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A Half Century of Refugee Rights: Assessing the Past and Future Contribution of the 1951 Geneva Convention Relating to the Status of Refugees

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The 1951 Convention has turned fifty. The authors assess its impact and relevance over time. They discuss some of its strengths and limitations in our contemporary world. The Convention is part of a broader set of international treaties which are aimed at preventing abuses of human rights and enhancing adherence to commonly shared human rights standards of which the right to seek asylum is a key element. The article also examines the influence of the Convention at European Union level as the EU prepares for a common asylum policy. The authors conclude by identifying some steps which could be taken to develop a more comprehensive international protection system within which the 1951 Convention would continue to be an important benchmark.

Introduction

The 1951 Convention on the Status of Refugees was the first international agreement to comprehensively address the situation arising where someone is forced to leave his or her home country because of persecution, and who, in the absence of specific international treaty protections, would be extremely vulnerable and bereft of basic rights guarantees.

The Convention was drafted against the background of the large-scale movements and displacement of people in the wake of the Second World War, and in particular the need to respond to the plight of the many fleeing the newly established Communist regimes in Eastern Europe. Although the right to seek asylum is in the 1948 Universal Declaration of Human Rights (UDHR), the Declaration is not a legally binding treaty. The Geneva Convention was accordingly drawn up and opened for ratification in 1951 to endow the right with treaty status. The Convention's origins are reflected in the fact that it was explicitly confined to people displaced by "events occurring before 1 January 1951" and at the time of becoming party to the Convention states had the option of making a declaration that such events referred only to those which had occurred in Europe (Article 1.B.(1)). These geographical and time restrictions were removed by a Protocol attached to the Convention in 1967.

Why a right to asylum?

A person's rights are held to be the first and particular responsibility of the state of which he or she is a citizen. An obvious threat to the individual citizen arises whenever a state fails for whatever reason to adequately discharge this responsibility. On occasion someone in this situation may be forced to flee his or her country. There are also those who for some reason are stateless. In the absence of explicit international provision, such people would have no right to seek refugee status in another country. Even if they could gain access to another state's territory, their situation as non-citizens would remain precatious, uncertain and open to exploitation. States accept far fewer responsibilities for non-citizens, even for those legally on their territory, than they do to their own citizens. One cardinal difference between the rights of citizens and non-citizens is that

the former may not be expelled from their own country. Non-citizens on a state's territory have no such security and generally require specific permission to stay there. If an internationally recognised right to asylum did not exist, people forced to flee their own country would have little if any structured protection for their basic human rights. This would have been even more the case in 1951, when most of the international human rights instruments now in force did not exist.

The main features of the Convention

In essence, the Convention defines who a refugee is, gives a person in this situation the right to seek asylum in the territory of another state which has become a party to the Convention and imposes a duty on the state in question to consider each application for asylum. Most importantly, it sets out the crucial right of *non-refoulement,* i.e. the right of an asylum seeker not to be removed to a state where his or her safety might be threatened.

In a well-known passage the Convention defines a refugee as a person who, owing to a well-founded fear of being persecuted (on stated grounds), is outside the country of his or her nationality or habitual residence, and is either unable or, owing to such fear, unwilling to avail him or herself of the protection of that country or to return to it. The stated grounds of persecution are race, religion, nationality, membership of a particular social group, or political opinion.

One of the most significant sections of the Convention is Article 31, which says that States Parties

> shall not impose penalties on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

By including this article the States Parties explicitly acknowledge

the reality that asylum seekers and refugees will often be forced to cross frontiers by irregular means, using false documentation or bypassing authorised entry points and should not be penalised for doing so.

Rights under the Convention

The Convention established that refugees lawfully on a state's territory are entitled to certain basic human rights safeguards. Apart from the basic right to apply for asylum these include the right to have the provisions of the Convention applied without discrimination as to race, religion or country of origin, free access to all the receiving state's courts of law and the same treatment as a national in matters pertaining to the courts, including legal assistance. These also include certain rights in regard to work, education, labour and social security rights, freedom of religion and of movement, and the right to be issued with identity and travel documents. In return the refugee assumes the responsibilities corresponding to those rights and in general to obey the laws and regulations of the host country.

