

This PDF is auto-generated for reference only. As such, it may contain some conversion errors and/or missing information. For all formal use please refer to the official version on the website, as linked below.

Historically European, Morally Universal? The 1951 Geneva Convention on the Status of Refugees

<https://www.e-ir.info/2010/03/28/historically-european-morally-universal-the-1951-geneva-convention-on-the-status-of-refugees/>

LUCY MAYBLIN, MAR 28 2010

The 1951 Geneva Convention on the Status of Refugees is today “one of the most widely accepted international norms, and remains the sole legally binding international instrument that provides specific protection to refugees” (Barnett, 2002:246). On the one hand, this is a staggering achievement which marks the realisation of the human right to asylum in cosmopolitan law. And yet, on the other hand, the Convention is neither fit for purpose nor universally accepted. It is not working for the non-Western states who were excluded from the original institutionalisation of international refugee management and who now deal with the majority of the world’s refugees. Equally, it is not working for the European states whose refugee situations were the focus of the original Convention. What this amounts to is that the 1951 Conventions is not fulfilling its promise of upholding what has been proclaimed a fundamental human right: the right, with just cause, to seek asylum in a foreign country.

If “the way in which we understand the past has implications for the social theories we develop to deal with the situations we live in today” (Bhambra, 2007:11) then the starting point for challenging leading international approaches to population displacement is the dominant rendering of the historical context of their inception. The Convention was written and subscribed to within the European conception of the worthy refugee to suit the specific circumstances of post World War II Europe. This has implications for the transferability of the model to other places but it also has implications for the response of European states to applications for asylum. This paper argues that the current refugee regime is the product of hegemonic (Western) epistemologies, and that its existence and the continued privileging of Western conceptions of human rights, democracy, and freedom are co-dependent. Despite tension between sovereign privileges of granting and denying rights, and cosmopolitan duties under international law, the downfall of the refugee regime would pose a challenge to the assumed superiority of Western conceptions of rights and duties. Therefore, despite its limitations in refugee situations which are not the immediate post WW2 European context (temporally and geographically), the Geneva Convention continues to hold a revered status amongst dominant international powers. Voices challenging this status were silenced from the first drafting of the Convention and continue to be silenced today. This begs the question: can the Convention ever live up to its egalitarian ideals? As the powerful use their sovereign privilege to renege on their commitments and those outside of the West continue to take most of the burden for the world’s refugees with inadequate resources, how universal is the universal right to asylum?

The first part of this paper looks at the events which led to the signing of the Geneva Convention, arguing that the history which defines modern conceptions of the genuine refugee is a European history. The paper then looks the ‘myth of difference’, that European refugee situations are unique in history and that this is legitimate grounds for limiting the right to asylum of non-European refugees. This is contrasted with the ‘reality of difference’, that non-European refugees often do not fit in to the Convention definition of the legitimate refugee, rendering *them* the problem, rather than the Convention. Following this is a discussion regarding how the current refugee regime may be helpfully viewed through the frame of silence. The final two sections look at how the nation state system and the history of colonialism are implicated in Western approaches to modern refugees and highlight the need for an understanding of plural epistemologies in conceptions of human rights

The Dominant Rendering of the History of the Refugee Regime

Historically European, Morally Universal? The 1951 Geneva Convention on the Status of Refugees

Written by Lucy Mayblin

Freeman (1995) writes that “the concept of human rights is legally international, philosophically universal, and historically Western” (p.17). Nowhere is this more so than in the case of refugee rights. The story of the development of what is commonly referred to as the ‘international refugee regime’[1] is the story of population displacements in Europe and the resulting responses to them by European and US nation states (Keely, 2001, Hathaway, 1990). Starting with the establishment of the League of Nations High Commissioner for Refugees (HCR) in 1921 (to deal with refugees created as a result of the 1917 Russian Revolution), and culminating with the establishment of the United Nations High Commissioner for Refugees (UNHCR) in response to the legacy of WW2, the modern refugee regime is, as previously stated, historically European.

