

The 50th anniversary of the 1951 Convention on the Status of Refugees falls this year, offering the occasion to reflect on the Convention's continuing relevance.

How well has the 1951 Convention served the cause of protection of refugees? Is it out of sync with the times? In what ways can the international refugee regime be strengthened to meet contemporary concerns relating to the globalisation of migration? The opening set of articles responds to these and other questions. It is fair to state that they reflect an overwhelming consensus that whatever new approaches are proposed to actualise the goal of refugee protection and the management of migration, these must accept the centrality of the 1951 Convention. As Ruud Lubbers, the new High Commissioner for Refugees, recently stressed:

The Convention has proven its resilience by providing protection from persecution and violence to millions of refugees over five decades. It is the hub upon which the international protection regime turns, and we would tamper with it at our peril.¹

In the opening article, **Erika Feller** avers that the strength of the 1951 Convention is derived from the fact that it codifies the core principles of refugee protection. Unfortunately, as she notes, the Convention is today being undermined in the North by a range of restrictive measures and by a proliferation of alternative protection regimes. She readily admits that the Convention is not, and was never meant to be, a panacea for all problems of displacement. In this regard, the launch by UNHCR of Global Consultations with governments, NGOs and refugee experts offers the opportunity to find imaginative solutions to the problems confronting states without in any way sacrificing the interests of asylum seekers and refugees. From the point of view of the South, it is important that the North does not hijack the Global Consultations.

Gerry Van Kessel articulates the general approach of states of the North to the contemporary global refugee issue. Van Kessel highlights, among other things, the phenomenon of 'mixed flows' of asylum seekers and economic migrants. He mentions the problems of fraudulent claims, the smuggling and trafficking of migrants, the inability of states to return failed asylum seekers and the expensive nature of asylum systems. But unhappily, according to Van Kessel, much of the current debate ignores the connections between migration and asylum. The concerns that Van Kessel expresses deserve to be seriously debated. To some these concerns may appear one-sided and will no doubt provoke a response in the Debate section of the next issue of *Forced Migration Review*.

Is the North willing to listen and be persuaded by good arguments? As **Guy S Goodwin-Gill** notes in his article, the 'individual rights' model has today been replaced by the 'security' model; the language of security is increasingly being deployed to justify the dilution of the language of protection. In this regard, **Maura Leen**, like Goodwin-Gill, calls for a more responsible and human rights-infused response to the plight of asylum seekers and refugees informed by each country's generous traditions. For this to happen there is an urgent need to change political attitudes. **Tarig Yousif** notes how the scaremongering depiction of refugees as scroungers makes it harder for them to gain employment and integrate into Irish society. He pleads for Convention refugees to be granted full citizenship.

While countries in the North are now using unconventional terminology to describe 'refugee' status, there are regions in the South which are marked by the absence of any formal legal regime dealing with the protection of



asylum seekers and refugees. What are the different alternatives available to such states in terms of adopting a law on the subject? **Chowdhury R Abrar** identifies the different possibilities before South Asian states for developing a formal legal regime: to accede to the 1951 Convention or the 1967 protocol, to adopt a regional convention or to frame national legislation. Abrar considers some of the reasons why states in the region of South Asia are hesitant to become party to the 1951 Convention. Most of the reasons offered by states appear to be unpersuasive; however, there is little incentive for South Asian governments to ratify the Convention at a time when it is being dismantled by the very states which drafted and adopted it. Without doubt, nevertheless, in South Asia as elsewhere national laws need to be put in place in order to protect the rights of asylum seekers and refugees.

While there is an international regime for those who cross borders to seek asylum there is still no unified binding protection regime for those who are displaced inside their own countries. **Francis Deng** and **Dennis McNamara** trace the progress that has been made at the international level, including the adoption of the non-binding Guiding Principles on Internal Displacement (1998), to redress the problems concerning the protection of IDPs. In their view, the "overall response remains woefully inadequate". They argue that sovereignty constitutes a serious constraint in shaping an international response,

“a barricade against international scrutiny and humanitarian action”. An alternative view might argue that the principle of sovereignty is a valuable one for the weak in an international system when powerful states ignore it to further their own interests.

Several articles discuss UNHCR and whether it is fulfilling its mandated responsibilities to provide protection, seek permanent solutions for the problem of refugees and supervise the application of the 1951 Convention. Critics have contended that UNHCR has moved away from its fundamental core objective of protection to stressing relief and assistance, that its extensive involvement with IDPs is incompatible with its mandate to protect refugees and that under pressure from states it has diluted the principle of voluntary repatriation. **Gil Loescher** points out how UNHCR’s management culture accords declining importance to the culture of protection. Protection needs to be restored as UNHCR’s central concern.

It is generally believed that UNHCR has deviated from its path under the influence of donor pressure alone. **Michael Barnett** contests this view and argues that UNHCR has a degree of autonomy *vis-à-vis* donor states. He also analyses the ‘repatriation culture’ which has come to pervade UNHCR but makes the important observation that both sides of the principled versus pragmatist debate on

repatriation occupy a central position. His article highlights, once again, the need for refugees themselves to be involved in decisions that affect their lives.

The pragmatic turn in UNHCR’s repatriation policy is worrisome. **Ayaki Ito** presents a telling case study demonstrating that when UNHCR talks about return in less than ideal conditions it is often a euphemism for involuntary return. Such a stance, instead of promoting stability, can actually accentuate instability. Yet, one wonders whether the solution is for UNHCR to abandon its non-political mandate to lobby and persuade states to address the fundamental causes of displacement. Could this process damage the credibility of the organisation?

One of the problems in the effective defence of refugee rights is that UNHCR is not in a position to effectively supervise the conduct of states. Article 35 of the 1951 Convention does not go far enough to secure state compliance. UNHCR’s views on the interpretation of the Convention are sidelined by states and are often openly resisted. UNHCR’s dependence on donor countries does not make it a suitable organisation for exercising the supervisory role. **Leanne Macmillan** and **Lars Olsson** argue the case for setting up an independent and impartial body to oblige states to report on monitoring and implementation of the 1951 UN Refugee Convention, to

advise on questions of interpretation of the Convention and to receive individual complaints from refugees whose rights are being violated.

John Telford draws attention to the current financial crisis that afflicts UNHCR and the perils of bilateralisation. Financial crises, as he notes, are cyclical in UNHCR. He points out that the decision of major donor countries to deny it funds is inherently political. The politics of humanitarianism, as **Amelia Bookstein** points out, also explain the fact that there is little commitment to the principle of universal entitlement to humanitarian assistance. Per capita assistance offered in Former Yugoslavia far exceeds that in Sierra Leone, the Democratic Republic of Congo or Guinea, whose plight is presented by **John Agberagba**. All this points to the dismal conclusion that states in the international system tend to privilege narrow national interests over the rights of asylum seekers and refugees.

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1 Presentation by Ruud Lubbers, UN High Commissioner for Refugees, at the Informal Meeting of the European Union Ministers for Justice and Ministers for Home Affairs Stockholm, 8 February 2001, available at www.unhcr.ch.refworld