A refugee lawfully on a state's territory may only be expelled in pursuance of a decision reached in accordance with the due process of law. Normally, the refugee shall be allowed submit evidence to clear him or herself, and to appeal to and be represented for the purpose before a competent tribunal or someone specially designated by the competent authority.

Unlike subsequent international human rights instruments the Convention does not provide an explicit monitoring mechanism, nor does it impose an obligation on States Parties to submit reports at specific intervals to such a mechanism. Under Article 35 States Parties undertake only to co-operate with the Office of the UN High Commissioner for Refugees (UNHCR) in the exercise of its functions and to facilitate the UNHCR in its duty of supervising the application of the Convention's provisions. They also undertake to provide the UNHCR with any information and statistical data requested concerning the condition of refugees, the implementation of the Convention and laws and regulations relating to refugees. These requirements fall well short of the reporting and examination obligations imposed on States Parties under later human rights instruments such as the UN Covenant on Civil and Political Rights.

A simple, practical and effective step to strengthen Convention protections would be to endow it with the same type of reporting and examination procedures as have been built into these more recent instruments. This could be done by adding a Protocol to the Convention, establishing an independent monitoring committee and obliging States Parties to submit reports at regular intervals on their compliance with the provisions of the Convention. An even more effective variant would be to give such a committee powers analogous to those given to the European Committee for the Prevention of Torture. This Committee has the power to visit any place in the territory of a State Party in which people are deprived of their liberty by public authority. A Committee established under the 1951 Convention could, in addition to examining states on their reports under the Convention, also be given the authority to visit any or all locations where asylum seekers were received, processed, located, dispersed, held or detained in any manner. It could also be given the mandate, to meet with the various public agencies responsible for any aspect of asylum administration, including police and immigration authorities, and to seek information in the same fashion as the Committee for the Prevention of Torture does in regard to detention matters.

Those who have committed war crimes, crimes against humanity or a serious non-political crime outside the host country are excluded from the scope of the Convention. Moreover, the Convention does not confer a permanent right to stay in the host country even if a person's application for asylum is granted. While many of those eventually granted refugee status are likely to remain permanently in their host country, and may be allowed to apply at some point to become citizens, Convention protection is not guaranteed indefinitely. This reflects the possibility that the situation causing someone to flee in the first place may eventually change for the better, thus opening up the possibility of a safe return to his or her country. If this happens, the refugee may wish to return voluntarily. If not, the authorities in the host country may try to persuade him or her to do so, perhaps by offering incentives rather than by taking steps to expel them.

In addition to granting refugee status on a case by case basis under the Convention, states may from time to time grant refugee status *en bloc* to groups of people where a particularly urgent situation has developed. People admitted on this basis are known as programme refugees. They acquire all the rights of refugees without having to undergo an individual determination process

The Convention today

By 2001, the Convention had been ratified by 141 states. At no time in the half-century since the Convention was drafted has the need for the protections it offers diminished. In 2001 the total number of "people of concern" to the Offiee of the UN High Commission on Refugees numbered 21 million, of whom 12 million are refugees. Others included in the 21 million figure include internally displaced persons and asylum seekers. There is nothing to suggest that the factors which displace people and create refugees are likely to disappear in the foreseeable future. The causes of refugee flows, for example, violent conflict, denial of basic rights, targeting of trade unionists and human rights activists, oppression of religious minorities, press-ganging children into armies, violence against women, discrimination against ethnic or religious minorities, and so on, show no signs of diminishing. Indeed there are grounds for believing that the movement of refugees is, if anything, likely to increase.

