The End of Asylum

A Pillar of the Liberal Order Is Collapsing—but Does Anyone Care?

By Nanjala Nyabola, FOREIGN AFFAIRS, October 10, 2019

A small tent city is taking shape in Tapachula, on the Mexican-Guatemalan border, and its inhabitants are living proof of the systematic erosion of one of the foundational principles of the post–World War II international order. The residents are primarily refugees and migrants from African countries who fled political persecution, social upheaval, and economic uncertainty, taking one of the longest and most perilous migration routes in the world in the hope of reaching the United States.

Until recently, most would have been granted a 21-day grace period to either normalize their residency status in Mexico or continue on to the U.S. border. But since the U.S. Supreme Court ruled in May that the administration of President Donald Trump can deny asylum to anyone who has crossed a third country en route to the U.S. border, Mexico has started denying Africans free passage through its territory. And so the migrants arriving in Tapachula have nowhere to go. They are trapped between hard-line U.S. asylum policies, Mexico’s acquiescence to those policies, and a growing global backlash against anyone seeking asylum.

The United States is far from the only country to slam its gates on those fleeing crumbling social, political, and economic systems. Around the world, rich and poor countries alike are pulling up their drawbridges, slashing the number of refugees they are willing to accept, and denying asylum to
those who might have been admitted in the past. Europe, for instance, sank to a new nadir in the summer of 2019 by criminalizing rescue in the Mediterranean, allowing preventable deaths at sea, and forcibly returning vulnerable people to torture and indefinite detention in Libya.

In Africa, Asia, and South America, the mood is much the same. Kenya is building a wall along its border with Somalia and sending thousands of Somali refugees back into a war zone. Bangladesh plans to repatriate thousands of Rohingya refugees to Myanmar with the help of the UN Refugee Agency, despite the fact that other UN agencies warn that returnees still face the threat of genocide. And across South America and the Caribbean, Venezuelans fleeing their country’s economic collapse have been met with sudden policy changes designed to make them ineligible for asylum, while Australia’s extraterritorial detention system, based on the Pacific island of Nauru, remains a symbol of the violent lengths to which that country is willing to go to prevent people from seeking safety within its borders.

Demand for asylum has never been higher, with more than 25.9 million people around the world having fled their countries as a result of war and instability. Yet the list of countries willing to take them in is shrinking by the day, and the international system that created and is bound to protect the right to asylum is increasingly complicit in its demise. If there were a theme song to 2019, it would be a dirge for the end of asylum.

ROOTS OF AN INVOLABLE RIGHT

Derived from the ancient Greek asulos, which roughly translates to “inviolable,” the word “asylum” first entered the
English lexicon in the late Middle Ages, when it was understood to mean “an inviolable shelter or protection from pursuit or arrest.” By definition, an asylum seeker was a person who sought a form of protection that could never be violated, broken, or infringed upon. Throughout history, various nations have recognized or aspired to some version of the right to asylum—from the ancient Greek and Hebrew civilizations to medieval England and the French First Republic.

In Europe, the history of asylum was closely intertwined with that of religious discrimination and strife. When the Catholic monarchs of Spain ordered the expulsion of hundreds of thousands of Jews in 1492, for example, many sought refuge in Turkey, Italy, and North Africa. In fact, many of the atrocities of World War II were the culmination of violent and discriminatory practices that had caused episodic displacement for centuries. One major distinction of the Nazi period, however, was that targeted groups, including Jews, Roma, Sinti, and homosexuals, saw their avenues of escape gradually closed off. No country was willing to take them in.

In 1938, representatives of 32 countries met in Évian, France, to try to agree on a coordinated response to the refugee crisis in Europe. While all recognized the gravity of the situation, most steadfastly refused to accept more refugees. Thus, in 1939, a ship carrying more than 900 Jews fleeing Nazi persecution was turned away by Cuba, the United States, and finally Canada, before it returned to Europe, where the Nazis eventually executed 254 of the passengers.

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This shameful history explains the centrality of the principle of asylum to the post–World War II international order. Its inviolability was seen as necessary to end Europe’s endless cycle of war and displacement. The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948, declared that “everyone has the right to seek and to enjoy in other countries asylum from persecution.” The 1951 Convention Relating to the Status of Refugees codified this protection for anyone persecuted on the basis of race, religion, nationality, political opinion, or membership in a particular social group. However, the convention stopped short of requiring countries to grant qualifying individuals asylum, saying only that they should do so.

As a result, asylum became an ad hoc and often political affair. During the Cold War, both the United States and the Soviet Union almost always granted asylum to political dissidents from the other side, while extending permissive immigration policies toward countries in their spheres of influence. In much of the rest of the world, asylum was handled on a situational basis—again, often to serve explicitly political ends. For example, people fleeing apartheid in Zimbabwe and South Africa routinely received protection, legal status, and travel documents from other African countries looking to contribute to the broader antiapartheid struggle. In his autobiography, Nelson Mandela describes his journey through 13 African countries in 1967, using travel documents granted by Tanzania and Ethiopia.

