

Afterword

What of the Future?

During its presidency of the EU in the second half of 1998, Austria put forward a ‘Strategy Document on Immigration and Asylum Policy’. The main thrust of this was to strengthen efforts to make the wall round Fortress Europe increasingly impregnable. Front line states to the east have already been made to shoulder responsibilities for keeping asylum-seekers out of the EU, but if this and other measures fail to prevent an influx of refugees, then, the policy document suggested, further strategies might have to be developed:

‘the question actually arises as to whether a new approach should also include initial steps harking back to the beginnings of the development of asylum law when the affording of protection was not seen as a subjective right but rather as a political offer on the part of a host country’.¹

This bland phraseology masks an extraordinary suggestion, namely that the Convention should be abandoned, and Article 14 of the Universal Declaration of Human Rights annulled. Those fleeing persecution would then no longer be able to rely on the protection of the Convention. Protection would no longer be a right. Asylum would be solely at the invitation of a state.²

This suggestion was shelved for the time being, but it rhymes with hints from the present Home Secretary that if the 1999 Asylum Bill does not work, then other ways would have to be sought, rumours that at least one senior minister under the previous government recommended that the UK should withdraw from the Convention, and the present Home Secretary’s threat to demand a re-negotiation of

1. Quoted in Berkowitz and Doebbler, ‘The European Dimensions’, 18.

2. *Ibid.*, 19.

the UN Convention on Refugees when he was faced with a hijacked planeload of Afghans seeking asylum in January 2000.

That section of the Austrian paper was withdrawn, but it lies waiting in the wings. Until now the idea of withdrawal from the Convention has been unthinkable. However, all those concerned for refugees, as well as for the ethical health of the nation, and, indeed of the EU, need to take the threat seriously. It should be made quite clear to all EU governments that such a broad section of the citizenry would be opposed to any action of this kind that it cannot be seriously considered.

Berkowitz and Doebbler, in whose article the Austrian suggestion quoted above is discussed, suggest that the few rays of light in what they describe as a dark picture come from the work of NGOs, refugee community groups and refugee agencies, who have organised themselves into lobbies and work to ensure respect for refugee rights. They name, by way of example, the British NGO, Asylum Aid, which, together with lawyers and other agencies is ‘at the forefront of the protection of asylum-seekers’ rights in Western Europe’.³ These are the groups that can make this retrograde suggestion unthinkable. The previous chapter has shown that the groups involved in supporting refugees and asylum-seekers forms a large constituency.

In the UK, the Refugee Council, Amnesty International, the Joint Council for the Welfare of Immigrants and others have, over the last few years, spelt out again and again the basic principles of fair treatment for people seeking asylum, but ARC’s positive proposals – set out in their study, *Providing Protection* – were not adopted.

The only way in which asylum-seekers can be protected would therefore appear to be through legal action, and there the judges have, on a number of notable occasions, come down on the side of fairness and humanity. In Chapter 5 we noted a decision of the Appeal Court which ordered an end to the imprisonment of passport offenders who should have been protected by Article 31.1 of the Refugees Convention. Chapter 8 discussed the Appeal Court ruling that not all EU countries can be considered safe third countries for certain categories of asylum-seekers. France and Germany will not grant asylum to people persecuted by non-state agents even when the state is unwilling or unable to protect them. These judgements are likely to require certain clauses of the 1999 Act to be amended. The test cases had to be brought because merely bringing the issues to the attention of the Home Office was unavailing.

Government policy appears to be to continue with any course of action that is called into question until prevented from doing so by

3. *Ibid.*, 19.

the courts. In Chapter 3 it we saw how asylum-seekers were not informed of the reasons for refusing them asylum until the courts ordered the Home Office to state their reasons for refusal. Chapter 4 described how an in-country right of appeal was resisted until it was thought that the European Court of Human Rights would be bound to find that judicial review did not provide a proper remedy.

