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Asylum Policy in the West: Past Trends, Future Possibilities

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Abstract

This article examines the policy responses of Western countries in the realm of asylum. We begin by explaining the reasons why the asylum issue has made its way up the political agendas of liberal democratic countries in recent years. While applications for asylum have risen in the last two decades, we also highlight the way rights-based constraints and financial costs have contributed to controversy around the issue. We then examine in detail the major policy responses of states to asylum, grouping them into four main categories: measures aiming to prevent access to state territory, measures to deter arrivals, measures to limit stay, and measures to manage arrival. Moving then to explore the efficacy of these measures, we consider the utility of policy making from the viewpoints of states, asylum seekers and refugees, and international society. The article concludes with the presentation of four new directions in which policies could move in order better to square the professed interests of Western states with the needs of refugees for protection.

Keywords: asylum, deterrence, welfare, Western states

JEL classification: F22, J15, H19, O15

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1 Introduction

For much of the post-war period, asylum and immigration were distinct concepts and processes. Throughout the west, asylum was bound up with the Cold War: ‘protection’ meant protection from Communism, and the terms refugee and defector were synonymous. When the public thought about refugees, to the extent it thought about them at all, it associated them with Hungarian freedom fighters or Soviet ballet dancers, both of which were popular figures. As for immigration, it meant different things in different countries: in the settler societies of Canada, Australia and New Zealand, it was a permanent movement of people who sought to try their luck in the new world. In the traditional emigration countries of Europe, it referred to the putatively temporary movement of guestworkers who were expected to feed the European economic machine for a few years before returning home. The important point is that, in both cases, the two movements were everywhere separate.

In the last two decades, they have merged. This fusion is most complete in Europe, where politicians and the public speak of ‘immigration’ and ‘asylum seeking’ interchangeably. Where immigration becomes politicized and subject to far-right exploitation, as it has in Denmark, France, the Netherlands and Italy, asylum seekers are the focus of this hostility. Other contributors to this volume focus on why immigration has folded into asylum; in this paper, we focus on how politicians have responded to this development. Our focus is on Northern countries in general – Western and Central Europe, the US, Canada and Australasia – but we accord somewhat disproportionate attention to the countries of the European Union (EU). The justification for this focus is two-fold: first, it is in these countries that the intermingling of asylum and immigration is most complete; and, second, EU member states have gone furthest in coordinating their policies in order to restrict access to asylum.

Observers of asylum in Europe have interpreted hostility to asylum as hostility immigration *tout court*. This represents a misunderstanding; in fact, all European countries have expanded access for primary immigrants at the same time as they have sought to reduce asylum applications. One way of interpreting this two-fold development is as an effort to sustain the distinction between the two movements while maintaining control over both: nation states, not only in Europe but particularly in Europe, are attempting to retain the capacity to limit asylum seekers’ entry, and they are resisting the conclusion that asylum is a form of uncontrolled immigration. In all likelihood, they will fail. As we illustrate in the first section, EU member states have restricted access to asylum as much as they can while still respecting the 1951 Geneva Convention and their own national constitutions. Indeed, in some instances they have violated the spirit if not the letter of both. Despite these efforts, asylum applications remain high by post-War standards, and there is no let up in the pressures that fuel them. Indeed, north/south wealth disparities and continuing violence and instability mean that, if anything, they may increase. At the same time, legal, moral and practical restraints mean that only a fraction of asylum seekers whose applications are rejected are returned; deportation is not an effective policy tool for combating asylum. These two developments, combined with asylum seekers’ difficulty in adapting to western labour markets and restrictions on their right to work, lead to sharply increasing costs, above all in Europe.

The result is that in most Western countries asylum applications are at levels where they generate deep political controversy and are likely to remain there; that public policy reform has generally not enabled states to reduce these numbers and is not likely to in the future; and that the costs associated with asylum rise with non-return and non-(labour market) incorporation. Moreover, even those few states that have seen rates of asylum seeking drop in recent years (such as Germany and the US) can, we will argue, have little confidence that their success in taming asylum flows will continue. After developing these arguments, we turn in the last section to outline possible paths future asylum policy might take.

2 Context: the politicization of asylum

Since the 1980s, there has been a proliferation of asylum policy reforms designed to reduce, deter and rationalize asylum claims and processing. Few if any policymakers in the 1970s would have predicted the complex battery of asylum measures, and their emergence requires explanation. The short and easy answer is numbers: as asylum applications increased in the late 1980s, and skyrocketed in the early 1990s, policymakers sought ways to reduce them. A sharper answer requires explaining two aspects of the change: why did numbers increase so sharply, and why did states view high numbers as so undesirable? The latter is less obvious than it might seem, as Canada, the US and Australia define themselves as countries of immigration, and Northern Europe welcomed millions of unskilled migrants in the 1950s and 1960s.

