

The European refugee crisis and international law

By Mike Head
5 December 2015

Not since the depredations of World War II have the peoples of the world witnessed scenes like those now on display in Europe. Hundreds of thousands of desperate refugees have fled war and destitution, only to be met with closed borders, razor wire, tear gas and water cannon.

Despite sympathy and support for the refugees from their own residents, as well as many millions internationally, European governments have mobilised thousands of border police and soldiers. While some European leaders initially feigned concern for the refugees' plight, they have all moved to block further arrivals.

Western countries like Britain, the United States, Canada and Australia have refused to take any more than token numbers of the victims, most of whom are fleeing the devastating wars and social disasters created by the criminal US-led military interventions in Afghanistan, Iraq, Libya and Syria.

Governments of all stripes are shredding what remains of the fundamental legal and democratic right to flee persecution and seek asylum, a right partially enshrined in the international Refugees Convention that was drafted in 1951, following the mass displacements and closed borders of World War II.

The evisceration of the 1951 convention is testament to the impossibility of resolving, via international law, the catastrophes of war and refugees that have been generated by the capitalist nation-state system itself over the past century.

The same imperialist powers that have driven humanity into two world wars and endless military interventions have proven incapable of producing any humane and rational solution to the resulting refugee crises. Instead, each ruling elite has insisted on retaining the national sovereign right to exclude the unwanted victims, and on incorporating that "principle" into international law itself.

By the end of World War II, the victorious powers, having claimed to be fighting in the name of democracy, faced widespread popular demands to address the pressing humanitarian disaster. Some 60 million people had been uprooted across continental Europe alone. Moreover, the spectre of Jews being turned away by the Western powers before and during the war, leaving millions to be murdered by the Nazi regime and its collaborators, had been burned into popular consciousness.

One of the most infamous episodes occurred in May–June 1939. The US administration refused to admit more than 900 Jewish refugees who had sailed from Hamburg, Germany, on the *St Louis*. Barred from the US, the ship was forced to return to Europe. Britain, France, the Netherlands and Belgium later agreed to accept some of the refugees. Of the 908 *St. Louis* passengers, 254 are known to have died in the Holocaust.

This outrageous act followed the breakdown of the 1938 Évian Conference, which was convened at the initiative of US President Franklin Roosevelt, under the pressure of public protest, to give the appearance that the major capitalist powers would address the plight of the Jews. At that conference, attended by representatives from 32 countries, both the US and Britain professed concern, but refused to

accept any more refugees, and nearly all the countries in attendance followed suit.

These events underscored the impotence of the Convention Relating to the International Status of Refugees, adopted in 1933, supposedly to prohibit the "refoulement," or removal, of asylum seekers to face death, torture or persecution—a principle of customary refugee law.

The 1933 convention was sponsored by the League of Nations, established by the victors of World War I, and characterised by Vladimir Lenin, leader of the 1917 Russian Revolution, as a "den of thieves." In effect, the 1933 treaty collapsed along with the League of Nations, as the rival capitalist powers once more plunged the world into war and barbarism.

At the end of World War II, the victorious powers again sought to establish a framework—this time via the United Nations, a new "den of thieves"—that could head off the deep working class discontent and unrest produced by the war, and provide the illusory promise of a new era of peace under capitalism, in which basic "human rights" would be protected.

In 1948, the UN adopted the Universal Declaration of Human Rights as part of the claim that it would no longer tolerate the abuses of war and fascism. Article 14 declared: "Everyone has the right to seek and to enjoy in other countries asylum from persecution."

That proclamation, however, proved to be a fraud. The right to asylum, like the entire declaration, was non-binding on national governments. By 1951, three years later, the delegates who were laboriously negotiating the UN's Refugees Convention opposed any suggestion of incorporating such a universal right.

Representing 26 predominantly Western countries, mostly from Europe and North America, the drafters of the 1951 convention were determined to make it as narrow as possible. Not only was the treaty specifically confined to those people displaced by pre-1951 events in Europe, but it deliberately provided only for a right to *flee* a country to escape persecution, not a positive right to *enter* any other country and be *granted asylum*.