In 1948 the Universal Declaration of Human Rights was adopted by the UN General Assembly. Article 14.1 of the Declaration states that “everyone has the right to seek and enjoy in other countries asylum from persecution” (Nobel, 1988). This, and its accompanying legal definition of a refugee[2], is contained in the 1951 Geneva Convention Relating to the Status of Refugees, the “critical event in the institutionalisation of the post-World War II regime” for refugee management (Zolberg, et al., 1989). Despite the wording: this being a ‘Universal Declaration’ and the right to seek asylum being for ‘everybody’, the Convention was no such thing. It had a European geographical limitation and a temporal limitation which made it only of relevance to refugees displaced as a result of WW2 (applicants must have been displaced as a result of events occurring before 1st January 1951).

The fact that the Geneva Convention was a response to the mid 20th Century European refugee situation is important because despite this narrow focus, the approach taken then is now applied to disparate countries across the world in an age with very different refugee problems. Indeed, it was in post WW2 Europe that “certain key techniques for managing mass displacements of people first because standardized and then globalized” (Malkki, 1995:497).

Barber and Ripley (1988) suggest that for refugees in 1951 “the practical difficulties of travelling long distances meant that most people were inevitably limited in choice” (this remains true for 90% of the world’s refugees), adding that besides this, “the overwhelming majority of refugees were European” (p.53). The issue with this account, and one that goes to the heart of dominant accounts of refugees as an international political concern dating back to the drafting of the Convention, is that the West is not unique in producing and hosting displaced people.

The Myth of Difference and the Reality of Difference

Let it be clear, refugees existed outside of Europe in 1951 but the records show that their plight and the burden on their hosts was not recognised as being of immediate concern to the Convention. For example, between 1949 and 1950 there was a vast exodus from China, significant numbers of refugees created by the Korean War (1950-53) (Suhrike, 1995), and 700,000 Palestinians became refugees during the Arab-Israeli conflict of 1948 (Morris, 2003). Rarely are these other refugee situations mentioned in accounts of the ‘unprecedented’ numbers of refugees in Europe immediately following WW2. Therefore, it can only be concluded that the humanitarian concerns which the Convention purports to promote came second to the domestic and foreign policy concerns of European states at that time.

The ‘myth of difference’ at the time of drafting presented non-European refugees as radically different from European refugees and therefore requiring solutions outside of the Convention (Chimni, 1998). This ‘myth of difference’ directly challenges the universality of the Convention and Protocol –how can it be universal if most of the world’s refugees cannot be provided for within its framework? And yet it isn’t the question of the de facto universality of the rights inscribed in the Convention within a diverse world that is problematised by the world’s hegemonic powers. It is the failure of asylum applicants to fit into what has been decreed just grounds for claiming asylum in a foreign land. This is a false logic. The reality of difference is that many of today’s refugees are different from the Convention definition of the genuine refugee, the point being that it is not refugees who do not fit, it is the Convention.

When, in 1967 the temporal and geographical restrictions were removed with the Protocol Relating to the Status of Refugees, the 1951 Convention, “rooted in Western political thought and consistent with Western political goals” (Hathaway, 1990:141) became universally applicable. And yet did it? There are numerous ways in which the Convention was (and is) not applicable to non-European contexts, not least in who can legitimately be defined as a

Historically European, Morally Universal? The 1951 Geneva Convention on the Status of Refugees

Written by Lucy Mayblin

refugee. While the official definition of persecution is “at best equivocal” (Arboleda and Hoy, 1993:77), critics have suggested that it simply does not recognise types of harm which mostly affect women, such as rape and female circumcision (Kelley, 2001). Others have noted the inability of the Convention to classify those fleeing civil war as being persecuted as they are not being singled out as an individual (Kalin, 1991).

Related to these issues is the clear distinction between the economic and the political when defining persecution in the Geneva Convention. This distinction draws a line between economic migrants on the one hand, and those who have been persecuted and can therefore be classified as refugees on the other. Foster (2007) argues that a great number of claims challenge the economic/political distinction. She suggests that the conflict is not often seen as between refugees and narrow legal definitions, but between the bogus and the genuine asylum seeker. This becomes problematic when we consider questions of choice (when does choosing to leave voluntarily give way to being forced and is this a helpful distinction?), of the dynamic relationship between push factors and pull factors, and of the connections between the economic and the political. People experiencing economic and social rights violations are not granted the same level of protection as those experiencing civil and political rights violations but this easily breaks down in practice when, for example, a government uses famine as a political tool. Equally, political dissent is arguably a choice, but does challenging corruption and injustice mean that you deserve to be persecuted?