The root causes of increased asylum applications can only be examined briefly, but five developments were crucial:

- In 1967, a Protocol was added to the UN Convention on Refugees expanding the application of the Convention to refugees who emerged as a result of events occurring after 1951 and came from countries outside Europe (Suhrke 1997: 218-219).
- The spread of film, television and telecommunications made differences in income, employment and lifestyles across countries better advertized than ever before, while cheaper transcontinental transport made mass movement possible.
- By the early 1970s, France, Germany, Switzerland, Scandinavia and the UK had all ended policies that encouraged or tolerated labour migration from Southern Europe and former colonies/the third world (Castles and Kosack 1973; Hollifield 1992). Around the same time, even countries of permanent settlement, such as Australia, found themselves cutting back on immigration, in part due to rising unemployment.
- From the 1970s, refugee-producing events in the South, and, after 1989, in the Balkans escalated.
- A global industry in the smuggling and, in some cases, trafficking of people has enabled asylum seekers to evade immigration control measures imposed by western nation-states.

These developments have led to a sharp rise in asylum seekers since the 1980s. The following table summarizes this movement.

Table 1
Asylum seekers in select Western countries, 1985-1998 (in thousands)*

Country	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Austria	6.7	8.7	11.4	15.8	21.9	22.8	27.3	16.2	4.7	5.1	5.9	7.0	6.7	13.8	20.1	18.3
Australia								6.1	7.2	5.1	7.6	9.8	9.3	8.2	9.5	13.1
Belgium	5.3	7.7	6.0	5.1	8.1	13.0	15.2	17.8	26.9	14.3	11.4	12.4	11.8	22.0	35.8	42.7
Canada	8.4	23.0	35.0	45.0	19.9	36.7	32.4	37.8	20.3	22.0	26.0	26.0	22.6	23.8	29.3	37.9
Denmark	8.7	9.3	2.8	4.7	4.6	5.3	4.6	13.9	14.4	6.7	5.1	5.9	5.1	5.7	7.0	12.2
Finland	-	-	-	-	0.2	2.5	2.1	3.6	2.0	0.8	0.8	0.7	1.0	0.4	3.1	3.2
France	25.8	23.4	24.8	31.6	60.0	56.0	46.5	28.9	27.6	26.0	20.2	17.2	21.0	22.4	31.0	38.6
Germany	73.9	99.7	57.4	103.1	121.0	193.0	256	438.2	322.6	127.2	127.9	116.4	151.7	98.6	95.1	78.8
Greece	1.4	4.3	6.3	9.3	6.5	4.1	2.7	2.0	0.8	1.3	1.4	1.6	4.4	3.0	1.5	3.0
Ireland	-	-	-	-	-	0.1	0.0	0.0	0.1	0.4	0.4	1.2	3.9	4.6	7.7	10.1
Italy	5.4	6.5	11.0	1.3	2.2	4.7	31.7	2.6	1.6	1.8	1.7	0.6	1.9	11.1	33.4	15.6
Luxembourg	-	-	-	-	-	0.1	0.2	0.1	0.2	0.1	0.2	0.3	0.4	1.7	2.9	0.6
Netherlands	5.7	5.9	13.5	7.5	14.0	21.2	21.6	20.3	35.4	52.5	29.3	22.9	34.4	45.2	39.3	44.0
Norway	0.9	2.7	8.6	6.6	4.4	4.0	4.6	5.2	12.9	3.4	1.5	1.8	2.3	8.4	10.2	10.1
Portugal	0.1	0.3	0.5	0.4	0.2	0.1	0.3	0.7	2.1	0.6	0.5	0.3	0.3	0.4	0.3	0.2
Spain	2.3	2.3	2.5	3.3	4.0	8.6	8.1	11.7	12.6	12.0	5.7	4.7	5.0	6.6	8.4	7.0
Sweden	14.5	14.6	18.1	19.6	32.0	29.0	27.3	84.0	37.6	18.6	9.0	5.8	9.7	12.8	11.2	16.3
Switzerland	9.7	8.6	10.9	16.7	24.4	36.0	41.6	18.0	24.7	16.1	17.0	18.0	24.0	41.3	46.0	17.6
UK	6.2	5.7	5.9	5.7	16.8	38.2	73.4	32.3	28.0	42.2	55.0	27.9	32.5	46.0	71.2	99.0
USA								150.1	207.5	209.6	216.2	155.3	75.7	52.1	46.0	59.3
Totals**	-	-	-	-	320.3	438.7	563.2	695.5	554.2	329.1	293.1	244.5	338.7	367.8	453.5	455.2

Notes: * Rounded figures; ** totals exclude Australia and USA.