The experience of the past fifty years has revealed more clearly the strengths and limitations of the Convention. It provides significant protection to those forced to flee their countries due to the use of or threat of persecution even though they have received no permission to enter another. It provides an important bulwark against transient changes in the climate of public opinion within states and an international standard against which the performance of governments can be compared. These are all major gains.

In addition, with the passage of time, the jurisprudence emanating from the Convention has continued to develop. The basic protection standards set out in the Convention (and in more summary form in other international instruments such as the UN Convention on Civil and Political Rights) are now generally regarded as part of general international law, and thus applicable even if a state has not signed the Convention. This applies particularly to the requirement not to return a refugee to another state where his or her life would be threatened.

Moreover, the 1951 Convention no longer exists in isolation as an international human rights instrument. It has to be placed in the context of the elaborate international human rights system which has grown up in the decades following 1951. Nowadays there is an important degree of protection available to asylum seekers from other international instruments and norms which, although not part of the Convention proper, are of considerable

importance in terms of the overall international protection available to refugees. There can be little doubt that if the Convention were being drafted in 2001 rather than 1951, it would be much more comprehensive, bearing in mind the fact that more recent human rights instruments clearly incorporate and build on salient elements of the instruments preceding them. The Convention on the Rights of the Child, for instance, incorporates much of the substance and terminology of previous instruments such as the International Covenant on Economic, Social and Cultural Rights.

It is difficult to see an international asylum instrument being drawn up today without specifying gender-related persecution as one of the grounds for seeking asylum,[1] or without addressing in some detail the position of unaccompanied minors seeking asylum, or without setting out a comprehensive list of safeguards for the reception and treatment of asylum seekers, including the right to work, to family reunion, to shelter, and so on. Significantly, the most recent of the major UN human rights instruments to be opened for signature, the Convention on the Rights of Migrants, is also by far the longest and most detailed. This largely reflects the need to incorporate the various relevant human rights standards which have been developed over recent decades.

Limitations of the Convention

There are undoubtedly some serious limitations and deficiencies in the Convention. An unwritten assumption underlying the Convention is that States Parties would not be faced with unmanageable flows of asylum seekers. But experience has belied that assumption on a number of occasions and shown how, in practice, this and other assumptions on which the smooth running of the Convention depends can be invalidated. Asylum determination procedures may be overwhelmed or made irrelevant by mass movements engendered by political violence, especially when conflict spills over frontiers. There may be an associated breakdown of political authority or alternatively borders may be closed as an emergency measure to protect the authority and resources of the host country.[2] This may deny asylum to many refugees or lead to greatly diminished protection for them.

One possible improvement to the 1951 Convention would be to widen the grounds on which asylum can be sought. In the present climate there seems little chance that governments would concede to this. Another avenue is to develop and strengthen the so-called complementary forms of protection for asylum seekers such as giving humanitarian leave to remain. While such leave is an important complement to the protections available to those fleeing their own countries, it is open to abuse as a weaker alternative to granting Convention status. And as a form of protection it is totally dependent on the grace and favour of the granting state. Moreover, its basis is much less transparent, it has fewer safeguards than Convention status and it can easily be withdrawn.

The asylum determination process

It is generally accepted that an asylum seeker will almost by definition often lack adequate documentation and may have entered a country illegally, sometimes with the help of people-smugglers or even traffickers. Realistic allowance has to be made for this. As already noted, subject to certain conditions, the Convention prohibits contracting states from penalising asylum seekers for illegal entry or presence.

For a person subject to state-inspired persecution to request official travel documents may provoke the issuing authorities into greater and even fatal persecution. In such conditions, the state receiving an application for asylum should not apply excessively legalistic or bureaucratic standards in requiring documentation, or insist unnecessarily on details of how the applicant arrived in the country where this might endanger friends or family in the country of origin. The 1951 Convention could not realistically be prescriptive in any detail in this matter. Much depends on how, in practice, the relevant authorities of the receiving state interpret their duties under it. The Convention's preamble, (which under the international law of treaties - the Vienna Convention - is part of the interpretative context to be considered in implementing the Convention), refers to the United Nations' concern for refugees and its endeavours to assure to refugees the widest possible exercise of their fundamental rights and freedoms. This should be the touchstone by which the asylum receiving and processing system operates.