A further problem is the necessity for granting group refugee status as opposed to on the basis of individual persecution (Kalin, 1991). The need to grant large groups of people refugee status means that both the definition of the refugee and the mode of granting refugee status (the model of the politically persecuted individual) are unsuitable for the reality of many displacement situations (Nobel, 1988).

There are a number of ways in which the gap between the reality of today’s refugee situations and the limitations of the Convention is met. Firstly, the UNHCR mandate is universal in scope and is not limited to the individualised assessment procedures that the Geneva Convention necessitates. This allows the UNHCR to classify people as ‘displaced persons’ rather than refugees and so provide them with some level of assistance (Goodwin-Gill, 1986, cited in Hathaway, 1990; Barnett, 2002). Of course, classification as a refugee would mean that such individuals and groups would be legally entitled to the full range of protection, as opposed to whatever the UNHCR has the resources to offer.

A further consequence of the unsuitability of the Convention to non-European countries has been the development of regional mechanisms to deal with refugees. In fact, “right to asylum is articulated in several other global and regional treaties, declarations and instruments” (Weissbrodt, 2008:153). Regional approaches include the Organisation of African Unity’s (OAU) African Charter on Human and Peoples’ Rights (ACHPR), the Asian-African Legal Consultative Committee’s (AALCC) Bangkok Principles (instituted in 1966 and reaffirmed in 1987), and the Cartagena Declaration. The ACHPR has been ratified by more than forty African states, making it the most widely accepted regional convention in the world. Nobel (1988) writes that:

“whereas the Geneva Convention was Eurocentric, based on the European war experience, the OAU Convention was Africa-centred, based on the assumption that most African refugees had originated in countries still under colonial or white majority regimes, and this was reflected in the Convention.. [it was] the most important step in international law... a concept that could correspond to the demands of massive groups of safety seekers in the Third World” (p.22).

The importance of alternative mechanisms becomes apparent when we examine the statistics. According to UNHCR data, 64% of the world’s refugees in 2006 were recognised via *prima facie* (group) recognition processes and only 24% by the 1951 Convention individual recognition process (Weissbrodt, 2008). Most refugees in Africa, Asia, the Middle East and Pacific region are recognised as part of a group while 99% of refugees in Europe and the Americas are recognised through individual screening processes in accordance with the Geneva Convention (Weissbrodt, *ibid*). If it were not for alternative mechanisms, the majority of the world’s refugees would be left without status and access to the aid and asylum that relates to it.

Thus, while Western countries have responded to the simultaneous decrease in European refugees and increase in

Historically European, Morally Universal? The 1951 Geneva Convention on the Status of Refugees

Written by Lucy Mayblin

the number of applications for asylum from outside Europe over the past 40 years with ever more restrictive domestic asylum policies (Barnett, 2002), the hegemonic concept of human rights is not tackled head-on. The fact that refugees are produced by 'Third World' countries, that they are a 'Third World' problem, is now taken as axiomatic in academic, political and popular discourse (Malkki, 1995). Therefore, following the assumption that non-European refugees are fundamentally different and so require alternative solutions to their European counterparts, the measures taken are done so on the basis of deficiencies on the part of the third world refugee, not the concept of the genuine refugee.

In 2001 former British Prime Minister Tony Blair said that it was now time to "stand back and consider its [the Convention's] applications in today's world". Quoted in (UNHCR, 2001). Barnett (2002) suggests that "once the North-South flows began, rather than recognising real persecution, receiving nations often labelled such refugees from the [global] South as economic migrants" (p.254). Within this changed context, Europe hosts only 14% of the world's refugees (UNHCR, 2008). The tactics employed by Western states in order to limit the number of refugees are well documented (see Marfleet, 2006). They include reducing social benefits, detention, narrow legal interpretations of refugee definitions (so that more people are rejected); sending people back to the first safe country they passed through, offers of 'voluntary repatriation', not allowing people to make an application for asylum unless they did so at the point of entry into the host country and stricter border controls. They also extend to support for refugee camps in refugee producing regions, and outposts of government departments in asylum sending countries where applications can be made before flight takes place. These measures are complimented by the sporadic and inconsistent granting of "'de facto' and/or 'humanitarian' legal status to asylum seekers who are not considered to meet their respective definitions of a Convention refugee, but who cannot or should not be returned to their countries of origin" (Arboleda and Hoy, 1993:67)