If the government is serious both about honouring the Convention, as it says it is, and at the same time about reducing the number of refugees, then the rethinking must begin with the root causes of asylum-seeking rather than with deterrence. A proper immigration policy is needed to replace the present 'No Entry' signs. These patently do not work. This means that arms must not be sold to countries such as Indonesia, which will use them to repress their own populations. Highly indebted poor countries must be relieved of their debt with greater urgency and more concern for the plight of their populations than the IMF and creditor nations have so far shown. The UK has a good record here, but needs to exert pressure on its EU and NATO partners to follow suit. Export credit guarantees should not be given for construction projects which are not soundly based and which may benefit the rich of a country, but at the expense of the poor, and in any case will benefit most the business consortium hired to undertake it. At the time of writing there is a question whether or not to give export credit guarantees to a British company to build the highly controversial Ilisu Dam in Eastern Turkey. This will displace thousands of Kurds, and may well drive some of them to seek asylum in Western Europe, as well as causing a diplomatic crisis over the distribution of the waters of the Tigris with countries further downstream. Businesses have to be pressured not to accept contracts in countries where human rights are grossly abused, unless they are prepared to use their clout to demand improvements.⁴ Currently Turkey is resisting any suggestion that the resettlement programmes for those displaced by the dam should be internationally monitored. The dreadful imbroglio that Shell found itself involved in when the Ogoni people of the Niger Delta rose up against the pollution of their land and demanded reparation has impressed on some businesses the need for ecological and human rights auditing.

4. This point was made to the writer by a member of the IBM Cambridge Course, 1999, at the end of a discussion about the refugee crisis. He believed that his company would wish to follow an ethical agenda of this sort. The whole group, whose members were drawn from nineteen different countries, agreed that dealing with root causes was where coping with the refugee crisis had to start. Mere deterrence and wall building could not solve the problem.

MBA courses have a responsibility, when teaching business ethics, to cover this dimension. Amnesty International is already working with business firms on human rights issues.

Stopping people needing to flee persecution should, therefore, be in the forefront of every country's refugee policy. There may be costs associated with that, but there are also costs involved in the fall back policy of having to support those forced to flee. If commercial deals and arms sales are encouraged at the expense of the environment and protecting human rights, then we must expect to pay the price in the shape of increasing numbers of people being forced to seek asylum. More ethical foreign and trade policies will not turn the situation around overnight, but to date this approach – dealing with the root causes of the refugee crisis – has barely been tried by Western governments.

When it comes to the situation in the UK, the imposition of more and more deterrent measures to prevent refugees from finding safety is not the answer. Such measures fail to deter, and they endanger those in genuine need of protection. Illegal workers find jobs all too easily and are exploited on farms that seek cheap, seasonal labour and in the restaurant and rag trades. At the same time as the Home Office is working against traffickers with the Chinese police in Fujien and Gwandong, Chinese nurses are being recruited into the NHS – albeit for a higher wage than they could earn at home, but one which does not attract sufficient British women into the profession.

Greater skill and efficiency in the Asylum Directorate of the Home Office is also urgently needed. If people who do not qualify for asylum know that they will be sent home swiftly, then those who are exploiting the system may be deterred. This much the Home Office has grasped. If this is to happen, however, the initial decision-making process must be improved so that it can be trusted. At the moment, no one with an expert knowledge of the country from which an asylum-seeker has fled ever sits down in the Home Office and looks through the case to see if the applicant is at risk. No one in the Home Office has the required degree of expertise to do so. The person who makes the decision has never even met the asylum-seeker face to face, so how can credibility be properly assessed?⁵ Computerisation alone cannot do what is required. Skilled country experts must be employed. Refugee agencies need to become 'insiders' again, and those assisting refugees must be able to trust the basic fairness of the procedures. At the moment they find themselves unable to do so.

