

REVIEW ARTICLE*

Refugee Rights and Realities: Evolving International Concepts and Regimes, by F NICHOLSON and P TWOMEY (eds) (Cambridge: Cambridge University Press, 1999), pp xxix + 391. Recommended retail price \$137.30 (ISBN 052 163282X).

Imagine being on the slippery slopes of refugee regimes marked by a myriad of immigration posts somewhere in the European alps and you have a fairly good idea of what to expect in this collection. Heavy on concepts and regimes as the title suggests, you won't get from this a stark picture of refugee realities in some, let alone all, parts of the world in the last decade. The Eurocentric focus is acknowledged by the editors although this is not reflected in the title of the collection. For readers from non-European and developing countries, this could be disappointing as most refugees and displaced persons, at the time the articles were written, were in Africa and Asia. Women's rights and child rights groups would also miss debate and analysis in relation to refugee women and children who continue to form the bulk of the refugee population in the world. There are passing references to gender-related persecution and female genital mutilation but hardly any on children, except for the right to family life, even though evolving concepts of child rights and child development are changing the way we look at relationship between state, parents and children.

Nevertheless, the collection is generally thoughtful, thought provoking and well-researched with a few outstanding critical pieces. It is a noteworthy record of an incredibly complex regime evolving alongside the European Union where asylum seekers are no longer seen as potential refugees but face an uphill battle in protecting their rights every inch of the way. It documents how the narrowness of the Refugees Convention albeit a principal human rights document is increasingly being patched and stretched by human rights law and other human rights instruments. It reflects the pre-occupation with a comparatively small number of asylum seekers and refugees besieging 'fortress' Europe. Even when the discussion turns to mass refugee situations, repatriation, in-country protection, temporary protection, early warning and preventive action, there is a sense that these concepts were developed partly with a view to

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stemming the flow of refugees and migrants from countries torn by conflict and wracked by poverty to wealthy and supposedly safer countries.

A third of the pages delve into the murky depths of refugee definition, ranging from the ordinary meaning to a more purposive, analytical reading. For countries with refugee status determination procedures designed to control refugee intake, this debate is important as refugee advocates and human rights defenders continue to battle governments and policy makers over refugee influx and treatment. The category of particular social group remains the gap in the gate for many fleeing conflicts and persecution. Refugee advocates in Australia might find Carlier's theory of the three scales, risk-persecution-proof, refreshing and useful in their attempt to secure refugee status and protection for potential refugees under their wings. The growing numbers of urban asylum seekers in Africa and Asia confronting refugee status determination procedures in host countries could also benefit from his purposive reading of the refugee definition. Plender and Mole's exposition of the human rights framework for refugee protection removes artificial distinctions between refugees and others. Refugees are just ordinary human beings, like everyone else, entitled to the same human rights. For example, expulsion and detention before deportation may be vigorously challenged by the rights to freedom from torture and the rights to family life. The principle of non-refoulement barely survives sophisticated immigration mechanisms. The message for refugee advocates is clear – have a good grasp of human rights law and use it!

Love it or hate it, the United Nations High Commissioner for Refugees ("UNHCR") is the principal refugee agency in the world so that whatever it does or does not do will have a significant impact on refugee protection. A somewhat rosy picture is painted of UNHCR's role in the development of international law. A more accurate picture emerges when we see UNHCR in action. The insights into UNHCR shifting from refugee protection to assistance or humanitarian action are disquieting. Goodwin-Gill's critique of the UNHCR's 'restructuring' exposes a weakening of its protection mandate due to a management for management's sake approach. The Division of International Protection was sidelined in the process. At the same time, UNHCR's involvement in the Former Yugoslavia signalled its initiation into preventive solutions ultimately compromising its mandate of international protection. Goodwin-Gill reserved his harshest criticisms for UNHCR's failure to withdraw from the camps in the Great Lakes even when it became clear that they could not protect the people from military attacks. The practice of UNHCR rather than its rhetoric is what counts for refugees from day to day. Some people might dismiss this as UN-bashing. If so, they are missing the point. Pointing out the failures and weaknesses of UNHCR is crucial if one is serious about trying to secure the protection that refugees are entitled to and keep UNHCR faithful to its mandate.

