

Human Smuggling and Closed Borders

The Future of the Asylum Process

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As the plane circles over London and its wheels come down for landing, a figure falls through the sky. It is the body of a boy, fallen from the wheel arch where he had hidden before the plane took off in India. When the wheel retracted into the undergarriage, he was crushed to death. Another boy, this time African, suffers a similar fate a month later. The captain of the aircraft asks: How desperate do you have to be to travel like this?

The CARF collective in London calculated that last year, 358 people are known to have died trying to get to western Europe. 280 of them drowned on Christmas day when the small, leaky boat they were put in for the last stage of their journey to Greece was rammed by the larger ship they had disembarked from, apparently deliberately. Many more

stowaways die on ships, or in container lorries, from suffocation, or from the effects of toxic fumes, or from starvation or thirst.

The people whose bodies are found in container lorries, in ships, and drowned and washed up on a beach, and those rescued from drifting rafts in sub-zero temperatures in the Baltic, all have paid huge sums of money, often over 2,000 USD to be smuggled to western Europe. And the smuggling trade, which is so often condemned by Europe's ministers responsible for immigration, has been created by them out of their anti-immigrant and anti-refugee policies.

Northern European governments decided in the early 1970s to ban migrant workers, and have spent the last twenty-odd years saying that immigrants, once welcomed, are bad for economy, taking the jobs of indigenous workers, using precious resources such as housing, welfare and health care. Before that, migrant labour had rebuilt much of Europe after the Second World War. Britain used east European

refugees and then recruited immigrants from the Caribbean, the Indian sub-continent and from the black countries of the old Empire to rebuild the economic infrastructure, to get staff for the hospitals and public transport and to do the dirty work in the factories. Germany used guest workers from southern Europe, and then went further afield to Turkey as its labour needs increased. France and Belgium looked to their former colonies in Africa. Most immigrants to France were illegal, not because they were not wanted but because employers did not want the delays, bureaucracy and expense of going through the Immigration Office. Once in the country, they were easily regularised on production of proof that they had a job.

Fortune magazine observed in 1970 or so that Europe's economy had become dependent on migrant labour, an estimated 11 million workers. By 1970 the immigrants – arrived as young adults they had costed the host countries nothing in education and welfare – had established permanent communities and were

Edited from the speech made by Frances Webber, Lawyer, an English expert of the questions of human rights and refugees, at the seminar "Illegal migration in Europe", Helsinki 24 April 1997, arranged by Finnish Refugee Council.

bringing up children. In white societies, visible and growing black communities were politically unpopular. Simultaneously, the economies of western Europe were slowing down and the demand for labour could be filled more easily from inside Europe.

Of course, the immigrants were still needed to do the low-paid jobs, although immigration from outside the EEC was made illegal. By making this labour force illegal, the governments ensured that these workers would stay at the bottom, making no or few demands and keeping wages low. For without security of status, they could not organise to employment rights, let alone equality in education, health and housing.

Southern European states were much slower to stop immigration for work. Spain, Portugal, Italy and Greece were still countries of industrial growth and massive expansion of agricultural capitalism, which attracted immigrants mainly from northern Africa. Italy's interior minister cheerfully admitted to "about a million" immigrant workers in the late 1980s, unregulated but welcome, doing the jobs others no longer wanted, mainly in agriculture. It was only at the EEC's insistence that these countries, described as "the weak link in the fence", began to tighten up their immigration laws.

Thus, access to the European labour market has been all but easy for non-Europeans over the past two decades. Since the early 1980s, we have seen a similar process of criminalisation going on in relation to refugees. From



1980 onwards, more refugees from war, political repression and social disintegration began arriving on Europe's doorstep. But European governments saw the issue not as a humanitarian one but as another immigration problem, and responded by building up the walls of the "fortress" to prevent the entry of more poor people from the south – and later, from the east.

Of course, it wasn't possible to ban refugees. The states of Europe were all signatories to the 1951 Geneva Convention on Refugees and its 1967 Protocol, which prevented refugees from being returned to the country from which they had fled. Some states, including France and Ger-

many, had incorporated the Geneva Convention guarantees into their constitution. None was prepared to renege publicly on their international obligations, but none wanted to meet them. Thus what we have seen in the past fifteen years or so is the most restrictive possible interpretation of those obligations. The Convention does not speak of admitting asylum-seekers, for example, it merely prevents their deportation. So most states adopted visa requirements. Visas are not available for asylum-seekers wishing to leave their own country; a person is not recognised as a refugee under the Convention until she is outside her own country. Once outside her own country

she cannot get a refugee visa for an European country as she is now safe.

The combination of visa requirements and carrier sanctions (criminalising carriers which bring in passengers without visas) did much to create the smuggling trade. Airlines are naturally unwilling to pay fines of £2,000 per passenger. If there is doubt about a passenger's documentation she won't be sold a ticket or allowed on the aircraft. And when it's impossible to travel legally, desperate people are going to find illegal ways to travel.

Schengen II, agreed in 1990, committed all signatories to tough border controls and visa requirements. These measures were not designed expressly against refugees, but affected them disproportionately. The companion Dublin Accord, signed in the same year by the twelve member states of the EC, was the first agreement to tackle asylum-seekers explicitly. It effectively institutionalised the grim game of pass the parcel, or "refugees in orbit" which had been growing in Europe as a result of the "safe third country" policy.