If individuals apply for asylum and are not granted refugee status as a result of not fitting into this Convention definition they are likely to be labelled 'bogus asylum seekers', illegal immigrants attempting to cheat the system. This distinction, and the perception that a large number of asylum seekers are 'bogus' is the dominant representation of such individuals in the media in many European countries (Cookson and Jempson, 2005, Buchanan, et al., 2003) and is rarely challenged by governments (Krzyzanowski and Wodak, 2008, Welch and Schuster, 2005). For example, British Home Secretary Jack Straw commented in 2001, that "would-be migrants are taking advantage of one aspect of the Convention—namely, that it places an obligation on states to consider any application for asylum made on their territory, however ill-founded." (UNHCR, 2001). These are not the words of a country committed to the principles inscribed in the 1951 Convention regardless of world political and economic circumstances. Yet they need not be, as Hathaway (1990) points out "international refugee law... increasingly affords a basis for rationalising the decisions of states to refuse protection" (p.130). The view that many so called political refugees are actually economic migrants (and that the two can be easily separated) is blurring the border between the issue of asylum and that of immigration more broadly. Thus, the moral justification for limiting asylum is essentially one of protecting the domestic population economically, socially and culturally from the perceived threat of an unknown 'outsider'.

In this way, international refugee law neither fully embodies humanitarian nor human rights principles (Hathaway, 1990). With regard to the latter, the focus of rights protection is, as previously mentioned, limited to civil and political liberties and as such is "unresponsive to the needs of most refugees" (ibid:133). Unresponsive, in fact, to non-European refugees.

Looking Through the Frame of Silence

One way to conceptualise the dominant rendering of the universal right to asylum is through the frame of 'silence'. Bhambra and Shilliam (2009) argue that silence is a constitutive feature of discourse and practice in human rights and "works in a systematic way to inform issues of voice, representation, and responsibility, along with associated problems of inclusion, exclusion, and participation, both historically and contemporaneously" (p.2). Therefore, silence is not simply about an absence of voice, it is about the active silencing of conflicting epistemological assumptions. For Santos (2007) the discrediting of rival knowledges is undertaken through employing the techno-scientific 'rationality' of Western based modern science. What this means for the discussion at hand is that voices who challenged the Eurocentric premise of the Geneva Convention were not simply silenced, but were silenced

Historically European, Morally Universal? The 1951 Geneva Convention on the Status of Refugees

Written by Lucy Mayblin

through a systematic 'rational' discrediting of their arguments which maintained hegemonic conceptions of human rights.

There is evidence to support this assertion in the case of refugee rights. Challenges to the dominant powers at the drafting of the Convention and Protocol, and the way in which they were silenced remain in the historical records. Davies (2006) has undertaken an in-depth analysis of the process which led to the 1951 Convention being passed by the UN General Assembly. She found significant evidence of dissent in the discussions over refugee definitions, notably from Pakistan, India, Mexico and Japan. Pakistan especially was concerned that their refugee populations "in desperate need of food and shelter were to be considered less as refugees than those in Europe" (p.568). Davies found that though there were voices challenging the explicitly Eurocentric agenda, they were overruled by more powerful states. She writes that:

"France's dismissal of these states' concerns, and its inference that India and Pakistan's refugee populations did not require the new organization's attention, indicated that several European states had already planned how the UNHCR should develop and whose interests it should serve" (p.568)

Though the UN is not a European institution, the final definition of legitimate grounds for claiming asylum left little chance that non-European groups fleeing events after 1st January 1951 would be granted refugee status. Of the 43 countries who could vote, 26 voted 'for', 12 abstained and 5 voted 'against'. Here, silence speaks volumes. As Davies puts it: "alternative concerns were not being taken into consideration in the construction of the new refugee regime's definition of a refugee" (p.568).