States continue to resort to the concept of sovereignty in response to individual rights or the intervention by the UN. This is obvious from the requirement of 'direct flight' and the notion of 'safe third country'. States' interpretation of Articles IE, 31 and 33 of the Refugees Convention have sought to justify their right to admit whom they choose to their territory. An analysis of

these articles casts doubts on their position. Basically the idea is that beggars can't be choosers. But is that true? This position is challenged by the proposition that in fact refugees may have a right to choose their country of asylum. Unfortunately, the discussion stopped there and I was left to ponder the complexities of the interaction between state responsibility and state sovereignty.

Despite being somewhat dated, the cogent analysis of the 1994 Rwandan tragedy situates refugees within the political context and take us beyond individual state responses to the crucial difference a collective response within the framework of the UN can make. The Rwandan genocide drives home the importance of early warning and the need for swift, unequivocal peace enforcement by international troops to prevent the escalation of ethnic conflict beyond the horrors of the Second World War. Massacre of civilians and massive displacement as others seek refuge in safer places could have been averted. It has been said that the UN reacted more quickly to the East Timor situation last year because of the lessons learnt from Rwanda. Others may argue that the UN did not react quickly enough. Nevertheless, Adelman's sketch of the UN Security Council as a political body comprising rings of influence with the United States at its centre remains true even during the days of the East Timor tragedy. Lukewarm US support for a decisive UN response despite all the indicators of impending catastrophe in Rwanda was a major factor although it was not the only reason for the delay. Other structural problems, communications and the inexplicable omission of an option before the UN Security Council of reinforcements to enable the UN peacekeepers to protect civilians were other ingredients in a recipe for disaster. Adelman contends that the issue goes beyond conflict management and early warning. He asserts that it is a normative problem where countries subscribe to norms such as in regards to genocide but do not see it as their duty to ensure the implementation of these norms. This bears deeper reflection as ethnic and religious conflicts continue to simmer and burn not just in Asia and Africa but also in Europe. Perhaps Adelman did not deem it appropriate to take his analysis further in his article. But the issue refuses to go away. If states are leery of abiding by ethical norms, by whom and how are these norms going to be implemented? Ultimately, unless states are prepared to mandate a supranational body such as the UN to respond to clear violations of international norms, civilians will continue to suffer mass slaughter and refugees will be inevitable. The idea of in-country protection or preventive solutions just won't work. Unless states can agree that it is not a diminishing of their individual sovereignty but an expression of their collective responsibility, interference in the domestic affairs of a sovereign state will always be raised to prevent response from matching rhetoric.

The new European asylum regime is edifying because of its far-reaching effects and influence on other asylum countries such as the USA and Australia. In fact temporary protection, the cornerstone of the new regime in the making, has already reached Australia with the Kosovar refugees. The economic boom after the Second World War and the labour shortages encouraged a liberal asylum policy in Western Europe. This is crumbling with the collapse of the Berlin Wall and the end of the Cold War in the late 1980s. The asylum policy

used to be selective but integrative, granting full social rights and long-term settlement to refugees. As the European Union grows in size and power, the current asylum policy is exclusionary, undermines status and rights and emphasizes short-term stay for refugees. With the tightening of the refugee regime, resort to human rights instruments to secure protection and asylum is increasing. The quality of protection is deteriorating and questions may be raised as to whether non-refoulement remains the unassailable principle of international law. Joly also points out that an enhanced role for the UNHCR has resulted in greater accommodation, not influence with governments in Europe. The final result is tightened immigration controls, regardless of norms and principles.

As the European Union vies with the USA for supremacy in politics and economics, refugee advocates may have little choice but to monitor developments there to anticipate the ripple effects on asylum policies and treatment of refugees in their own countries and regions. The apparent diminution of individual sovereignty in favour of regional co-operation is deceptive. As barriers fall between countries within the Union, a barricade is rising all around it. One regime for people from EU countries, another for the unwanted – refugees and migrants.