Two related factors dominated the convention's months-long drafting sessions. First and foremost was the refusal of any of the major powers to open their doors freely to refugees. They insisted, instead, on the basic capitalist nation-state principle of retaining the sovereign right to exclude anyone they did not want. An added consideration was that at least three of the drafters—the US, Canada and Australia—maintained racist immigration policies that barred anyone with "non-white" skin.

Secondly, by 1947, the Cold War against the Soviet Union had been launched, which led to a boycott of the UN by the Soviet Union and the newly-formed Eastern European states. The Western delegates fashioned a narrow refugee definition that could be used by their governments, for ideological purposes, to offer asylum to dissidents facing political or religious persecution by the Eastern states, while excluding asylum seekers more generally.

A refugee was defined by Article 1 as any person who: "Owing to 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."

The five "persecution factors" of race, religion, nationality, social group and political opinion were intended to disqualify the vast majority of refugees. Those fleeing wars, armed conflicts, economic collapse, political oppression, environmental disasters or famine were barred, unless they could prove they were individually persecuted for one of the five stated reasons.

Secondly, in order to qualify for refugee status, an asylum seeker had to be already "outside" his or her country of origin. That meant having fled across an international frontier, often "illegally"—that is, without official permission. People unable to flee, or trapped in an "internally displaced" camp within their country, were excluded. They could apply for asylum only once they had succeeded in actually entering the territory of a signatory to the convention. At the same time, no obligation was imposed on the signatories to take anyone from a refugee camp.

While professing concern for the plight of those uprooted across Europe, the drafters were determined not to open the door to broader influxes of victims of war or oppression, especially from outside Europe. They rejected a proposal by the International Committee of the Red Cross that "[e]very person forced by grave events to seek refuge outside his country of ordinary residence is entitled to be received."

The US delegate bluntly argued against "[t]oo vague a definition, which would amount ... to a blank check." Speaking for the US at a related UN meeting, Eleanor Roosevelt insisted that "nations are not likely to accept ... a definition that obligates them to accept people permanently uprooted by invasion or internal strife."

Likewise, a French representative declared that, "any attempt to impart a universal character to the test would be tantamount to making it an 'Open Sesame.'" Crudely, an Australian delegate said a wider definition of refugee would be like "being asked to buy a pig in a poke."

Summing up the deliberations, the International Association of Voluntary Agencies' observer noted that they "had at times given the impression that it was a conference for the protection of helpless sovereign states against the wicked refugee."

The convention's core rights

Despite its inherent limitations, however, the 1951 convention did recognise two core rights.

The first is for people to flee persecution without being punished or discriminated against for doing so. Article 31 states: "The Contracting States 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 ..."

The second is the right not to be returned ("refouled") to a country where an asylum seeker would face the danger of death or persecution. Article 33 states: "No Contracting State shall expel or return ('refoule') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

Once within a signatory country, refugees must also be treated no differently from citizens with regard to certain basic rights. These include religious freedom (article 4); protection of artistic and property rights (article 14); access to courts and legal assistance (article 16); rationing (article 20); housing (article 21); elementary education (article 22); public relief (article 23); and labour legislation (article 24).

Originally, the Refugees Convention was intended to last three years.

Far from subsiding, however, the world's refugee crisis continued to grow after 1951, driven by continued wars, oppression and destitution. The numbers of people seeking asylum have since increased from less than two million in 1951, to 27 million by 1995 and more than 60 million by 2014.

By 1967, there was an obvious disparity between the limitation of the 1951 convention to Europe and the international dimension of the plight of refugees. To provide the appearance of universality, the convention was extended by a protocol to cover the globe. But the narrow post-war definition of refugee was deliberately retained, ensuring that most of those seeking to escape poverty, oppression, famine and military conflict remained outside the protocol's coverage.

Over the past four decades, 146 countries have ratified the convention or the 1967 Protocol, leading to claims by the UN High Commissioner for Refugees (UNHCR), that the convention became the "bedrock" of worldwide refugee protection. In reality, most asylum seekers remained excluded. Moreover, no mechanisms exist to enforce the convention, whether by the UNHCR or any other agency—in keeping with the inviolability of national sovereignty.

