). The French delegation, following concerns expressed within their government that they would have to receive too many refugees, successfully insisted on these restrictions being included in the final draft (Noiriel 1998: 144). In particular, they argued that a narrow definition of a refugee would enable the 'separating of the wheat from the chaff' (quoted in Chetail 2014: 25). The United States delegation, among others, objected to a universal definition, as it would force states to sign a 'blank check'. They pointed to the numbers of Palestinian refugees and of those who had fled as a result of Indian Partition as examples of why a more specific definition was necessary. The Italian delegate, Del Drago, expressed horror at the idea that European nations would have to accept refugees as a result of national movements in the East (Einarsen 2011: 60). It was left to the Pakistani delegate, Brohi, to express his government's opposition to a refugee Convention that excluded all non-Europeans, such as the millions who suffered as a result of Partition (Einarsen 2011: 57). It is therefore clear that the Convention refugee has its origins not in concern for refugees per se, but rather as part of a compromise intended to assuage the concerns of states, particularly those in Europe, that they would be inundated with masses of unwanted asylum seekers, mainly those who were poorer and darker. The Western bias of the Convention is obvious in statements such as the following made in 1966 by the UNHCR:

> The [geographical] limitation did not give rise to any particular problem when the 1951 Convention was first adopted, since at that time the 1951 Convention extended in practice to all known groups of refugees.[18]

This claim is highly disingenuous, as it ignores at least three other major refugee crises of the time: the largest forced migration in world history involving some 14.5 million people who crossed the borders following the partition of India and Pakistan in 1947, the 800,000 Palestinians forced from their homes by the Zionists in the following year and the refugees created by the outbreak of war on the Korean peninsula in 1950. For geopolitical reasons to do with the Cold War, the United Nations, at the behest of Western states,

was prepared to set up specific agencies to assist the Palestinians and Koreans, but those in the Indian sub-continent were denied aid, in spite of repeated requests from both India and Pakistan (Loescher 1993: 62).

Writing in 1954, Paul Weis observed that both the discussions that led to the setting-up of the IRO and then later the UNHCR demonstrated a 'keenness' amongst states to delimit the scope of people who would be assisted and given asylum (Weiss 1954: 208). In addition to the exclusive nature of the definition, the 1951 Convention for the first time included a clause allowing the removal of refugee status.[19] Further, during the negotiations, states insisted on retaining the right to exclude refugees, on the basis of national security and public safety, whom they considered 'unworthy or undesirable' (Hathaway 1990: 172)—something that found expression in Article 1F and Article 33(2). In discussions on Article 31 of the Convention, which ostensibly grants some leniency to refugees who illegally enter the putative host state, the secretariat, in proposing the draft, begin their commentary by stating categorically: 'The sovereign right of a State to remove or keep from its territory foreigners regarded as undesirable cannot be challenged.' Further, the secretariat raised the issue of the refugee 'caught between two sovereign orders' but in the context not of the suffering of the refugee, but rather that they might end up leading 'the life of an outlaw and may in the end become a public danger' (Weiss 1995: 202). The negotiations that led to the 1951 Convention are probably best summed up by one non-governmental organization (NGO) observer of them, who noted ironically that they

> had at times given the impression that it was a conference for the protection of helpless sovereign states against the wicked refugee. The draft Convention had at times been in danger of appearing to the refugee like a menu at an expensive restaurant, with every course crossed out except, perhaps, the soup, and a footnote to the effect that even the soup might not be served in certain circumstances (Quoted in Hathaway 1990: 145).

Defining and Controlling the Refugee Subject

Application of the 1951 Convention in practice appears to confirm its bias towards control rather than protection. Unlike many other signatories of the 1951 Convention, France moved swiftly to implement the Convention into domestic law. Within months, the law of 27 July 1952 incorporated into the domestic legal regime the definition of a refugee contained in Article 1A of the 1951 Convention.[20] This law also created the *Office Français de Protection des Réfugiés et Apatrides* (OFPRA) in order to manage the implementation of refugee admissions and to ascertain refugee status on the terms of the Convention. This legislation therefore led to the principle of the right of asylum in France being definitively 'subordinated to establishing proof of persecution' (Noiriel 1998: 200). This new emphasis led quickly to OFPRA relying heavily on the police and police methods. For example, the authorities