When, in 1967, the Geneva Convention was made universally applicable, there was an assumption that all members of the UN should subscribe to the Protocol (Davies, 2006). One reading of this is that non-Western cultures, pre-modern and consequently behind the modern West, were shown the (right) way by their progressive counterparts. Yet a framework developed in one locality cannot easily be globally exported and consistently implemented (Bhambra and Shilliam, 2009). Indeed, the conceptualisation of refugees and states responsibilities in relation to them were not reconsidered in light of the plurality of views now potentially in play. As calls for the lifting of restrictions were in response to a significant refugee burden in Africa and Asia at the time, discussion of alternative perspectives would perhaps have been advisable in the pursuit of universality (Davies, 2006).

Inclusion and Exclusion in a World of Nation States

The moral justification for limiting the rights of exiles to asylum in Western states relates to a conception of the state as linked to a territorially bounded nation with a mandate to advance the general good of its population (Hathaway, 1990). Emerging as a dominant ideology in early 20th century Europe, this perspective allows for individual rights only as far as an individual belongs to a state. Here, "rights only became real when taken up and protected in the positive law of states" (Haddad, 2003:3). Furthermore, the maintenance of state legitimacy necessitates the exclusion of people whose backgrounds differ from a perceived national norm or whose arrival had the potential to negatively impact on the indigenous population. Hathaway (ibid) suggests that when coupled with the emergence of systems of national economics and a preoccupation with the economic well-being of the population within the state, "immigration came to be seen less as a means of addressing the needs of fleeing individuals... and more as a vehicle for facilitating the selection by states of new inhabitants" (p.136). Thus, within this context, accommodating refugees could never have been entirely about realising humanitarian principles. Humanist moral responsibilities would always be secondary to the sovereign prerogative for self protection. This is why the refugee regime emerged not out of a sense of duty to fellow human beings from wherever they originate, but in response to the spatial proximity of large numbers of refugees and the political necessity of accommodating them. Furthermore, when the Convention was extended in 1967, the dominance of the sovereign privilege prevailed as always intended.

In this way, the 1951 Convention must be understood as a practice of statecraft (Soguk, 1999). It is "first and foremost in the interests of national and international security, not humanity" (Haddad, 2003:11). But forced migration cannot be attributed to the actions of one state that fails to provide for its citizens, creating 'their refugees' for whom states on the other side of the world bear no responsibility. The moral justification of self protection is

Historically European, Morally Universal? The 1951 Geneva Convention on the Status of Refugees

Written by Lucy Mayblin

weakened by the involvement of Western states in refugee producing situations. Nobel (1988) points out that:

“the overwhelming majority of the refugees originate in the Third World. The direct causes of their flight are conflicts kept alive mostly by super-power politics and by weapons forged and manufactured at bargain prices in the rich countries, who export death and destruction, and import the natural and partly processed products of the poor countries. At the same time they refuse to a great extent to receive the refugees who try to escape the suffering and the sorrow generated by super-power politics” (p.29)

Indeed, the weakness of the moral justification has been linked to racism by many commentators. Marfleet (2006) suggests that the imagined community of the nation *requires* aliens to provide the imagined threat of the stranger as an integral part of the maintenance of the national myth. Of course, this necessitates the criminalisation of immigrants which inevitably slips in to a simplistic racist discourse operating around the binaries of us/them, enemies/friends, insiders/outsideers. Accusations of racism in the current regime abound, there is resonance with Césaire’s contention that the dehumanising effects of colonialism occur on the side of both the colonised and the colonisers, and that the need for decolonisation is as great (if not greater) for Europe as it is for Africa (Césaire, 1972 [1955]). Similarly, Said’s writing on ‘Orientalism’ carries a significance in discussions of the racist dimensions of the refugee regime. The idea that the colonized and coloniser are fundamentally different echoes in asylum debates in Europe today and yet the ‘Orient’ is never far from Europe in that defining the ‘other’ is concomitant to defining the self (Said, 1995 [1978]). Thus, there is a mutually constitutive relationship between the worthy, genuine, persecuted refugee (who is like us and therefore able to assimilate), and the unworthy economic migrant from the poorer parts of the world, here to exploit our prosperous society. This is what Mignolo (2005) refers to as “invented dichotomies” whereby “the logic of coloniality [is] enacted and naturalised” (p.117), where social representations and their manifestation in action are imbued with colonial ways of seeing.