How applications are processed and the standards of proof required are crucial aspects of a country's asylum system. It is noteworthy that the Convention has very little to say about how asylum applications are to be dealt with by the receiving state. It is accepted that while there is an inescapable element of the subjective in each claim, there must be some objective basis to the claim. This said, while the burden of proving the validity of the asylum application devolves onto the person applying for asylum, the standard of proof required is widely held to be less than the balance of probabilities demanded for civil litigation. Thus the final judgement determining the outcome of an application is likely to reflect a combination of objective (such as the existence of a dictatorship) and subjective considerations (such as his or her political or religious beliefs).

Elements such as the ethos of the determination bodies, (in Ireland the Refugee Applications Commissioner and the Refugee Appeals Tribunal), the level and type of training of the examiners, the reliability and timeliness of country of origin information, the extent and ease of access by asylum seekers to adequate legal advice (especially at the early stages of the process) and to competent interpretation and translation services, all impact on the quality of the determination procedure. Taken together, these will have a major influence on the extent to which the general protections set out in the Convention are, in practice, guaranteed to the individual asylum seeker.

In addition to the five grounds of persecution listed in the Convention, it is now widely agreed that imputed or perceived grounds for persecution can validate an asylum application. For instance, if a person, although not of a particular religion, is nonetheless perceived by the authorities to be of that religion or even sympathetic to it, this may well make him or her liable to persecution. Such a person should also be eligible to be considered for asylum.

The duty to receive asylum seekers and accommodate refugees does not stop once they have been admitted by the receiving state. Each state is responsible for looking after asylum seekers in a decent and humane manner until their application has been decided. Thus there are a consequential set of human rights standards and recognised best practice guidelines to be met in respect of the provision of accommodation, family reunification, health, education of minors and social welfare, as well as in relation to the right to seek work after an appropriate period such as six months.

If it becomes necessary for any reason to detain or imprison

asylum seekers, they are likely to find themselves in an especially vulnerable situation. The European Committee for the Prevention of Torture has established a clear body of basic standards and good practice for the treatment of asylum seekers and refugees. This covers every stage from arrival in the receiving country and includes procedures when asylum seekers have their applications refused and are subsequently deported. Moreover, in the absence of effective court or media scrutiny it is vitally important to have an adequate system of independent monitoring by NGOs at arrival points. Confidence in the transparency and impartiality of immigration and asylum procedures is not enhanced when the authorities refuse to permit independent monitoring at arrival points. An example of this is the refusal of the Irish authorities to permit an NGO monitoring and reception project in Dublin Airport, even though the EU among other sources had already agreed to finance it.

The 1951 Convention, while stating the right of *non-refoulement*, says little about the sensitive question of how deportation is to be handled. There are many concerns in this regard, for example where deportees have been gagged, unnecessarily imprisoned or deported while in need of medical attention. This area is one in which the Convention protections could certainly be strengthened and amplified.

Asylum fatigue is a constant threat to the system of protection enshrined in the Convention. In recent years even traditionally welcoming asylum countries such as the Netherlands and Canada have been tested by the growth in the number of those seeking asylum. The resulting and increasingly obvious presence of asylum seekers has often provoked hostile reactions and led to increased political support for xenophobic politicians. Frequently the general population, and sections of the media, do not distinguish between asylum seekers and economic migrants. One sees references to "bogus asylum seekers", "spongers", "floods" of refugees, and so on as the media or sections of it reach for scare headlines.

