**Reconfiguring the Concept of Asylum**

**Simon Behrman, University of East Anglia, UK**

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 Refugee Convention, and supplemented by the quasi-customary principle of *non-refoulement*and various human rights treaties, represents the *sine qua non* of protection for forced migrants today. But as just a few commentators have noted from time to time, insofar as a right of asylum exists it is a right of the State to grant asylum, not the individual to receive it. This is evidenced by the complete absence of any mention of such a right in the 1951 Convention along with other regional legal instruments, and by the insistence by states that the original draft of the Universal Declaration on Human Rights which talked of a right to be ‘granted’ asylum be 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?

My paper addresses this issue in two ways. First, by uncovering the origins of international refugee law squarely within the desire of states to manage and control the movements of forced migrants, rather than ‘humanitarian’ concern for them. Second, by discussing the concept of asylum as it has been understood and practiced from antiquity up until the modern age, which was grounded within it etymological root as ‘freedom from seizure’ by sovereign power and the law. This tradition is a rich one, which has drawn variously on theological, spiritual and political notions of justice and contestability. It is a tradition that, in contrast to law, directs itself to the protective principle.

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 categorised, controlled and warehoused; this process is, I argue, facilitated by law, not in spite of it. Thus the legal regime of refugee law has not created spaces of protection, but has instead extended ever further the grasp of the State over the refugee. In a world in which security paradigms such as the ‘war on terror’, the Pacific Solution and Fortress Europe, along with an archipelago of detention centres and camps largely determine the experience of the forced migrant, it has become an urgent necessity for academics, practitioners, activists, and not least forced migrants themselves, to recover and reassert the tradition of asylum as freedom from sovereign power not subjection to it.

This paper, therefore, engages principally with the theme of Conceptual Issues in Forced Migration Studies, by interrogating the central concept of asylum. In addition, it also gestures towards certain questions relating to research methodologies in the field. In particular, my research draws upon and calls for a much greater emphasis on critical historical and genealogical frameworks in dealing with the issue of asylum and its relation to law.