Sources: Salt (1999); *World Refugee Survey* (1999); ECRE (1998); UNHCR (1995).

Governments viewed the increased numbers flowing from these developments as undesirable for reasons bound up with domestic constitutions, legal jurisprudence and social policy. Referring to Germany, but with implications for almost all OECD states, Arthur Helton suggested that the ‘dirty little secret’ of asylum is that while many people apply, few are granted refugee status (Helton 2002: 169). In Europe, only a fraction of those arriving receive refugee status; in settler societies, only a minority. Whereas Germany received 95,100 applications for asylum in 1999, only 10,940, or 8.6 per cent, were recognized as refugees in that year; in France, the figures were 30,910 applications, 4,460 or a 14 per cent recognition rate; in the UK a total of 71,100 applicants for refugee status were received in 1999, with some 6,200 or 8.7 per cent receiving refugee status. Even Canada, praised by UNHCR as an ‘exemplar’ in refugee recognitions, has a recognition rate of less than 50 per cent, with 13,000 grants of refugee status and 30,100 applications in 1999.¹ In the US in the same year, the recognition rate stood at 22 per cent.²

¹ The figures are from UNHCR (2000: 321-4).

² In most Western countries, the number actually given a right to stay is boosted significantly by grants of humanitarian status.

Another little secret is that while few are granted asylum status, fewer still leave. Yearly removal rates hover at most in the 10-20 per cent range.³ The result is a gradually expanding population of rejected asylum seekers remaining within Europe and North America. In Germany alone, Interior Minister Otto Schilly told the then-British Home Secretary Jack Straw, that there were some 400,000 rejected asylum seekers in 2000 that Germany cannot remove.⁴ A recent report by the greater London Authority estimated that more than 75,000 people rejected for asylum or exceptional leave to remain (a non-convention status) are residing illegally in London. The figure, moreover, rises to 100,000 if dependents are included (Wintour 2001). Generalizations across countries are difficult to make, but in the OECD somewhere between fifty and seventy per cent of asylum seekers receive neither refugee nor a non-convention status but nonetheless remain.

Removal rates are so low because of a series of moral, financial, legal and political constraints.⁵ In the West, asylum seekers enter not any state, but a particular type of state: a liberal democracy founded on a rights culture expressing itself in two ways. First, the whole asylum system revolves around processing individual claims. Except in 'fast-track' cases, the process is time-consuming and expensive. Second, and closely related, rights are linked with residence: the longer individuals spend on national territory, the stronger the claim they can make against removal. The process is thus self-reinforcing: the same rights culture that facilitates longer stays makes them the basis of a legitimate claim to remain. Domestic constitutions and international treaties, interpreted by national courts, sharply constrain the capacity to states to use return. Within Europe, the process is compounded by social policy: national legislation and judicial interpretation of it not only preventing the return of many rejected asylum seekers but oblige states to provide housing, medical and subsistence-level welfare support. In the UK alone, asylum seeker support in 2000 cost £835 million, or £34 per UK household (BBC 2001). Once processing is added, the total bill is said to approach £2 billion (*The Guardian* 2002).

The flip side of asylum seekers' dependence on welfare is their non-participation in the labour market. In many countries, including France and (since 1997) Germany, legislation prohibits asylum seekers from seeking work. Yet, in countries like the UK where work is allowed after six months, there is little evidence that asylum seekers integrate into the legal market. They lack the professional accreditation, linguistic ability or occupational skills (for instance, in high-tech industries) requisite to labour market participation. In an era in which western nations used mass, low-skilled immigration to fill positions within booming 'old economy' industries, an intermingling of the asylum and immigration queues would have posed no difficulties. Today, these jobs are either gone (the UK) or obtained only following highly competitive apprenticeship programmes (Germany). That said, there is anecdotal evidence of incorporation into the illegal labour market – as a visit to a London bar or a Berlin construction site attests – but often under precarious conditions and substandard wages.⁶

³ At most because statistics on removal include in cases in addition to asylum seekers and because in some countries, such as Germany, they include airport turnarounds.

⁴ Confidential source.

⁵ For a discussion of these, see Gibney and Hansen (2003).

⁶ On illegal migrants in Berlin's construction industry, see Hadji-Ristic (n.d.).

If there is a labour shortage at the low end of the occupational hierarchy, politicians, especially in Northern Europe, are largely unwilling to admit it.

In short, the ending of primary immigration to Europe and the expansion of asylum numbers, when interacting with constraints on removal and (European) social policy commitments, have led asylum deep into political controversy. The symptoms are high and in some cases spiralling costs, long delays for asylum seekers and growing public opposition to asylum. As gaining access to national territory triggers the asylum process and its attendant costs and obligations, policymakers have sought to erect barriers to this access. The restrictionist policy framework is arguably most developed in Europe, but Australia and the United States have at times been prepared to use the harshest measures.