began to screen Spaniards arriving over the Pyrenees, distinguishing between Convention refugees and economic migrants (Weiss 1954: 196). In its account of its own history, OFPRA states that the focus on judging the eligibility of the applicant is crucial, for 'the credibility of the narrative, its coherence and its accuracy, comes down to the question of proof' (OFPRA: 17). In addition, the semi-autonomous refugee groups to aid Armenians, Russians and Spaniards, which had hitherto played the leading role in settling refugees, were effectively subsumed into this new administrative apparatus (OFPRA: 9). Similar practices resulted from the introduction of the 1951 Convention elsewhere. West Germany, for example, set up a 'recognition procedure' based in Nuremburg, which assessed the 'refugee quality' of applicants against the definition in Article 1A. In Italy, those entering the country illegally were held in 'collecting centres', where they would also be assessed as to 'refugee quality' before being released (Weiss 1954: 216). The logic of control that guided the process leading up to the 1951 Convention led to the creation in a number of countries, including France, West Germany and Italy, of 'eligibility certificates' for refugees, without which they could not get work or access other forms of material assistance. The eligibility in question again related to the Convention definition. The burdensome apparatus of screening procedures, surveillance and detention that is so ubiquitous today is not a betrayal of the spirit of the 1951 Convention, but rather is an expression of it.

Although the 1967 Protocol eased the temporal and geographic limitations of the 1951 Convention, the restrictive definition of a refugee, as one fleeing their home state for reasons of persecution on grounds of the denial of social or political rights, remained. Indeed, it was strengthened due to the fact that this definition now assumed a global and indefinite character; that is, it completed the gesture towards universality implicit in the 1951 Convention. As a result, the overwhelming majority of contemporary forced migrants from the Global South, fleeing conditions of civil war, natural disasters and economic hardship, were placed outside this 'universal' refugee construct (Hathaway 1990: 162). The process used for getting the 1967 Protocol through the United Nations was designed precisely to prevent any wider political discussion on the question of the scope of protection and the question of the refugee definition; it is why the Protocol was drafted in a plain technical way and why it makes no explicit reference to the 1951 Convention (Hathaway 1990: 163–164). As Hathaway writes:

> The refugee definition established by the Protocol has enabled authorities in developed states to avoid the provision of adequate protection to Third World asylum claimants while escaping the political embarrassment entailed by use of an overtly Eurocentric refugee policy (Hathaway 1990: 164).

Frédéric Tiberghien points out that the very fact of creating a definition of a refugee in law in turn creates the distinction between 'true' and 'false'

refugees. The refugee determination procedure, a necessary part of policing this distinction, ends up as a mechanism for making subjective judgements on whether or not the refugee is worthy of being granted asylum (Tiberghien 1988: 57). B. S. Chimni identifies this problem when he writes that the Convention's 'objectivism tends … to substitute the subjective perceptions of the State authorities for the experiences of the refugee' (Chimni 2004: 62). In sum, all those aspects of international refugee law, as expressed primarily by the 1951 Convention, that are claimed to be positives—objectivism, universality and, most of all, legality—turn out on closer inspection to be key ingredients in the diminution of the refugee subject, and the placing of her under ever greater control and management by states and the international legal order. Writers who see themselves as defenders of the rights of refugees, while trying to uphold the tenets of international refugee law, end up raising the spectre of 'disorderly movements' of refugees, were it not for the 1951 Convention (McAdam 2017: 1). To back up this argument, McAdam cites the current Assistant High Commissioner for Protection at the UNHCR:

> departures from the fundamental principles of international refugee protection have neither reduced nor stalled refugee movements'', but have resulted in ''ineffective management of large-scale influxes, the diversion of refugee movements, [and] the creation of tensions between states as burdens and costs are shifted from some onto others (Volker Türk, quoted in *ibid.*).

We are back to the same concerns that drove the development of international refugee law in the first half of the twentieth century. The refugee has become, even for those apparently most sympathetic to their plight, a problem to be managed, not a subject capable of seeking and demanding protection on their own terms.

Human Rights Law to the Rescue?