Those who are identifiably different in terms of skin colour, language, religion or ethnicity are easy targets for scapegoating, especially in times of economic recession and rising unemployment. Moreover, in tight electoral situations some politicians are tempted to take a hard line on asylum seekers and immigrants for reasons of electoral advantage. Of particular concern is the extent to which governments, under the influence of domestic opinion or for other reasons, attempt to impose a minimalist and restrictive interpretation of their obligations

under the Convention. One political response is to develop a battery of administrative, policing and other measures to try to ensure that asylum seekers are prevented from accessing a state's asylum system in the first place. For instance, in Ireland the placing of gardaí and immigration officials at mainland European departure points for sea and air routes into Ireland is designed to stop potential asylum seekers from reaching Irish soil in the first place, since an asylum application cannot be made outside the country. The numbers of asylum applications at Rosslare ferryport, which ran at an average of 45 per week immediately before November 2000, fell to zero following the deployment of Irish immigration officials and gardaí during that month on the Cherbourg to Rosslare ferry, and at Cherbourg itself. This has been described by the Irish Bishops' Committee on Refugees as a policy of "pre-emptive exclusion".[3]

A similar motivation underlies the introduction of legislation to penalise transport companies ("carriers") which bring people with inadequate documentation into the state. Such legislation, imposing what are known as carrier sanctions, already exists in most EU countries. In February 2001 Ireland's Minister for Justice announced that he too proposed to introduce it in the near future. Such an approach is both unfair and inappropriate since it shifts responsibility for checking documentation and for making judgements about the status of possible asylum seekers from the immigration authorities to transport company staff. The latter should not have to take such decisions nor have they any training in doing so. Above all, while being in no way accountable for the effects of their decisions in allowing or preventing an asylum seeker from travelling on their respective carriers, they become in effect arbiters of whether such a person should be able to reach the Irish frontier, something an asylum seeker must succeed in doing before he or she can lodge an asylum application with the Irish authorities.

Another approach being taken is to seek bilateral repatriation agreements between the host country and individual sending countries. Under such agreements the formalities for returning nationals to sending countries are streamlined and speeded up. These agreements may be implicitly associated with other inducements to the sending country, such as aid or co-operation agreements of one sort or another. Ireland has concluded one such agreement in the past two years with Romania and another with Nigeria is expected to come into effect in the near future. These examples illustrate the extent to which the Convention guarantees need to be spelled out more explicitly in order to

reduce the latitude of interpretation currently enjoyed by States Parties in implementing its provisions.

Towards a comprehensive international protection system

It is clear that an effective international ptotection system for those displaced or forced to leave their country needs to be comprehensive and capable of not only providing adequate legal proteetions but also of delivering a commensurate range of practical administrative and political responses.

Establishing a right to seek asylum is, on its own, a necessary but clearly insufficient part of building up a comprehensive system of rights protection. The Convention system is generally unsuited to coping with rapid large-scale population displacements. During the past decade the expériences of Rwanda, the Balkans and Afghanistan have shown the demands mass exoduses of people make, both on neighbouring countries and on the international humanitarian system. On its own the 1951 Convention remains totally inadequate and often inappropriate as a response to the complexity of such situations. Its inappropriateness lies in the requirement that each application made under it be processed individually. In a situation of mass exodus a receiving country's capacity to efficiently process applications is likely to be overwhelmed. Moreover, those fleeing would probably not be able to show thcy were individually the subject of persecution as defined under the Convention.

Most refugees are not received in the world's wealthy industrialised countries, although these are the states best resourced to accept them. Instead, the majority are taken in by neighbouring developing countries whose resources and administrative capacities are generally much more limitcd. The Preamble to the 1951 Convention acknowledges that the granting of asylum may place unduly heavy burdens on certain countries and that a satisfactory solution to a problem, which the United Nations has recognised is international in scope and nature, cannot therefore be achieved without international co-operation.