3 State responses

In response to the rising numbers and changed international and domestic contexts outlined above, Western governments have introduced a range of policy measures to prevent, deter, limit the stay of, and manage the settlement of asylum seekers and refugees over the last 15 years. Though numerous and varied, the goals behind these policies are more easily summarized: preventing asylum seekers from accessing state territory; deterring potential asylum claims; limiting the amount of time asylum seekers and refugees spend in the state; and, finally, imposing order on the inward movement of refugees and, to a lesser extent, asylum seekers.

3.1 Measures to prevent access to state territory

Since the early 1990s, all Western states have embraced as a chief policy goal (arguably the chief goal) the prevention of asylum seekers' arrival at their frontiers or territory. They have done so largely to avoid incurring responsibilities under the 1951 Refugee Convention (and other domestic and international legal instruments), and by so doing to escape the expenses of asylum processing and the possibility of political backlashes caused by the arrival of large numbers of entrants.

Beginning in the early 1980s a number of traditional immigration policy measures, notably visas and carrier sanctions, were either re-tooled or initiated to prevent the arrival of asylum seekers. Notwithstanding talk of wanting simply to prevent the movement of economic migrants, all Western countries now use *visa regimes*, more or less explicitly, to prevent the movement of people from refugee source countries (such as Iraq and Afghanistan) to their territory. There are, to be sure, variations across states. Australia, for example, requires visas for all foreign nationals wishing to enter its territory; whereas Canada, the US and EU members states require visas only for the nationals of countries deemed to produce large numbers of asylum seekers or overstayers (for example, Morocco, Nigeria, Rwanda). Member countries of the EU have, under the Schengen agreement, harmonized visa requirements, resulting in a situation where the citizens of some 120 countries now require visas to enter EU states. While visa regimes have purposes other than stopping asylum flows, the linkage with asylum was evidenced in the imposition of visa requirements for Sri Lankans by the British government in 1986; for Algerians by the French in the same year; and, more recently,

for Hungarians by the Canadian government in 2001. In almost all cases, asylum seekers wishing to travel to the West have to apply for visas; in almost all cases western states deny visas to those believed to be seeking asylum.

Carrier sanctions, the levelling of fines on sea, air and land carriers that bring foreign nationals (for example, asylum seekers) without proper documentation or visas to state territory, are now a part of the immigration control armoury of almost all states. Australia, Austria, Belgium, Canada, Denmark, France, Germany, Italy and the US all use such sanctions, though the penalties they impose vary between approximately Euro 100 for each individual brought to state territory (in the case of Italy) to a maximum fee of Euro 10,000 (for complicit carriers in Germany, 1997 figures). In July 2002, the French presidency of the EU proposed a directive harmonizing carrier sanctions (NoborderZone 2002).

Pre-inspection regimes in foreign countries to prevent unwanted arrivals are another, more innovative, example of migration policy by 'remote control'.⁷ By the end of the 1990s, the UK, Canada, the US, Sweden and France had employed an advance guard of immigration staff, commonly referred to as airport liaison officers, in select foreign airports to detect potential illegal entrants. Australia, the Netherlands and Norway, on the other hand, have sent immigration officials abroad to train airline staff at foreign airports to recognize fraudulent or incomplete documentation. The United States goes one step further, posting its immigration gates abroad; travellers from Dublin, Montreal and Toronto pass through immigration control and enter the United States while physically still in Ireland or Canada.⁸ The primary goal of visa regimes, carrier sanctions, and pre-inspection is to prevent the arrival of unwanted and illegal entrants.

While pre-inspection regimes *extend* migration boundaries, some states have also contracted their boundaries to evade asylum claims. Switzerland, France, Germany and Spain have all declared parts of their airports *international zones*. Such zones are established to function as areas in which officials are not obliged to provide asylum seekers or foreign individuals with some or all of the protections available to those officially on state territory (for example, the right to legal representation, or access to a review process) in order to enable speedy removal from the country. In a similar vein, the US has used Guantanamo Bay for the processing of Haitian and Cuban asylum claims in order to obviate the need to grant them the constitutional protections held by foreigners on US sovereign territory.⁹ Arguably the most radical development along these lines was the Australian government's redefinition of the status of its island territories for immigration purposes. A 2001 law 'excised' Christmas Island, Ashmore Reef, the Cocos Island, and other territories from its migration zone, so that the landing of asylum seekers on these territories did not engage most of the country's protection

⁷ We borrow this term from Aristide Zolberg.

⁸ US officials, it is important to note, have sometimes tended to justify the use of pre-inspection as a way of easing the movement of people from favoured countries (for example, Ireland and Canada) rather than as a way of boosting control *per se*.