5. This was stated forcibly by Guy Goodwin-Gill, Professor of International Refugee Law, University of Oxford, in a letter to *The Times*, 28 October 1999.

Once an asylum-seeker receives a refusal, he or she must be given adequate time to seek advice and decide whether or not to appeal. Five days is not enough. Some people are unable even to access a solicitor in so short a time. Reversing a decision to refuse an appeal because it has been made out of time is far more wasteful of time than allowing adequate time in which to prepare grounds of appeal. Unless enough time is given, everyone is likely to appeal because there is no time to persuade those without good grounds that their appeals will fail. We noted Lord Ackner's warning on this score in Chapter 8. If initial decisions become trusted, and if advisers have sufficient time to talk things through with their clients, then more of those who have been refused might be told they have no hope of success at appeal, and could be encouraged to contact one of the agencies that provide help to returnees.

A wise government would decide on a wider amnesty than is being offered at present, and would sell it to the public as they very well could if they saw the necessity to do so. Unless the backlog is more substantially cleared than present proposals provide for, too many staff are taken up with the backlog for new arrivals to be swiftly and competently dealt with. Other countries, notably the USA, have given amnesties when that has become the only way in which the situation can be dealt with.

The appeals system, too, needs to be improved. Research has shown up major deficiencies, and these need to be remedied.

Yasmin Alibhai-Brown, in *True Colours*, the report she prepared for IPPR, has made excellent suggestions in her final chapter about positive ways in which government can act and talk in order to promote good race relations. The rhetoric about asylum-seekers needs to be modified. Denunciations of 'economic migrants' and 'scroungers' and constant reference to 'abusive claims' and 'floods of bogus asylum-seekers' create a climate of opinion in which the general public cannot think through these issues sensibly. It is time that attention was drawn to the desire of refugees to return home, to the many groups which have returned home when conditions in their home countries have changed, to the fact that for years the rate of emigration has exceeded the rate of immigration, and to all that immigrants and refugees have contributed to the cultural and economic life of this country.

Reasonable subsistence compatible with human dignity must be made available to those who seek asylum here. They should not be driven into deep poverty, with the danger that in desperation, especially if they have children, they will be reduced to fraud and theft. Government is in danger of losing the goodwill of NGOs who feel

they are increasingly being asked to make provisions that are really the responsibility of the state. They do not wish to become 'state agents' whose voices are muffled as a result. Support must not be left to the discretion of a Minister. A decent subsistence must be a right. We ought to be ashamed if it were not.

The people of Britain need to feel proud again of generosity, openness, and concern for the underdog. Concentration on competitiveness and success must not be allowed to erode these values or we shall end up poorer, our ethical capital eroded. A great many refugees flee to Britain because they still think this country is one where human rights and justice are respected. We ought to feel proud of that, and work to see that it remains true.

Finally, all who are concerned about justice need to ensure that any consideration of withdrawal from the Convention, or modification of it, is made unthinkable. What the Home Secretary proposed in June 2000 was plainly unworkable, and a trenchant criticism of the proposals was made by Keith Best, Chief Executive of the Immigration Advisory Service at meeting in June 2000 soon after they were made. No doubt work will go on to refine Straw's suggestions which would mean that the 'burden' of asylum would be pushed away from the rich countries of the EU and other highly industrialised countries onto the poorer countries at their margins, perhaps through compliance being made a condition of aid. The danger is that these poorer countries will be driven to finding ways of preventing the entrance of asylum-seekers, and that endangered people will be prevented from finding refuge. The subversion of the 1951 Convention on Refugees must not be permitted to take place as a result of undemocratic and secretive consultation processes.

'Wherever there is lost the consciousness that every man is an object of concern just because he is a man, civilisation and morals are shaken, and the advance to fully developed inhumanity is only a question of time' (Albert Schweitzer, 1925).⁶

6. Quoted in Victor Gollancz, *A Year of Grace*, London: 1950, Penguin Books, 1955, 9.