Fifty years later an adequate and effective international system of sharing the worldwide responsibility for coping with refugee

and asylum flows remains to be established. Such a responsibility sharing system is both a demand of solidarity, and a practical necessity. The Convention itself was neither intended nor designed to provide the basis for such a system. While there will always be a need for international mechanisms to protect asylum seekers and displaced persons, it is apparent after half a century that a reactive approach to displaced persons is, on its own, extremely limited even if of critical importance to the individuals who benefit from it. As in so many other areas, prevention is far better than cure.

It remains true that, in practice, rights are guaranteed primarily at state level. But when this state of affairs breaks down, the individual who is a holder of rights is left defenceless in the absence of an effective international system of rights protection. The reality is that now and for the foreseeable future people will continue to be displaced, as individuals, as families or in larger groups, because the state of which they are citizens or residents will not or is unable to protect their basic rights adequately. In human rights terms this leaves the international community with a fundamental dilemma: if there is a right to asylum for those fleeing persecution, which might not be life-threatening, on what logic can a right to asylum be refused to those fleeing other threats which are equally or even more life threatening, such as civil war, famine, or major environmental degradation? How consistent is it to hold out the prospect of asylum to someone who may be subjected to constant verbal abuse but not necessarily physically threatened, while refusing it to someone demonstrably facing death from starvation? From this viewpoint the current internationally recognised right to asylum, enshrined in the 1951 Convention, must be regarded as an acquisition which in the long run cannot stand alone. The foundational insight at the heart of the international human rights system is that rights are claims to be treated in certain ways simply by virtue of one's humanity and not primarily by virtue of one's citizenship, race, or other attributes. The logic of upholding this insight in its entirety points inexorably towards an expansion rather than a contraction of the content of the right to asylum.

Naturally, this also leads to consideration of the need to develop more radical responses to the income gap between rich and poor countries. The last ten years have seen the gap between the richest and poorest groups of countries become ever greater, not just in relative but even at times in absolute terms. Until radical changes are made to the existing international maldistribution of power and resources and towards eliminating

the enormous gap between the richest and poorest countries, the flow of migrants, asylum seekers and refugees within and between states is likely to persist and probably to grow.[4]

While the concept of economic migrant is distinct from that of asylum seeker, in many cases it is clear that at an underlying level, the root causes, if not the same, are at least closely related. The same factors which give rise to the phenomenon of economic migrants are equally likely to cause or to aggravate the sort of political and ethnic tensions within countries which give rise to persecution and drive people to seek political asylum.

The conclusion must be that to address, and as far as possible eliminate, the underlying conditions driving people to seek asylum, a more comprehensive international approach to defending and promoting human rights on an integrated basis is required. Sometimes the absence of civil and political rights will need to be addressed but very often the absence of basic economic and social rights will call for attention, since it is their denial which is often even more responsible for generating or perpetuating the insecurities and conflicts which ultimately drive people to flee their countries of origin. The continuing stream of asylum seekers across frontiers is a clear symptom of the pervasive lack of human rights and basic security in many countries and regions in the world. Hence, ensuring, maintaining and restoring peace and justice are the only long-term means to eliminate the underlying causes of displacement of people and large-scale persecution.

The Convention and the EU

The 1951 Convention raises particular issues for the European Union (EU). One of the foundational principles of the EU is that of free movement of persons within its territory which can only happen when a common frontier has been put in place. Although all EU member states are individual parties to the Convention, the demands of an area of freedom of movement pose immediate questions in the absence of a common EU asylum policy: What if some member states have less stringent asylum criteria than others? Germany, for instance, does not recognise persecution by non-state actors while Ireland does. Should persons given refugee status in one member state have the right to travel and reside in other member states? Which state should be obliged to determine an

asylum application? What about responsibility sharing between states, for example in the face of a mass influx of people seeking refuge?

This imperative of establishing a common frontier is propelling the Union towards the construction of a common asylum and immigration policy. In so doing a major responsibility rests with EU leaders and decision-makers to ensure that the protections offered to asylum seekers and refugees, regardless of whether these are at national or EU level, at least match up to and preferably exceed the international standards developed in the fifty years since the Convention was drafted.