⁹ In 1994, the Eleventh Circuit Court of Appeals determined that these aliens 'had no legal rights under the domestic law of the US or under international law' because such rights were available only to persons on US territory. The court found that Guantanamo Bay, while under US 'jurisdiction and control', was not US sovereign territory. See Jones (1995).

obligations. While Australia's obligations under the 1951 Refugee Convention still applied, the more extensive protections and entitlements associated with the country's domestic asylum laws, including the right to seek review of negative decisions, were no longer available to individuals on these territories (USCR 2002a).

Finally, states have resorted to *interdiction* to prevent asylum seekers from accessing national territory. While all interdiction aims to prevent asylum seekers from reaching the territory (or waters) of the repelling country, the implications for asylum seekers differ between cases. In some cases, asylum seekers are indiscriminately turned back to the country from which they departed; in others, some attempt is made to separate out refugees through a preliminary screening procedure, thus reducing the chances of *refoulement*. Throughout the first half of the 1990s, US policy towards Haitian boat people moved back and forth between these two responses (Perusse 1995). In other cases still, interdicted asylum seekers are taken to an off-shore territory or to a safe third country with or without the intention of resettlement in the interdicting country if determined to be refugees. Australia used the latter response during the *Tampa* incident of 2001. The island nation of Nauru was enlisted to host asylum seekers while their eligibility for refugee status was assessed (Perusse 1995).

All interdiction increases the risk of *refoulement*; indeed, it arguably violates any reasonable interpretation of the principle.¹⁰ Nonetheless, interdiction appears to be becoming more acceptable. In a scene worthy of Jean Raspail's *Camp of Saints*, the UK, faced with rising numbers of asylum seekers in 2001, announced that it was considering deploying naval carriers in the Mediterranean to prevent illegal migrants from arriving in Europe (Milne 2002). The announcement had, to be sure, the flavour of a publicity stunt for the consumption of the highly restrictionist British electorate. But the government's willingness even to float the idea illustrates how the bounds of acceptable discourse and practice has been shifting.

3.2 Measures to deter arrivals

While preventative measures directly impede the entry of asylum seekers, deterrent measures operate more indirectly. They attempt to discourage asylum seekers from seeking asylum in a particular state by making the costs of entry so high (or the benefits so low) that arrival is not attempted. While analytically distinguishable, there is an obvious overlap in practice between preventative and deterrent measures because many policies that prevent entry also deter others from arriving (for example, interdiction policies increase the chance of being refused entry in a particular country and thus can act to dissuade people from seeking asylum there). The deterrent policies commonly used by states have focussed on reducing the privileges and entitlements available to asylum seekers claiming asylum.

¹⁰ The US Supreme Court has demurred, however. In *Sale v. Haitian Centers Council (1994)* it ruled six to one in 1994 that interdicting Haitian boats before they reached US territorial waters and returning the occupants to Haiti, without assessment of their asylum claim, was not a violation of domestic US or international law.

These policies have recently included:

- *Limitations on employment.* In order to discourage economic migrants entering via the asylum route, most Western countries restrict the right of asylum seekers to gain paid employment while their claims are processed. In France, the US and Germany (since May 1997), asylum seekers may not work at anytime during processing. In the Netherlands, the UK and Belgium, there is a delay of 12 weeks, six months and during initial processing, respectively. In Austria, they may work only in auxiliary services directly related to their accommodation (for example, cleaning). Canada is one of the few exceptions to this rule: an asylum claimant is eligible for a nine-month work authorization after a medical examination.
- *Limitations on welfare.* At the same time as limiting work, governments have also restricted access to state funds, ostensibly to reduce the pull factor of welfare payments. Asylum seekers are typically offered welfare either at a reduced level relative to permanent residents, or under more stringent conditions (for example, USA, France, Australia, Italy, Spain); or are, pocket money aside, eligible only to receive in-kind benefits rather than cash payments (UK, Germany). The UK has also tried to deny welfare to individuals who do not apply for asylum immediately after arrival. In the US, asylum seekers are expected to rely on family and charity.
- *Detention and restrictions on residency.* While newly arrived asylum seekers (like immigrants) typically desire to congregate in cities close to previous waves of their co-nationals and to immigrant services, recent government policies have attempted to restrict where asylum seekers reside. Asylum seekers in EU states are usually required to live in special accommodation centres often outside major cities.¹¹ To prevent asylum seekers from residing in London, UK officials have made housing and welfare benefits dependent upon applicants moving to other areas of the country, including the North. As well as supposedly deterring economic migrants, restrictions on where asylum seekers live are seen as making it easier for officials to keep track of applicants and more difficult for individuals to disappear into the community. In Australia, the US and Canada asylum seekers not in detention are more likely to have access to traditional forms of public housing and thus to greater choice in their place of residence.