But perhaps much of what I have written on refugee law, and specifically on the 1951 Convention, is moot given the major impact of human rights law. Vincent Chetail has made a compelling argument that international human rights law has developed to such an extent in relation to the protection of refugees that it has effectively supplanted the 1951 Convention as the key framework. Indeed, he starts from the proposition that international refugee law was effectively conceived as intimately bound up with the system of migration controls, and thus they exist in an orbit of a 'self-referential logic' with one another (Chetail 2014: 23). However, via the establishment of *non-refoulement* as a principle of customary law, and the application of human rights norms that are universal in scope, refugees, whether they fit the Convention definition or not, can access basic rights of non-discrimination and subsistence. María-Teresa Gil-Bazo (2015) builds on this argument, with an analysis of how various international human rights tribunals have

developed a jurisprudence that establishes some of these basic rights in respect of refugees. While many of the arguments of Chetail and Gil-Bazo are persuasive, they do rather beg the question as to the continuing relevance of the 1951 Convention; if human rights norms are applicable equally to nationals as well as migrants, what is the function of refugee law as a separate entity?

Yet, there remains a fundamental problem in this approach, which is that all these human rights norms apply only to those people *already* present in this or that sovereign sphere. There is still no right of access to a state to which one is a non-national, hence the efforts of states to repel migrants on the high seas, the exporting of border controls and the warehousing of refugees and other migrants in off-shore detention camps and *zones d'attentes*. While the effects of these practices are extremely detrimental to the wellbeing of the refugees, they are perfectly legal in international law and do not in themselves breach human rights law, although the manner in which they are implemented often does. Moreover, as Marie-Bénédicte Dembour has demonstrated in her extraordinarily detailed investigation into the jurisprudence and practice of the European Court of Human Rights (ECtHR), while there are certain cases—well known and endlessly cited by academics—that have upheld the rights of migrants, a great many more cases have allowed deportations of asylum seekers (Dembour 2015: especially Chapters 7 and 12). Dembour also highlights a significant blind-spot in most commentary in this area. The cases where asylum seekers have succeeded more often than not required dedicated lawyers and took years to work their way through the courts. Meanwhile, a great many more refugees, whose names will never be known through repeated citations of this or that judicial decision, have their claims refused as manifestly unfounded, by both states and national and international courts. Many more will have no access to adequate, if any, legal representation in the first place. Yet more refugees will never make it to a country of refuge in order to lodge a claim, as various methods of safe and orderly travel are closed off. In short, to rely on the law in general, and on human rights and refugee law in particular, is to make some very big assumptions about access to the law for refugees and their ability to succeed in their claim should they be one of the lucky few who have their cases heard. The point is that the evermore burdensome process of making one's claim to access to protection in another country is made so precisely because of the plethora of laws that police the boundaries between the rights of states and those seeking their protection. As Dembour notes in her study, the default position of the ECtHR is to treat the testimony of refugees and migrants with suspicion. Yet this, in my view, is to be expected given that a basic principle of law is that it is up to a claimant to prove their case.[21] As such, I return to the point made at the beginning—that refugee law, even when complemented by human rights law, while presenting an illusion of balancing the rights of states and asylum seekers, actually privileges the former over the latter.

Conclusion

The refugee today has been reduced in political, legal and everyday discourses to what Guy Goodwin-Gill has referred to as a 'unit of displacement', as someone who is categorized, controlled and warehoused (Goodwin-Gill 1999: 246). This process is facilitated by international refugee law, not in spite of it. Thus, refugee law has not created spaces of protection, but has instead extended ever further the grasp of the state over the refugee. The operational conclusion is not to reject wholesale the subsidiary benefits of the 1951 Convention and other similar laws, but we must reject the false notion that the *primary* function of refugee law is to extend protection to the refugee. As I have attempted to show here, it has been an article of faith of jurists, from the fathers of modern public international law through to the drafters of the 1951 Convention, that ultimately the interests of the state must be pre-eminent over the rights or needs of the refugee. Courts at both the national and international levels tend to begin from the proposition that states have a right to control access to their territory, not that asylum seekers have a right of entry. Indeed, to believe otherwise is to ignore the guiding principles on which international refugee law was founded. The failure to properly understand and appreciate the fundamental nature of the existing refugee law regime, its history and its practice can lead us to defending the indefensible, or at best placing our hopes in a legal regime that rarely delivers the protection that refugees deserve.