The EU, already wealthy, is becoming steadily richer. It is politically stable, democratic and powerful. Understandably it continues to receive increasing numbers of asylum seekers as well as immigrants looking for work. The EU is notable for its low birth rate, which is insufficient even to keep the population from falling and its population is rapidly ageing. According to UN estimates, the drop in EU birth rates means that Europe may need between 40 million and 160 million immigrant workers over the next few decades if it wishes to maintain its present model of growth and rate of economic expansion. The social, political and cultural consequences of immigration on such a scale are likely to be momentous. Two contradictory factors are in operation: economically Europe cannot continue to grow without a continuing influx of immigrant labour, but politically and socially this influx risks precipitating an anti-immigrant and anti-refugee backlash. At the same time the desire of Eastern European states to secure membership of the EU makes them vulnerable to EU pressure to curb migration so that in important respects the applicant countries are now policing EU frontiers.

Concern is often expressed that asylum procedures are being used as a backdoor by economic migrants. The response to such concern is usually heavily skewed towards tightening overall immigration procedures and putting additional restrictions in place than it is towards devising adequate and transparent immigration policies. Thus there is a clear risk that measures to control illegal immigration and clamp down on people trafficking and people smuggling (which are not at all the same thing)[5] will also make it more difficult for asylum applicants, whether this is intended or not.

In recent times there have even been proposals from particular EU presidencies, (each member state presides in turn over EU affairs for six months), that the Convention should be substantially reviewed. Such a proposal was made by the Austrian Presidency in

1999. Despite protestations to the contrary, such proposals give rise to justified fears that rights under the 1951 Convention would be in danger of being eroded under the cover of such a review. It is therefore somewhat, even if by no means completely, reassuring, that the Presidency conclusions of the 1999 EU summit in Tampere, Finland, contained a commitment to work towards the setting up of a common European asylum system based on the "full and inclusive" application of the 1951 Convention. However, not least because of the democratic deficit at certain levels of EU decision making, including the formulation of justice and immigration policy, continual monitoring of EU asylum policy by human rights and asylum groups is more essential than ever in the wake of Tampere. In addition, throughout the EU there is a need for comprehensive public information and education programmes on the rights of refugees and asylum seekers and their host states' responsibilities in this regard. Such human rights based education will help in ensuring that EU policymakers and citizens work towards upholding the spirit as well as the letter of the 1951 Convention and other international human rights instruments.

Conclusion

The 1951 Convention was born in Europe but in time was shown to have universal relevance. It is fitting that the EU, in developing its common policies on asylum, should do nothing to dilute the essential concept of a universal and non-discriminatory right to seek asylum. It is also appropriate that the EU should do everything to extend its application and to strengthen the basic protections it offers to those who, by definition, have no other effective source of protection for their basic rights and often their very lives.

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Footnotes

1 Gender is one of the grounds of persecution allowed for in Ireland's 1999 Refugee Act.

2 It is appropriate to note here that an approach focusing purely on the legal rights of asylum seekers is likely to be unbalanced if it fails to acknowledge that receiving countries and host communities also have an entitlement to have their needs taken into account. These include access to sufficient financial resources to meet essential expenditure associated with refugee integration and meeting the costs to host communities.

3 "Pre-emptive exclusion of asylum seekers? Disturbing evidence of a new policy", briefing document on behalf of the Committee on Asylum Seekers and Refugees of the Irish Catholic Bishops Conference, December 2000

4 This will require a range of complementary policies including donor countries' reaching the 0.7% GNP aid target, further debt cancellation and trade policy reform to open markets to developing country exports. Further elaboration is beyond the scope of this article.

5 The difference between smuggling and trafficking is essentially that people are trafficked involuntarily and the trafficker intends to exploit them in the destination country, whereas the smuggler requires payment solely to convey the asylum seeker across a border or borders and sometimes may not even seek payment.