The Need for Plural Epistemologies

The practice of encouraging states to sign up to the Convention and Protocol continues today on the assumption of universality. This is in line with Goody’s (2006) assertion that “the past is conceptualised and presented according to what happened on the provincial scale of Europe, often Western Europe, and then imposed upon the rest of the world” (p.1). Speaking of human rights more widely, Bhambra and Shilliam (2009) write that

“the discourse necessarily represents a universal attribute of humanity through the construction of a particular history, an exercise itself promoted through the exercise of power by particular authorities” (p.4).

This exercise of power can be seen as closely related to the colonial encounter, when European ways of understanding the world first encountered conflicting epistemologies. Muntarhorn (1992) argues that the whole idea of nation states with clearly defined borders was imposed on colonised countries, introducing concepts such as nationality law and immigration law that were previously alien to those regions. This has subsequently had an impact on refugees in these regions who are limited in movement by now formalised concepts of insiders and outsiders, citizens and others. If this is the case, the adoption of historically Eurocentric asylum law is possible only within the context of colonialism. Following the argument through, the promotion of the Geneva Convention as a global standard for human rights could be seen as the continued colonisation of national law in the former colonies.

The West may have laid claim to a set of humanist values that prescribe what it is to be humane, and what our duties are with respect to people who have been treated inhumanely by others. Yet, as Goody (2006) points out, “all societies have standards that they regard as humane” (p.247) and responsibilities vis-a-vis refugees on the basis of moral duty are not distinctively European. In many non-Western contexts colonial laws and norms of national government attempted to usurp traditional laws. But religious and customary laws have survived in numerous instances and commonly “include notions which may differ from the Western imported laws, not least on the question of humanitarianism” (Muntarhorn, 1992:11). For example, Islamic teachings include ‘asylum’ as an inherent principle (hijrah law), and a number of scholars have argued that though hijrah law gives more protection to asylum-seekers and refugees than conventional international law, imported immigration laws often fail to cater sufficiently to this principle (Elmadmad, 2008, Muntarhorn, 1992).

Historically European, Morally Universal? The 1951 Geneva Convention on the Status of Refugees

Written by Lucy Mayblin

One consequence of the poor fit between the Geneva Convention and non-European conceptions and experiences of population displacement is the refusal of a number of countries, mostly in Asia, to sign up to either the Convention or the Protocol. Davies (2006) attributes the rejection of refugee law by the majority of Asian states, the “unacknowledged voices”, to an act of resistance against the “push from ‘above’ to accede the international refugee law instruments” from which their perspectives have been silenced (p.566). From this viewpoint, it is the silencing itself that has led Asian states not to concede to rules decided by others, to resist further legal colonisation.

Eurocentrist perspectives hold that societies of the non-West can only succeed in progressing towards modernity, democracy and freedom, by becoming more like the West (Amin, 1988). If this is true then despite the above mentioned instruments to deal with refugees on a regional basis and with alternative conceptual frameworks to those underpinning the Geneva Convention, it is only through signing up to the Convention that human rights might be upheld in Africa, Asia and Latin America. Regional mechanisms and non-hegemonic conceptions of asylum arguably represent examples of historically contingent conceptions of refugees which are just as ‘humanitarian’ as the 1951 Convention (some argue more so). Granted, there are problems, for example compliance with the Bangkok Principles is not monitored or enforced (Davies, 2006), and many regional agreements are not legally binding. However, they nonetheless illustrate that the disjuncture at the heart of the Convention, between universal human rights and the fact that it is the state which traditionally grants these rights, might be addressed through other means than claims of universality in the face of evidence to the contrary (Hathaway, 1990).

But does the acknowledgement of plural epistemologies undermine the very idea of human rights, and in doing so prevent the realisation of cosmopolitan rights to asylum? Only if the conventional Western understanding of human rights as an abstract universality is followed (Santos, 2008). This, as Santos (ibid) points out, denies the complexity of different historically and geographically contingent understandings of human dignity. Therefore, the question colludes with narrow conceptions of human rights, serving only to maintain the hegemony of Western perspectives to the detriment of many of the world’s refugees.