The obvious conclusion from all this is that an open-borders policy is the only thing that will truly relieve the burden on refugees in making the journey from danger to safety. This situation existed de jure just a century ago and de facto for most states until the 1970s. Indeed, refugee law only has a purpose in the context of border controls. At this point, it is usual to make the disclaimer that, while desirable, a policy of open borders has little or no chance of being enacted given the current geopolitical context. Therefore, let us focus on 'making the existing system work better'. The problem with this approach is that, while the case law has continued to make refugee law and human rights law more expansive in theory, in practice, refugees have found it increasingly difficult to reach countries of refuge and the standards of reception if they do make it have deteriorated in recent decades. For sure, developments in international refugee law, notably the extension of human rights norms into its realm, have improved things at the margins, and they help support a narrative that asylum is possible through the law. But at what cost to the overwhelming majority of the world's refugees? The case for open borders, therefore, may take time to have an impact but, until we begin making it forcefully and consistently, an ever-increasing burden will be placed on refugees as they seek to make their claims via the legal route. Moreover, by selling the refugee law regime as somehow fundamentally about upholding the rights of refugees, we end up promoting a labyrinthine

and loaded system that reinforces barriers to protection rather than removing them.

1. *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series vol. 189, p.137.
2. *M.S.S. v. Belgium and Greece* [2011] 30696/09. In Chapter 12 of her book, Dembour (2015) provides an in-depth study of the context in which the applicant was successful in this case, and the limitations of its wider application.
3. *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, 189. For the most up-to-date statistics, see the UNHCR website, http://www.unhcr.org/uk/figures-at-a-glance.html (accessed 5 March 2018).
4. Figures can be found at http://www.internal-displacement.org/global-report/grid2017/ (accessed 5 March 2018).
5. The final draft, to clarify the point, refers only to the '*grant* of asylum' (emphasis added).
6. League of Nations, *Convention Relating to the International Status of Refugees*, 28 October 1933, League of Nations Treaty Series, Vol. CLIX No. 3663; League of Nations, *Convention Concerning the Status of Refugees Coming From Germany*, 10 February 1938, League of Nations Treaty Series, Vol. CXCII, No. 4461.
7. In 1931, the League of Nations stipulated 31 December 1938 as the date by which the Nansen Office's work would cease.
8. League of Nations, *Convention Relating to the International Status of Refugees*, 28 October 1933, League of Nations Treaty Series, Vol. CLIX No. 3663, Article 3.
9. The extent of the shabby attitude of state delegations towards refugees and indeed the whole purported task of the conference is well described in Marrus (2002: 171).
10. League of Nations, *Convention Concerning the Status of Refugees Coming From Germany*, 10 February 1938, League of Nations Treaty Series, Vol. CXCII, No. 4461, Article 1 (emphasis added).
11. Similar sentiments were expressed by General Patton in language that was only slightly more offensive, describing displaced persons as 'locusts' who needed to be kept behind barbed wire (Marrus 2002: 322).
12. United Nations, *Constitution of the International Refugee Organisation* (IRO) A/RES/62 (1), 15 December 1946, Preamble (emphasis added).
13. United Nations, *Constitution of the International Refugee Organisation* (IRO) A/RES/62 (1), 15 December 1946, Annex 1, Article 1(c).
14. *Ibid.*, Article 1(e).
15. *Ibid.*, Sec. D, II (6).
16. Institut De Droit International, *L'asile en droit international public* (Bath 1950), Article 1.
17. *Ibid.*, Article 2.
18. UNHCR, UN Doc. A/AC.96/346 (1966), paragraph 2.
19. Article 1c.
20. Article 2, Loi no. 52-893 du 25 juillet 1952 relative au droit d'asile.
21. I have dealt elsewhere with the broader questions surrounding the legal form and its deleterious impact on the refugee. See Behrman (2014a, 2014b).

BEHRMAN, S. (2014a) 'Accidents, Agency, Asylum: Constructing the Refugee Subject'. *Law and Critique* 25(3): 249–270.

BEHRMAN, S. (2014b) 'Legal Subjectivity and the Refugee'. *International Journal of Refugee Law* 26(1): 1–21.

BEVAN, V. (1986) *The Development of British Immigration Law*. London: Croom Helm.

BOLESTA-KOZIEBRODZKI, L. (1962) *Le Droit d'asile*. Leiden: A.W. Sythoff.

CHETAIL, V. (2014) 'Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law'. In Rubio-Marin, R. (ed.) *Human Rights and Immigration*. Oxford: OUP.

CHIMNI, B. S. (2004) 'From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems'. *Refugee Survey Quarterly* 23(3): 55–73.

COURSIER, H. (1950) 'Restauration du droit d'asile'. *Revue Internationale de la Croix-Rouge et Bulletin international des Sociétés de la Croix-Rouge* 32(384): 909–917.

