

Migration: Benefiting Australia

PART 4 :

International asylum and humanitarian migration

8 Humanitarian flows and the international system of protection

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8.1 Executive summary

Ease of transportation, the revolution in communications, the enduring economic crisis of the third world, protracted internal conflicts and social upheavals have led to a globalisation of population displacement. The end result is that the world is today, faced with a combined mass of legal and illegal immigrants and refugees. Within this movement, the distinction between a refugee and an illegal migrant or between a person seeking asylum because he/she is in danger and a person attempting to emigrate is becoming increasingly blurred.

For the countries of destination, this phenomenon is socially destabilising. It challenges existing laws, presents a security risk and its cost is exorbitant.

Governments faced with problems of this nature can take essentially two measures. At the national level, they can adopt coherent, rational migration and asylum policies, which are realistic and implemental. Within this perspective, immigration in itself is neither a positive nor a negative phenomenon. Indeed the parameters of an immigration policy are the social or economic needs of the recipient country, its capacity of absorption and the profile of the prospective immigrant.

Alternatively, asylum is a moral imperative, albeit one that has to be managed. Managing asylum means implementing the feasible rather than promoting the unfeasible and, even more so, preserving the principal by curbing the abuses which are causing it to collapse under its own weight.

8.2 Humanitarian flows & the international system of protection

The purpose of this presentation is to describe the international system of protection and the challenges faced in particular by the asylum systems of industrialised democracies as a result of changing patterns of international migration. This paper is designed to sketch a broad canvas for further discussion.

Managing migration flows is one of the great challenges of globalisation. Ensuring the protection of refugees, by guaranteeing their right of asylum, is the main moral component of this challenge.

The word asylum comes from the Greek language. It describes a place of refuge, where a man could stay to escape from the reach of the power of the state. In keeping with the religious origin of the concept, the place of asylum was traditionally the temple, that is

to say the place of worship. However, if the person who had sought refuge in the holy place had committed a blatant crime he would be denied food and water so as to compel him to leave the place of worship. This then enabled the temporal power to lay hand on him and render him accountable for his misdeeds.

In other words, a fundamental issue with asylum was management. 3000 years later, the problem is still unchanged. Asylum without management leads to abuse, which in turn leads to the erosion of the principle. Thus the preservation of the principle requires that it be managed. The problem then and today is how?

To manage an asylum process essentially means answering three broad questions: Firstly, who is a refugee? Secondly, where should he/she seek asylum? Thirdly, for how long?

A refugee is defined by persecution, be it for political, religious or social reasons. Somebody seeking asylum is by definition an asylum seeker. If the person's claim to asylum conforms to the definition of a refugee, he/she is recognised as such. If it does not conform he/she is not. One is therefore either a refugee or one is not.

Traditionally refugees sought asylum within their own cultural and geographic environment with the ultimate aim of returning home when the danger for them was over. While this situation still endures in some parts of the world, with refugees seeking asylum in neighbouring countries or in their own region, it has become increasingly undermined by a new phenomenon which emerged in the late 1980's; globalisation.

Ease of transportation, the global revolution in communications, the enduring economic crisis of the third world, combined with protracted internal conflicts and social upheavals which have further fuelled the lingering discontent of the underdeveloped, have led to a globalisation of population displacement. The end result is that today a combined mass of legal and illegal migrants, asylum seekers and refugees. Within this

global movement, the purpose, increasingly, is not so much to leave, as it is to arrive with two constants.

First, asylum seekers / migrants essentially converge towards countries where they will join an existing community of compatriots. And secondly the population flux will generally move towards those countries that provide the most generous social benefits. In other words, for the refugee component of the movement, personal convenience increasingly takes precedence over protection and what might have started, as an imperative quest for refuge becomes a quest for social grants. While the phenomenon is subjectively understandable it becomes, when multiplied by the hundreds of thousands, unbearable to the few industrialised countries that end up carrying a disproportionate burden of unauthorised arrivals.

In 1983 the total arrival of asylum seekers in Western Europe was a manageable 73.700. In 1992 it reached 692.000. In 1983 some 4200 asylum requests were made in the UK. In the year 2000, the number reached some 70.000. At the other end of the spectrum, asylum requests in Italy fell from 3000 in 1983 to 681 in 1996. In other words, some 2.4 million asylum applications were filed in Western Europe between 1991 and 1995. As the number of asylum claims increased so did the costs. It is estimated that from 1990 to 1998, the European countries spent between 40 and 45 billion US dollars managing their asylum systems. In 2001 the cost was projected at some 10 billion US dollars.