Under the Convention, asylum-seekers could no longer decide where they wished to claim asylum (unless they could get a plane directly there). Their claim would be decided in the first member state of EC which allowed them into the Community territory, and if refused by one member state, they could no longer do it in another one. Since then (although the Convention

has not been ratified by all signatories and is still not in force), asylum-seekers arriving at British seaports frequently get no further. They are returned to Belgium or France, the "safe" country they came from on the boat to England. It doesn't matter how many sisters, uncles or adult children they have in Britain. Preference, language, the presence of a supportive exile community, count for nothing. The same rule applies to those arriving by air, if they have transitted through a "safe" country.

A Somali couple with over 100 relatives in Britain and none anywhere else were ordered back to Italy. Another Somali, a man who collapsed on arrival in Britain and was found to have shrapnel lodged in his head and neck was given pain-killers and sent back to Italy, and the High Court did not see the problem. The sole survivor of a group of five Romanians who came in by lorry from France – the others died from inhalation of toxic fumes from the chemical used to clean the container – was detained in prison for deportation to France, despite his swallowing razor blades in despair, and again the court did not see fit to intervene.

When a right of appeal against the decision to return a refugee to a "safe" transit country was introduced in 1993, the situation changed rapidly. Over half of the appeals succeeded. Immigration adjudicators decided that France, Belgium and Italy in particular were not "safe" for asylum-seekers, because of the risk of chain deportations. But this respite was shortlived. So successful were

these appeals that they were abolished in the law of 1996. Now, you can only appeal after you have been deported. There are more and more restrictive interpretations of the refugee definition; fewer and fewer refugees recognised; the virtual abolition of the "B-status" or exceptional leave for "humanitarian" refugees (ie those fleeing war or civil war, who are not recognised as refugees under the Geneva Convention because they are not in fear of "persecution").

It is not that those arriving have become less worthy of belief or compassion; what has happened is a change in the culture, the creation of a culture of rejection, by the combination of repressive legislation, tighter procedures and criteria, and strident propaganda labelling the asylum-seekers as "illegal immigrants". Under the 1996 law in Britain, anyone arriving with no documents or on forged documents is put on the fast-track procedure, as if the mere possession of false documents renders the entire asylum claim false. Ironically, those arriving on their own passports are told that they cannot be genuine refugees.

Asylum procedures have become a nightmare. First, there is the compulsory fingerprinting and the possibility of the detention (in Britain there is no time limit on detention of asylum-seekers and some have been held in prison for years). Then, there is the disbelief. Few asylum-seekers come equipped with documentary proof of their claim. Those that do are often told that the documents they produce are

not genuine. The asylum-seekers are interviewed, often immediately on arrival, often confused, disorientated and frightened, sometimes with no interpreter, usually with no legal advice. Failure to mention something at that interview which is subsequently mentioned brings accusations of fabrication. Discrepancies over detentions or dates and ordinary human fallibility is seen as evidence of deliberate deception. The fact that the asylum-seeker was able to leave is seen as evidence that she is lying.

An Iranian was told: "Your brother was executed but you were not; the authorities clearly have no interest in you." Similarly, a Colombian was told that "Your enemies have had ample opportunity to kill you but they have not done so"; the claim was therefore bogus, because the claimant was still alive. The only good refugee seems to be a dead one, or one safely in prison in his own country.

Methods of expulsion have become more efficient and more brutal. There are now jointly chartered deportation planes taking off from the Netherlands and picking up deportees in France and Germany for destinations in Africa. The point about the charter is not only that the numbers being deported are vastly increasing, but that the procedure is private. When deportees are carried on ordinary commercial flights other passengers and crew complain when deportees are gagged and bound or beaten or drugged. On a charter, often with a military crew, no-one sees, no-one will complain.

All of this comes about through treating people as harmful and dangerous parcels. European immigration and asylum policy has been designed by policemen and politicians, with no input from immigrant and refugee groups. It is therefore racist, defensive, designed to keep poor people from sharing the prosperity of Europe. There might be freedom for capital in Europe's brave new world, but free market policies don't extend either to the goods or the people outside of the borders of the EC. They must remain living underground in precarious existence, vulnerable to all kinds of exploitation, often working in conditions of slavery merely to pay off the huge debt to the smuggler.

Funny, isn't it, how the definition "economic migrant" has turned from a neutral or even positive phrase, with nuances of enterprise and courage, into a wholly negative one when applied to non-Europeans who need to earn a living simply to keep themselves and their families alive. Why should it be acceptable for a European to migrate elsewhere to make a decent living, to "make his fortune", but not for someone from the south? In the context of European immigration and asylum policy, "economic migrant" is a dirty word because migration for work is illegal and governments want to make the public believe that it is also wrong. Phrases like "bogus refugee", "luxury refugee" and "illegal immigrant" are used to make the immigrant or refugee wrong from the start, to make him or her undeserving of sym-

pathy or solidarity, so that they can be fingerprinted, processed, detained and deported like cattle.

The west has helped to create the conditions from which people flee; by imposing devastating austerity in the name of financial stability through the IMF and the World Bank; through GATT and NAFTA; by the arms trade, which keeps repressive regimes from Turkey to Indonesia in control of rebellious populations with electric cattle prods and shackles and bomber aircraft and tanks.

European immigration and asylum policy is compounding the misery caused by European (and American) trade imperatives, and is further polarising European society into affluent EEC citizens and an often invisible sub-class of illegal migrant workers and rejected asylum-seekers. To this sub-class, talk of human and civil rights is a cruel joke. In Europe (as often in their countries of origin) they don't have any. But human rights are indivisible and universal and if that principle is not adhered to, if one group in society is treated with contempt for its human and civil rights, democracy itself is in danger.

The real problem is in treating immigration and asylum as policing issues; in treating the countries of origin of the immigrants and asylum-seekers as virgin territory ripe for exploitation by the multi-nationals, in putting profits before people, and in refusing to accept the human consequences when they appear on Europe's doorstep.