By 2001, the 50th anniversary of the 1951 convention, a wholesale assault was underway against even its minimal core obligations. The Bush administration's declaration of the "war on terrorism," followed by the US-led invasions of Afghanistan and Iraq, was accompanied by a drive to either scrap or effectively nullify the convention.

Members of Bush's "coalition of the willing" who participated in the invasions, led the way in calling for the convention's dismantling. British Prime Minister Tony Blair declared that although its "values are timeless" it was time to "stand back and consider its application in today's world."

Australian Immigration Minister Philip Ruddock, who implemented the "Pacific Solution," under which asylum seekers are transported to remote Pacific Island detention camps, described the 1951 convention as open to exploitation and manipulation by non-refugees. He insisted it should be toughened "either administratively or by reviewing the actual treaty document itself."

After a year-long UNHCR-facilitated debate on the future of the convention, the treaty was retained, but has been increasingly flouted or sidelined by various regional agreements that provide even fewer rights and protections to asylum seekers.

One doctrine invoked to disembowel the convention is that of "safe third country." A prime example is the Dublin Regulation, adopted in 2003, which compels refugees to remain in the first European country they enter, regardless of where in Europe they wish to seek protection.

European governments are now going further, insisting on forcing refugees to seek asylum in the first supposedly "safe" country they enter, such as Turkey, or deporting them to such a country, irrespective of the poverty and inhuman conditions they will face there in overcrowded and underfunded camps.

Across Europe, governments are in the process of overturning even the narrowly-constrained rights upheld by the Refugees Convention. Despite their limited scope, Articles 31 and 33 prohibit what is now occurring—the turning away of asylum seekers (Article 33) and the punitive treatment of refugees in order to intimidate others from seeking protection (Article 31).

Thus, on November 12, a European Union heads of state and government meeting in Valletta, Malta, struck a deal with representatives from more than 30 African states to keep refugees out of Europe. The African governments are to crack down on their borders and accelerate measures to take back asylum seekers deported, or refouled, from Europe, in exchange for funding from the EU countries. While the summit's final declaration cynically invoked the need to respect human rights and deal with refugees in accordance with international law, the EU is shamelessly collaborating with the very despots and dictators from whom many have fled, therefore assisting these regimes' repressive measures, in blatant

violation of Article 33.

Throughout Europe, from Britain's Tory government to the Syriza-led Greek regime, asylum seekers are essentially being penalised for seeking refuge—including by being subjected to inhuman and cruel conditions in overcrowded detention camps. Whether it be on cramped Greek islands or in aircraft hangars in Germany's abandoned Berlin-Tempelhof airport, men, women and children are being denied basic facilities such as bathrooms and treated virtually like cattle. Clearly driven by the EU policy of "detering" refugees, these conditions are designed as punishment for seeking asylum, in direct breach of Article 31.

Governments are also exploiting the restrictive definition of refugee in order to arrange the deportations of thousands of rejected asylum seekers by the end of this year. Among them, the Left Party-led government in the German state of Thuringia plans to create a hub for mass deportations from across Germany. In order to achieve this end, access to the courts and legal assistance is being given short shrift, along with other basic Refugees Convention rights, like elementary education.

The ever-more blatant abrogation of the 1951 convention, despite the terrible plight of those fleeing war, is an indictment of the capitalist nation-state system. Once again, it is thrusting humanity into the barbarism of war, while shutting its borders to millions of displaced victims.

The overturning of international law for refugees, among the most vulnerable layers of the global working class, goes hand in hand with the tearing up of the basic legal and democratic rights of all working people. That is why the struggle against imperialist war and police-state methods of rule is inseparable from the fight to defend the fundamental democratic right of every person to live and work in the country of their choice, with full civil and political rights. This is an essential component of the forging of the worldwide unity of the working class on the basis of a socialist and internationalist program to end the outmoded capitalist profit system itself.

To contact the WSWS and the
Socialist Equality Party visit:

<http://www.wsws.org>