All of the restrictions on work, welfare and accommodation outlined above have rationales other than deterrence. Geographical dispersal policies, for example, may spread the social cost of housing new arrivals between different communities or provinces; this is the basic practice in Germany. But over the last decade deterring new asylum claims has increasingly come to be part of the public rationale for such restrictions. This is particularly apparent in the case of another key public policy, arguably the severest: detention.

¹¹ The UK is one country where this has traditionally not been true. However, plans outlined in the governments most recent white paper on asylum and immigration (Home Office 2002), and included in recent legislation, foreshadow a move to establish new accommodation centers to house asylum seekers.

While all of Western states detain asylum seekers for at least some reasons, the extent and length of detention varies widely. Detention is resorted to least in continental European countries, notably France, Sweden, Germany, and in Canada, where constitutional law typically limits detention to individuals who are deemed likely to abscond or whose identity has not yet been ascertained.¹² The UK government, by contrast, faces relatively few domestic legal constraints on its use of detention (an important recent House of Lords' judicial ruling decision overturned a lower court decision that detention for the sake of administrative convenience was unlawful) (Travis 2002). Yet, as discussed above, practical and moral considerations, compounded by a lack of available detention places, mean that only a relatively small percentage of all asylum seekers is detained. Detention is used mostly freely in Australia and the US. In the US, under 1996 legislation, all asylum applicants without a right to remain on a valid visa are at a minimum detained until they can establish that they have a 'credible fear of persecution'. In Australia, all asylum seekers arriving in the country without a valid visa or other documentation are subjected to mandatory detention for the period during which their claims are processed (in some cases over a year). The location of detention centres far from the major cities in isolated, outback areas of the country merely increases the deterrent effect of the government's policy.

3.3 Measures to limit stay

Through preventative and deterrent measures governments have been able to avoid some of the social, economic and political costs of asylum. However, in spite of these measures, historically large numbers of asylum seekers continue to arrive in Western states claiming protection. The key policy issue involved with these arrivals over the last decade has been how to limit the period of time they spend in the state. In particular, governments have grappled with the question of how to ensure that individuals with failed asylum claims and refugees no longer in need of protection are removed. This policy priority grows out of the recognition that the removal of unwanted foreigners becomes more difficult – legally, politically and morally – the longer that they have been resident. Moreover, the failure to remove rejected asylum applicants is widely believed not only to bring the integrity of asylum determination systems into question, but to encourage abuse of asylum systems by economic migrants (Van Kessel 2001).

As we shall now show, policies aimed at limiting residence and hastening departures have been introduced in all aspects of the asylum process in recent years. They now run the gamut from initial admission to final removal.

- *Exclusion from the asylum process.* Western states have used a range of policy measures to exclude asylum seekers from determination procedures making them eligible for return. Most significantly, countries have invoked, with limited success, safe third country (STC) measures. The safe third country principle links asylum applications with first destination; asylum seekers are

¹² In Sweden, for example, 'illegal migrants', applying for asylum, may be held in detention only until their identity has been established. This process takes around two weeks to two months (*Migration News* 2001).

expected to apply in the first safe country they reach.¹³ It has reached its most developed form in the Dublin Convention, signed by EU states, which came into force in 1997. Despite difficulties in facilitating return amongst Dublin signatory states, countries outside Europe have shown increasing interest in STC agreements. Since 1995, Australia has treated China as a STC for Sino-Vietnamese asylum applicants,¹⁴ and Canada and the US have recently negotiated such an agreement (USCR 2002b). In addition to STC agreements, states, such as the US, have limited access to asylum systems by introducing penalties on the future re-entry for asylum seekers who are found not to have a valid claim for asylum.¹⁵ Many states, including the US and the UK, have also legislated in recent years to exclude individuals from asylum systems on the grounds of ‘non-compliance’, that is, failing to submit application forms on time or attend required hearings. This is not a minor development. In the UK in 2000, a full 27 per cent of all asylum applications were refused on the grounds of this category of technicality alone (Scottish Refugee Council).

- *Speeding the process of determination.* In addition to reducing the number of asylum claims, Western states have also attempted to boost the judicial and administrative efficiency of asylum processing. Many asylum systems (Germany, the UK, Canada, the US) faced large backlogs in asylum applications in the 1990s due to a combination of rising numbers of applicants and inadequate funding (see Table 1). These backlogs encouraged the creation of fast track procedures. In Canada such procedures enable individuals from well-known countries of persecution to be quickly admitted to Refugee Convention or humanitarian status. In the US, the post 1996 system of expedited removals ensured the immediate departure of individuals entering without proper documentation not deemed to have a ‘credible fear’. In the UK and most other European countries those deemed to be from a safe country of origin have their claims determined through a pared down asylum process. The increasing judicialization of refugee decision-making has posed another challenge for officials as appeals to the law courts invariably slow down decision-making. In response, governments in Australia, the US and the UK have engaged (with mixed results) in legislative attempts to cut off avenues for legal appeals of asylum decisions.¹⁶

¹³ In addition, the Dublin Convention adds further criteria: family members and past receipt of a visa.