Conclusion

This paper has argued that a refugee regime conceived with the mid 20th century European context in mind is inappropriate for other contexts, geographically and temporally. Despite its Eurocentric origins, the rhetoric surrounding the Convention is one of internationalism and of humanitarian values which transcend local specificities. As such, the very specific historical events of twentieth century Europe which led to the institutional mechanisms for enacting its normative framework for the control of refugee flows are played down. In their place is an international refugee regime which is assumed (by the UN) to be universally applicable, stemming from fundamental human values which transcend differences between societies.

What is missing from dominant accounts of the international refugee regime is an acknowledgement firstly that the conception of refugees in the UN Convention is far from universal. Secondly, that where non-Western states fail to sign up to the UN convention it is not necessarily a case of an authoritarian regime violating human rights but may stem from a rejection of the underlying Eurocentrism of the Convention. And thirdly, that the 1951 Convention, as a solution to the challenges posed by forced displacement, is not the only possible approach.

The point of this critique is not to label everything European as bad and everything else as good, but instead to problematise the implicit positioning of Western values as the most progressive, the most fair, the most genuinely humanitarian. Shohat and Stam (1994) write that Eurocentric discourse “embeds... and ‘normalizes’ the hierarchical power relations generated by colonialism and imperialism” (p.2). I would argue that this perspective is applicable to the refugee regime. The implication being a prioritisation of European claims to human rights within an international hierarchy of the deserving.

The unsuitability of the Convention for contemporary contexts results in all parties being forced to circumnavigate, reinterpret, compromise, bend the rules or outright reject the terms of the Convention. That is not to say that there is no justice in the system, nor to deny that a significant number of people fleeing persecution every year are able to find shelter in a state that is not their own. Yet the reality is that “as far as positive law is concerned, there is no

Historically European, Morally Universal? The 1951 Geneva Convention on the Status of Refugees

Written by Lucy Mayblin

guarantee of genuine 'human rights' that an individual possesses simply on the basis of their humanity" (Haddad, 2003:3-4). If at the present time, rights have meaning only to the extent that they are consistent with the sovereign priorities of states then the system will always work in favour of the powerful.

References

- Amin, S. (1988) *Eurocentrism*. London: Zed Books.
- Arboleda, E. and Hoy, I. (1993) The Convention Refugee Definition in the West: Disharmony of Interpretation and Application. *International Journal of Refugee Law*, 5 (1): 66-90.
- Barber, M. and Ripley, S. (1988) Refugee Rights. In: Sieghart, P. eds. *Human Rights in the United Kingdom*. London: Human Rights Network.
- Barnett, L. (2002) Global Governance and the Evolution of the International Refugee Regime. *International Journal of Refugee Law*, 14 (2/3): 238-262.
- Bhambra, G. K. (2007) *Rethinking Modernity: Postcolonialism and the Sociological Imagination*. Basingstoke: Palgrave Macmillan.
- Bhambra, G. K. and Shilliam, R. (2009) *Silencing Human Rights: Critical Engagements with a Contested Project*. Basingstoke: Palgrave Macmillan.
- Buchanan, S., Grillo-Simpson, B. and Threadgold, T. (2003) *What's The Story? Results from Research into Media Coverage of Refugees and Asylum Seekers in the UK*. London: Article 19
- Chimni, B. S. (1998) The Geopolitics of Refugee Studies: A View from the South. *Journal of Refugee Studies*, 11 (4): 350-374.
- Cookson, R. and Jempson, M. (2005) *The RAM Report: campaigning for fair and accurate coverage of refugees and asylum seekers*. Bristol: Mediawise Trust.
- Césaire, A. (1972 [1955]) *Discourse on Colonialism*. New York: Monthly Review Press.
- Davies, S. E. (2006) The Asian Rejection?: International Refugee Law in Asia. *Australian Journal of Politics and History*, 52 (4): 562-575.
- Elmadmad, K. (2008) Asylum in Islam and in Modern Refugee Law. *Refugee Survey Quarterly*, 27 (2): 51-63.
- Foster, M. (2007) *International Refugee Law and Socio-Economic Rights: Refuge from Deprivation*. Cambridge: Cambridge University Press.
- Goody, J. (2006) *The Theft of History*. Cambridge: Cambridge University Press.
- Haddad, E. (2003) Refugee Protection: A Clash of Values. *The International Journal of Human Rights*, 7 (3): 1-26.
- Hathaway, J. C. (1990) A Reconsideration of the Underlying Premise of Refugee Law. *Harvard International Law Journal*, 31 (1): 129-182.
- Kalin, W. (1991) Refugees and Civil Wars: Only a Matter of Interpretation? *International Journal of Refugee Law*, 3 (3): 435-451.
- Keely, C. B. (2001) The International Refugee Regime(s): The End of the Cold War Matters. *International Migration*

