

**COMMENTARY**

The right and role of critiquing the contemporary patchwork of protection

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The 70th anniversary of the 1951 Geneva Convention has been marked by a flurry of powerful academic critiques of the Convention's colonial and Eurocentric roots, and its "intentional" exclusion (Mayblin, 2014) of certain refugees and regions (i.e. see Krause, 2021; White, 2021; longer-standing critiques include Chimni, 1998). Equally, the Convention's anniversary has been characterized by the ongoing flagrant violation of its fundamental legal principles by states across the global North and global South alike. At a time when refugees' rights to protection continue to be undermined, it becomes urgent to ask: what is the role of critique? Does critique risk undermining the existing framework, thereby potentially leaving people with fewer rights? Or, to the contrary, does it provide an avenue to bring into fruition more equitable and meaningful practices, and a more hopeful vision of protection in the 21st century?

The lens of critique – when geared towards close analysis and complementing critical knowledge production with critical modes of action – offers an important entry point to understanding how the 1951 Geneva Convention has evolved over the past 70 years, and also to the ways that different people and institutions – ranging from asylum seekers and refugees, to members of civil society, and UN High Commissioners – have sought to expand and hold the international protection system to account.

In this regard, the international protection system includes, but is in no way restricted to the 1951 Geneva Convention, and, indeed, while critiques of the colonial and Eurocentric nature of the Convention are essential, protection frameworks and systems – in the plural – have not solely been developed and implemented by states from the so-called global North, as I have argued in my work on multi-scalar Southern-led responses to displacement (Fiddian-Qasmiyeh, 2015, 2016, 2018, 2019, 2020; Fiddian-Qasmiyeh & Pacitto, 2015).¹

With reference to the productive force of critique, the recognition of the historical and geographical limitations of, and the many gaps (Fiddian-Qasmiyeh et al., 2020), created by the drafters of the 1951 Convention led states around the world to develop complementary regional frameworks. Instead of rejecting the 1951 Convention,

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this led to the cumulative expansion of the 1951 refugee definition: the OAU's 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa expanded the 1951 refugee definition, and, in turn, the 1984 Cartagena Declaration on Refugees in Central America expanded the OAU 1969 definition. Equally, feminist and queer critiques of the 1951 Convention have cumulatively led to the expanded interpretation of the originally androcentric and heteronormative refugee definition, leading to the development of key guidelines and legal jurisprudence. This has meant that gender-based persecution and claims based on persecution linked to sexuality and gender identity are increasingly legible to decision makers (although, again, in ways that have been critiqued²). This process has demonstrated the roles of lawyers, scholars and civil society movements both in critiquing normative frameworks and of acting to hold the spirit and body of the protection framework to account.

These more expansive definitions and modes of interpretation – accompanied by the expansion of UNHCR's mandate to provide assistance and protection to internally displaced people and to prevent and reduce statelessness³; clarification that Palestinians outside of UNRWA's areas of operation *are* eligible to apply for protection under the 1951 Geneva Convention; and the extension of the protection system to include the first regional Convention re IDPs, the *Kampala Convention* – arguably join together to form a tighter and more inclusive patchwork of protection for asylum seekers, refugees, IDPs and stateless people alike.

However, even the most cursory assessment of the overlapping crises of protection which characterize the 2020s confirm that these expanded definitions, new Conventions and additional Guidelines have not necessarily led to enhanced access to humanitarian assistance, let alone to legal protection and rights. And, of course even the original, “unexpanded” principles which have come to be acknowledged as part of customary law are constantly undermined by states around the world. From innumerable examples in Spring 2021 alone, the governments of Denmark and the UK have, respectively, announced plans to revoke Syrians' refugee status in order to forcibly return them to a still-at-war Damascus and to deny the right to seek asylum of people who have arrived in the UK through “irregular” means, effectively withdrawing from the 1951 Geneva Convention. These and other states' plans, and actions, have in turn been accompanied not only by protests by refugees and citizens alike (i.e. Bjerkestrand, 2021), but also by vocal criticisms from UNHCR representatives, who have repeatedly noted that such policies and actions “risk breaching international law” (i.e. see Singh, 2021; Zorzut, 2021).

Such criticisms fall under the remit of UNHCR's supervisory responsibility, which is a fundamental and integral part of its international refugee protection mandate, since UNHCR is mandated to “provide for the protection of refugees” by “promoting the conclusion and ratification of international conventions for the protection of refugees” and by “supervising their application.” All states are officially beholden to cooperate with the UNHCR, irrespective of whether or not they are parties to the 1951 Convention and/or its Protocol.⁴ Yet, this obligation does not in practice lead to states' cooperation, let alone compliance with international refugee law.