DEMBOUR, M.-B. (2015) *When Humans Become Migrants: Study of the European Court of Human Rights with an Inter-American Counterpoint*. Oxford: OUP.

EINARSEN, T. (2011) 'Drafting History of the 1951 Convention and the 1967 Protocol'. In Zimmerman, A. (ed.) *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary*. Oxford: OUP.

FRUCHTERMAN, R. L. (1972) 'Asylum: Theory and Practice'. *Judge Advocate General Journal* 26(2): 169–180.

GIL-BAZO, T. (2015) 'Refugee Protection Under International Human Rights Law : From *Non-Refoulement* to Residence and Citizenship'. *Refugee Survey Quarterly* 34(1): 11–42.

GOODWIN-GILL, G. (1999) 'Refugee Identity and Protection's Fading Prospect'. In Nicholson, F. and Twomey, P. (eds) *Refugee Rights and Realities: Evolving International Concepts and Regimes*. Cambridge: Cambridge University Press.

GRAHL-MADSEN, A. (1972) *The Status of Refugees in International Law: Volume Two*. Leiden: A.W. Sijthoff.

GROTIUS, H. (1962) *The Law of War and Peace*. Trans. F.W. Kelsey. Indianapolis: Bobbs-Merrill.

HATHAWAY, J. C. (1984) 'The Evolution of Refugee Status in International Law: 1920–1950'. *International and Comparative Law Quarterly* 33(2): 348–380.

HATHAWAY, J. C. (1990) 'A Reconsideration of the Underlying Premise of Refugee Law'. *Harvard International Law Journal* 31(1): 129–184.

HOLBORN, L. W. (1938) 'The Legal Status of Political Refugees, 1920–1938'. *American Journal of International Law* 32(4): 680–703.

JENNINGS, R. Y. (1939) 'Some International Law Aspects of the Refugee Question'. *British Yearbook of International Law* 20: 98–114.

KARATANI, R. (2005) 'How History Separated Refugee and Migrant Regimes: In Search of Their Institutional Origins'. *International Journal of Refugee Law* 17(3): 517–541.

KENT, A. AND BEHRMAN, S. (2018) *Facilitating the Resettlement and Rights of Climate Refugees: An Argument for Developing Existing Principles and Practices*. Abingdon: Routledge.

KRENZ, F. E. (1966) 'The Refugee as a Subject of International Law'. *International and Comparative Law Quarterly* 15(1): 90–116.

LOESCHER, G. (1993) *Beyond Charity: International Cooperation and the Global Refugee Crisis*. Oxford: OUP.

MALKKI, L. H. (1995) 'Refugees and Exile: From ' "Refugee Studies" to the National Order of Things'. *Annual Review of Anthropology* 24(1): 495–523.

MARRUS, M. R. (2002) *The Unwanted: European Refugees from the First World War through the Cold War*. Philadelphia: Temple University.

MCADAM, J. (2017) 'The Enduring Relevance of the 1951 Refugee Convention'. *International Journal of Refugee Law* 29(1): 1–9.

MORGENSTERN, F. (1949) 'The Right of Asylum'. *British Yearbook of International Law* 26: 327–357.

NOIRIEL, G. (1998) *Réfugiés et sans-papiers: La République face au droit d'asile XIXe -XXe siècles*. Paris: Hachette.

OFPRA (no date) *De la Grande guerre aux guerres sans nom: une histoire de l'OFPRA*. Paris: OFPRA.

SCHMAHL, S. (2011) 'Article 1B 1951 Convention'. In Zimmerman, A. (ed.) *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol: A Commentary*. Oxford: OUP.

SIMPSON, J. H. (1938) *Refugees: Preliminary Report of a Survey*. London: Royal Institute of International Affairs.

SKRAN, C. (2011) 'Historical Development of International Refugee Law'. In Zimmerman, A. (ed.) *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol: A Commentary*. Oxford: OUP.

TIBERGHIEN, F. (1988) *La protection des réfugiés en France*, 2nd edn. Paris: Économica.

WEISS, P. (1995) *The Refugee Convention, 1951: The Travaux Préparatoires Analysed with a Commentary by Dr Weiss Paul*. Cambridge: Cambridge University Press.

WEISS, P. (1954) 'The International Protection of Refugees'. *American Journal of International Law* 48: 193–221.

WOLFF, C. (1934) *Jus Gentium Methodo Scientifica Petractatum: Volume Two*, trans. Drake, J. H. Oxford: Clarendon Press.