Historically European, Morally Universal? The 1951 Geneva Convention on the Status of Refugees

Written by Lucy Mayblin

Review, 35 (1): 303-314.

Kelley, N. (2001) The Convention Refugee Definition and Gender-Based Persecution: A Decade's Progress. *International Journal of Refugee Law*, 13 (4): 559-568.

Krzyzanowski, M. and Wodak, R. (2008) *The Politics of Exclusion: Debating Migration in Austria*. New Jersey: Transaction Press.

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

Marfleet, P. (2006) *Refugees in a Global Era*. Basingstoke: Palgrave Macmillan.

Mignolo, W. D. (2005) Prophets Facing Sidewise: The Geopolitics of knowledge and the Colonial Difference. *Social Epistemology*, 19 (1): 111-127.

Morris, B. (2003) *The Birth of the Palestinian Refugee Problem Revisited*. Cambridge: Cambridge University Press.

Muntarhorn, V. (1992) *The Status of Refugees in Asia*. Oxford: Clarendon Press.

Nobel, P. (1988) Refugees and Other Migrants Viewed with a Legal Eye -or How to Fight Confusion. In: Petersen, K. H. and Rutherford, A. eds. *Displaced Persons*. Sydney: Dangaroo Press.

Said, E. W. (1995 [1978]) *Orientalism: Western Conceptions of the Orient*. London: Penguin.

Santos, B. d. S. (2007) *Another Knowledge is Possible: Beyond Northern Epistemologies*. London: Verso.

Santos, B. d. S. (2008) The World Social Forum and the Global Left. *Politics & Society*, 36 (2): 247-270.

Shohat, E. and Stam, E. (1994) *Unthinking Eurocentrism: Multiculturalism and the Media*. London: Routledge.

Soguk, N. (1999) *States and Strangers: Refugees and Displacements of Statecraft*. London: University of Minnesota Press.

UNHCR (1951) Convention relating to the Status of Refugees.

UNHCR (2001) *A 'Timeless' Treaty Under Attack: Reconsidering the Convention*. [online] Available from: <http://www.unhcr.org/1951convention/reconsidering.html> (Accessed 26/03/09).

UNHCR (2008) 2007 *Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons*. [online] Available from: <http://www.unhcr.org/statistics/STATISTICS/4852366f2.pdf> (Accessed 26/03/09).

Weissbrodt, D. (2008) *The Human Rights of Non-Citizens*. Oxford: Oxford University Press.

Welch, M. and Schuster, L. (2005) Detention of asylum seekers in the US, UK, France, Germany, and Italy: A critical view of the globalizing culture of control. *Criminal Justice*, 5 (4): 331-355.

Zolberg, A., Suhrke, A. and Aguayo, S. (1989) *Escape from Violence: Conflict and the Refugee Crisis in the Developing World*. Oxford: Oxford University Press.

[1] The term 'refugee regime' refers to laws, policies and practices set up to deal with 'refugees' as defined by the 1951 Convention.

Historically European, Morally Universal? The 1951 Geneva Convention on the Status of Refugees

Written by Lucy Mayblin

[2] Article 1 of the Convention (as amended by the 1967 Protocol, lifting temporal and geographical restrictions) provides the definition of a refugee: 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 his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. (UNHCR, 1951: Convention relating to the Status of Refugees)

—

Written by: Lucy Mayblin
Written at: University of Warwick
Written for: Gurminder K. Bhambra
Date: 2009