Do these ongoing gaps and failures mean that either the 1951 Geneva Convention, or the role of critique, are to be abandoned? I would strongly argue that the answer is no. The Convention, as flawed as it is, is not only an important starting point, but also a crucial base to continue to be built upon (especially noting that, in the current political climate, states would invariably resist the development of a more comprehensive alternative to the Convention *per se*). And it is precisely critique of different forms, enacted by different actors, which has led to the strengthening of principles and practices of protection in the past, and which will continue to do so in the future.

There is ample evidence of civil society initiatives around the world – including the actions of refugees themselves – working to uphold the rights and needs of people who have been persecuted and displaced. The lives of thousands of Rohingya refugees have been saved through rescue operations led by fishermen and fisherwomen in Aceh (McNevin & Missbach, 2018). Resources and solidarity have long been shared by the residents of neighbourhoods hosting Syrian refugees in Lebanon, Jordan and Turkey, with such “local responders” holding diverse legal statuses, including citizens, migrants, refugees and stateless people (Fiddian-Qasmiyeh, 2016, 2020). Faith-based and secular groups have provided human rights training and created LGBTQI+inclusive spaces for refugees, migrants and citizens in Mexico, both to strengthen asylum claims and to provide tools for local residents to protect their rights to provide support and solidarity to refugees and migrants (Fiddian-Qasmiyeh et al., 2020). As I write,

Palestinian refugees and IDPs continue to demand, through protests, strikes and social media, that states and international organizations comply with their obligations under international law. Investigative journalists, scholars and NGOs have traced the dangers and risks that refugees and migrants face when the digital technologies used by states, NGOs and UN agencies perpetuate racialised systems of violence and exclusion (see Achiume, 2020). In turn, collective action on land, air and sea has prevented the deportation of people to countries which remain at war, with people – including bystanders with no previous commitment to refugee rights specifically – refusing to be complicit with state-sponsored policies which violate fundamental human rights.

Indeed, local and transnational initiatives have not only provided direct forms of assistance and protection but also lobbied and worked to hold states, and UN agencies, accountable. For instance, civil society engagement has been effective in changing policies around, and implementing alternatives to, immigration detention in Taiwan and Turkey, Thailand and Zambia (Mitchell, 2020). In turn, UN agencies with protection mandates have been critiqued for their complicity in undermining refugee rights in too many situations, with civil society organizations, scholars, NGOs and journalists alike having documented and denounced UN staff's sexual abuse of refugees and IDPs around the world (including in West Africa and Haiti) (see Alexander & Stoddard, 2021). And a wide coalition of people with displacement backgrounds, practitioners, activists and academics have come together on diverse platforms under the broad umbrella of “decolonising aid” to imagine and bring to fruition forms of action which ensure that the needs and rights of displaced people are upheld in meaningful ways which challenge, rather than reproduce colonial and neocolonial power imbalances (i.e. see Nasser-Eddin & Abu-Assab, 2020).

Identifying these examples does not intend to idealize the responses enacted by different people, groups and institutions around the world, all of which are arguably members of intersecting protection systems, even if their relative power is very different to that of state and UN representatives. In effect, local responses are rarely sustainable, and they are at times co-opted by states and institutions; it is, of course, equally the case that local residents and civil society groups also perpetuate different forms of violence against refugees. Most importantly, local and transnational responses are themselves emblematic of systematic, political failures (just as the need for international protection and humanitarianism arises precisely when the political has failed, whilst recalling that the granting of asylum has historically been perceived as a political, rather than “humanitarian” act).

Far from leading to fatalism, or the dilution of existing protection frameworks, however, together, these critiques and critical acts seek to fill gaps and address failures that are ubiquitous, but not inevitable. They highlight that these gaps and failures have been politically produced and reproduced because states and international organizations have too often failed and refused to meet their obligations. And it is, ultimately, through critique, and the reimagining of the future which accompanies and follows these critical acts, that states and international authorities will continue to be held accountable for their political failures, not only demanding but also enacting more human and humane responses to the protection needs and rights of people who have been persecuted and displaced.

ENDNOTES

1. This article draws on two of the author's projects: *Analysing South-South Humanitarian Responses to Displacement*, which has received funding from the European Research Council (ERC) under the European Union's Horizon 2020 research and innovation programme (grant agreement No 715582); and *Local Community Experiences of and Responses to Displacement from Syria (Refugee Hosts)*, which has received funding from the UK Arts and Humanities Research Council (grand agreement No AH/P005438/1).
2. On critiques of the interpellation of women, children and LGBTIQI refugees as ‘particular’ and ‘exceptional’ versus the normative cisgender male, for instance, see Fiddian-Qasmiyeh (2014).
3. In 1994, the UN General Assembly entrusted UNHCR with a global mandate for the identification, prevention and reduction of statelessness and for the international protection of stateless persons. See: UN General Assembly Resolutions A/RES/49/169 of 23 December 1994 and A/RES/50/152 of 21 December 1995.
4. Art. 35 and 36, 1951 Convention; Art II, 1967 Protocol; Art. 56, 1945 United Nations Charter.

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