After the end of the Cold War, world powers had less interest and fewer opportunities to instrumentalize asylum, and refugee protection became more formalized as a legal and bureaucratic practice. At the same time, however, civil
conflicts in places such as Somalia, Angola, and the former Yugoslavia produced extended turmoil and millions of refugees. As pressure mounted on receiving countries, many decided that these refugees did not meet the rigid bureaucratic requirements of the 1951 refugee convention: fear of general violence or instability did not fit neatly into any of the five narrow categories of persecution outlined in the UN convention. When millions needed asylum the most, countries defined the right as narrowly as they could so as to shoulder the least-possible burden.

THE AGE OF ENCAMPMENT

Thus began the age of encampment. Around the world, countries receiving large numbers of refugees began to force the displaced into camps. Usually, the host governments granted these new arrivals prima facie refugee status, because they had fled their home countries en masse, but rarely did they go through the process of adjudicating individual asylum claims. As a result, these people were often treated as second-class refugees, unable to access the same rights and freedoms as refugees granted asylum through an individual determination process or resettled to a third country such as the United States or Canada. Many were denied freedom of movement, barred from receiving international travel documents, and given limited access to education and health care outside the camp.

The scale of displacement after the end of the Cold War quickly overwhelmed major host countries such as Kenya and Pakistan, as well as the UN system that kept the camps running. People with prima facie recognition but not full refugee status remained in limbo for decades. Some countries tightened the bureaucratic standards for full status even
further, and many applications stalled indefinitely. Even then, the host countries insisted that the camps be treated as temporary, a designation that made the denial of full refugee status more politically palatable.

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The alarming rise in encampment—and the realization that the camps were anything but temporary—should have catalyzed a review of the 1951 convention with the aim of closing the gap between refugees with full status and those who remained in camps. Instead, the international community responded with a measure of delusion, refusing to recognize that the camps were slowly becoming permanent open-air prisons. To agree on a new convention at a time when more and more countries wanted less and less asylum would no doubt have been difficult. Already, the guiding philosophy in many countries had shifted from default inclusion to default exclusion. But failure to end the two-tiered system, in which some refugees enjoy the full protections of the 1951 refugee convention and some remain at the mercy of host governments—perpetual asylum seekers—set the stage for the current crisis.

That most of the countries hosting large numbers of asylum seekers were poor countries, while rich countries led the way in eroding the right to asylum, was no accident. UN agencies, whose budgets were mainly funded by rich countries, were complicit in maintaining this status quo. Some asylum seekers were eventually resettled from the camps to third countries, mainly in the developed world, but only a tiny fraction of those
in need of asylum. And so the camps became permanent cities. Today, there are millions of people around the world who have never known life outside of a refugee camp. The Dadaab refugee complex in Kenya, for example, was until recently the largest refugee camp in the world, with a population of more than 500,000. But Dadaab doesn’t exist on official maps of Kenya, even though at its peak it would have been the country’s third-largest city. Its residents enjoy none of the rights of Kenyan citizenship.

HOW ASYLUM ENDS

Today, the status of asylum as an international legal principle is more tenuous than ever. The age of encampment has led to an intensifying global retrenchment, as the poor countries bearing the brunt of the burden are now reluctant to accept more asylum seekers. Some, with the cooperation of the United Nations, are actively returning refugees to conflict zones, in clear breach of the 1951 convention.

At the same time, crises not contemplated at the time of the 1951 convention expose the regime’s inadequacy. Large-scale commercial logging has displaced whole indigenous communities from the rainforests of Brazil and Indonesia. Rising sea levels threaten island nations and coastal cities whose residents could soon be uprooted. And higher global temperatures will eventually make parts of the world uninhabitable while fueling extreme weather events such as Hurricane Dorian, which leveled much of the Bahamas earlier this year. Yet there is no internationally recognized definition of a climate refugee, no doubt because many countries are slow to recognize the threat.
In an ideal world, now would be the time to review and update the 1951 refugee convention. That was the original goal of many who pushed for the Global Compact on Refugees, a new international framework for addressing the refugee crisis, which the UN General Assembly passed last year. But the nonbinding compact fell far short of expectations, failing to sufficiently shift the responsibility for hosting refugees from poor to rich countries and doing nothing to defend or expand the right to asylum. Along with Prime Minister Viktor Orban’s Hungary, the United States nonetheless voted against the Global Compact on Refugees, limited and toothless though it was.

Both of the ideas embedded in the historical definition of asylum—inviolability and protection—are under attack as never before. Last month, the incoming head of the European Commission, Ursula von der Leyen, changed the title of her migration commissioner to “vice president for protecting our European way of life,” seemingly endorsing the idea that migration is a threat to Europe. There was a moment of social media outrage, but the discourse around refugees in Europe remains unchanged. Few political leaders anywhere in the world are willing to defend the inviolability of the right to asylum. And this is how asylum will end—in a low boil of ambivalence that will eventually consume this foundational principle of the liberal order.