¹⁴ <http://www.immi.gov.au/facts/74unauthorised.htm>.

¹⁵ 1996 legislation in the US makes an alien found to have filed a ‘frivolous application’ permanently ineligible for any immigration benefits.

¹⁶ US legislation in 1996 limited judicial review on a range of decisions by the Attorney General to lift bans on an individual’s ability to apply for asylum (for example, for reasons of changed circumstances in an asylum seeker’s country of origin). Successive Australian governments have legislated to limit the powers of the judiciary in asylum matters. 1992 legislation, for example, said that the courts were not to release asylum seekers detained for arriving without valid visas. See, USCR (2002c). The hostility of the current Howard government is, if anything, stronger, see the *Sydney Morning Herald* (2002). The British Home Secretary, David Blunkett, has also been publicly critical of judicial decisions that threaten the government’s liberty to make policy in the area of asylum. See, *The Guardian* (2003).

- *Restricting grants of permanent residence.* Traditionally, Convention refugee status has been a ticket to long-term residence or even citizenship in Western states. Since the mid 1990s, however, the connection between refugee status and permanent residence has become looser. States have increasingly linked the admittance of refugees for resettlement with a requirement of return when conditions in the country of origin improve. EU member states (including Austria, Germany, the UK and the Netherlands) have used various forms of temporary protection during the conflicts in the former Yugoslavia and/or Kosovo. Outside Europe, Canada and the US were more reluctant to use the status, though Australia took Kosovan refugees on a temporary basis. Refugees admitted under temporary schemes have usually received new and often ad hoc forms of status rather than Geneva Convention protection. The end of temporary protection regimes has proven a controversial business, especially when refugees have been reluctant to return. In response, states have devised a number of supplementary policy measures: ‘look and see’ visits (UK, Germany, Nordic states), start up payments upon return (UK, Germany, Nordic countries), and, more punitively, the withdrawal of welfare assistance (Germany) and the threat of removal to new locations (Australia) have all been used to boost the likelihood of departure.¹⁷ Temporary protection is not new (the US employed temporary schemes for Central American refugees in the 1980s and 1990s).¹⁸ However, the spread of such schemes during the 1990s and the (albeit gradual) emergence of an EU legal infrastructure for temporary protection are novel. Moreover, the uses of temporary protection appear to be changing. The Australian government has recently used it in a punitive fashion to discourage asylum seekers. According to 1999 legislation, ‘unauthorized’ arrivals later determined to be refugees may not be granted permanent residence visas. They are eligible only for temporary protection visas, a status that denies them family reunion rights and the ability freely to travel overseas, as well as security of status.¹⁹
- *Removals and deportations.* Despite the moral, practical and financial constraints on deportation, states have adopted a range of measures designed to encourage departure. The US, for example, expanded use of detention in 1996 Act, thus expediting the process of return for failed applicants; Canada has recently increased its technological resources for tracking the status of asylum seekers to coordinate swift return after unsuccessful asylum decisions; 2003 legislation in Britain aims to create a more ‘holistic’ asylum process that will ensure that asylum seekers are kept under the eye of the state from initial entry to final departure; finally, Germany, along with many other countries, has, since the early 1990s, entered into a range of aid, trade and immigration bargaining with asylum source countries to ensure the readmission of rejected asylum

¹⁷ For a broader discussion of the practice of and the issues raised by Temporary Protection, see Gibney (2000a). On the methods used by the Australian government in relation to the Kosovans, see USCR (2000).

¹⁸ Although the concept is understood differently in the US: it is granted only to individuals already in the US when home circumstances change.

¹⁹ The scope of those to whom these restrictions applied was increased further and made more punitive by legislation in 2001. For more details, see USCR (2000).

applicants and undocumented migrants.²⁰ Notwithstanding these initiatives, human rights and practical constraints seem likely to ensure that the gap between those eligible for deportation and those actually removed remains a feature of Western asylum systems for some time to come.

3.4 Measures to manage arrival

Beyond prevention and deterrence, Western states have engaged in a range of somewhat more positive ways to make the arrival of asylum seekers more orderly and equitable. Reform of refugee decision-making and the use of resettlement programmes have been two such areas.