By any standards, the exercise is staggeringly costly, and even more so for two reasons. First this sum, or part of it, could have been far better spent in assisting the countries of first asylum in the third world that receive refugees, not to say in the countries of origin. Secondly it is one thing to spend money to care for refugee and quite another if the overwhelming majority of arrivals are either not refugees, or if they are refugees, they already benefit from asylum. Indeed at best only 10% of the asylum seekers processed by the Western European asylum system were found to have genuine

claims to refugee status. Thus what the procedure underlined was the fundamental difference between a hapless refugee in desperate need of sanctuary and a refugee who already has asylum but wishes to further emigrate for reasons unrelated to refugee status. Intimately what the industrialised countries were confronted with were not so much refugees in need of asylum but either illegal immigrants seeking refugee status or refugees already benefiting from asylum and seeking to emigrate by evading normal immigration procedures.

Confronted with a crisis which showed no sign of abating the western European governments, in the late 1980's had to reluctantly acknowledge that their asylum systems which had been designed both to handle far smaller numbers and to address claims which in their majority were those of genuine refugees were now collapsing under their own weight. Within this reappraisal, the 1951 Convention was not the issue. The Convention, in substance only sets out two main principals. First the definition of a refugee and second that he or she should not be sent back to a country or area where he or she would be persecuted. As they stand, these principals remain unquestioned. Indeed, through various instruments such as the Convention Against Torture or the creation of a "humanitarian status" the industrialised democracies had already, on their own moved far beyond the Refugee Convention. What was at issue was the various national pieces of legislation that spelled out the implementation of the Refugee Convention. While these procedures, by and large, were exceedingly generous and made great efforts to ensure that no asylum seeker with a genuine claim to refugee status be excluded, they were exceedingly long and costly. However, they were not geared to address a massive and complex influx of which the refugee component sometimes did not exceed a few percentages.

The problem for the industrialised democracies was simple: how to ensure the preservation of asylum while curbing the potential for abuses. To say that the solutions are incomplete, painful to implement and sometimes difficult to realistically identify is an understatement. One of the approaches has been Temporary Protection. Confronted with a mass exodus, Temporary Protection provides blanket asylum for the duration of

the crisis. Without a time-consuming and costly individual screening, followed by repatriation, voluntary or not, once the conflict has ended.

This solution was successfully applied by the Europeans in the case of the crisis in Bosnia and Kosovo. Regarding continued unauthorised arrivals, states have increasingly sought to implement the principle of first asylum, which is the notion that an asylum seeker should request asylum in the first country where he is not at risk. A Tamil who requests asylum in Switzerland after having transited through India, Hungary, Poland and Germany is a case in point. While he might well be a refugee, he was not in danger in any of the countries of transit, and thus his request for asylum in Switzerland was motivated by personal convenience and not by a quest for safety. Acting on this principle, European democracies now have reciprocal return agreements and people intercepted at the border are returned from Holland and Denmark to Germany, from Germany to Poland and the Czech republic and the like. Ultimately, what the system seeks to do is to delink asylum from the presence of the asylum seeker in the state of preferred refuge. This is what the US Cuban asylum policy has achieved.

Cuban boat people headed for the US are now intercepted on the high seas by the US coast guard and forced on board. There they are given a rapid screening for a presumption of refugee status. Those who are not presumed to be refugees are returned to Havana within 12 hours. Those with a positive presumption are taken to Guantanamo where they are placed in detention while they are being screened. The screened-out are then sent back to Cuba and the screened-in are resettled in a number of countries excluding the US. In parallel, the US has a regular emigration program from Cuba. The US approach is perfectly consonant with the Convention because it does provide that a refugee will have access to asylum procedures and will be provided with a place of protection. However it does not permit refugees to either impose their presence on a preferred country of destination.

Acting on the same principle, the *Aegean Sea Initiative*, presently under discussion between Italy, Albania and Greece would provide for the creation in Albania of a

holding centre for all illegal arrivals in Italy. There the inmates would be processed, with the recognised refugees accepted for resettlement and the others deported to their countries of origin.

If we look beyond the Cuban example, it is clear that addressing the asylum/migration issue requires an international effort and cannot be addressed by one country alone - the country of origin, the country of first asylum, the various countries of transit, the countries of destination- are involved. These international efforts are now an ongoing process and include the Bali conference, the Bern Initiative, the Global Consultations, the IOM MPRP and the ICMPD Budapest Process. But whatever the indispensable International efforts, there is no substitute for realistic and implemented National Policies.

Within this comprehensive effort, as the Europeans have learned to their chagrin, there is no room for complacency. The effort can also not be unprincipled because we are dealing with asylum, which is a moral principle, albeit one which is exercised in the real world. Thus the challenge is to find a realistic balance between what should be done and what can be done. As of today, and with all their imperfections, the industrialised democracies, have not failed the principle of Asylum.