Refugee decision-making. In the midst of constructing measures to limit asylum seeker numbers during the 1980s and 1990s, many states put more thought, energy and resources into refugee determination procedures, resulting in general improvements in the quality and professionalism with which asylum decisions are made. This has been clear, for example, in Canada, where a highly regarded body, independent of the immigration department, the Immigration and Refugee Board, has been established to make decisions on refugee status. In the US, a professional corps of asylum decision makers was created at the beginning of the 1990s, thus enabling the disentanglement of determination decisions from foreign policy and immigration enforcement pressures (Joppke 1999: 119; Martin and Schoenholtz 2000). It is perhaps no coincidence that both the US and Canada have some of the highest rates of grants of refugee status of any Western countries. Over the last decade, a range of countries, including Canada, Australia and the US have also radically improved the quality of country of origin information used in making asylum decisions, enabling greater accuracy in the assessment of claims (Martin and Schoenholtz 2000).

Resettlement programmes. During the period of rising asylum numbers in the 1990s, traditional immigration countries, such as Australia, the US and Canada, operated annual resettlement programmes for refugees. These programmes, which have served as a kind of adjunct to skilled migration schemes, have allowed pre-screened refugees from first countries of asylum to enter for resettlement. Well over one million refugees (and people in humanitarian need) entered under these schemes during the 1990s.

By contrast, EU states, such as Germany, the Netherlands and the UK, have traditionally provided (both permanent and temporary) resettlement places on an *ad hoc* basis in response to specific refugee crises. Nonetheless, in 2002 the UK government announced its intention to follow the lead of countries like Australia and the US and implement an annual resettlement scheme (beginning with a modest annual intake of 500) ostensibly in order to allow legitimate refugees a legal way of reaching Britain; other Northern European countries are already operating similar schemes. While these schemes may represent a positive development, a range of concerns remain. Some worry that resettlement will be offered as an alternative to protection for asylum seekers; that governments will choose for entry only refugees with desired labour market or language skills; and that the provision of new places for pre-screened refugees will legitimate even harsher preventative practices towards claimants at the

²⁰ See Lavenex (1999). For a fuller discussion removals and deportation, see Gibney and Hansen (2003).

frontiers. Linkages of this sort are hardly beyond the realms of possibility. The recent practice of the Australian government has been to reduce the number of refugees it settles annually by the number of on shore asylum applicants the country receives in order to balance its overall refugee intake.²¹

While new unilateral measures in the area of resettlement are beginning to emerge, *burden (or responsibility) sharing* remains, despite many EU-level proposals, relatively undeveloped. In the 1990s, Germany was a strong supporter of responsibility sharing, while France and especially the United Kingdom were generally hostile (Thielemann 2002). Unsurprisingly, when asylum applications to the UK trebled in the late 1990s, its policymakers began to see the benefits of cooperating with other EU countries. The various proposals for burden sharing slot into one of two broad schemes: financially compensating member states receiving disproportionate numbers or devising formulas for fairly distributing refugees between states in situation of mass influx, like Kosovo. The most promising is clearly a system of financial recompense. Indeed in the late 1990s, the EU established the European Refugee Fund to create a financial pool (so far a fairly paltry one) to ‘create an equitable mechanism for sharing financial responsibility for supporting refugees between Member states’ (ECRE 2001: 12). Agreeing to share actual refugees between states has proven more difficult. The kind of solidarity amongst member states that would enable them to transcend a cost-benefit analysis of their interest in specific refugee situations has thus far been lacking.²²

In summary, the responses put in place by states are remarkable both for the vast array of different policy measures involved and for the speed of their development. Policy measures that touch upon all aspects of the asylum seeking (and migration) processes have been assembled by states in little over a decade. The story is one of learning and convergence: while there is no doubt that some states operate stricter measures than others, the main elements of state policies (visa regimes, carrier sanctions, safe third country agreements, fast tracking schemes, readmission arrangements, etc.) are essentially very similar. It is also one in which the harshest policy developments towards asylum seekers – those that come closest to violating the 1951 Convention or international human rights obligations – have been pioneered by traditional immigration countries, notably the US and Australia.²³ A history of receptiveness and experience with economic migration in no way guarantees that a welcome will be extended to asylum seekers. Finally, while the bulk of restrictive policy measures developed have been legitimated publicly by the desire to disentangle mixed flows (by the aim to preserve asylum for ‘real’ refugees), most policy measures are completely indiscriminate in their effects. They are, that is, as likely to prevent, deter or punish the entry of legitimate refugees as economic migrants. Equally however, such measures are likely to remain, and in the next section we offer an evaluation of their effects.

²¹ USCR (2002c: 6). The current Howard government has pursued this practice with alacrity. But the practice of linking the two has its roots in the 1980s.

²² For a helpful analysis of some of the difficulties facing attempts by EU states to burden share, see Thielemann (forthcoming).

²³ Some argue that the drop in asylum applications to the US, following 1990 and 1995 policy changes, reflects not the deterrence of genuine asylum seekers but rather the weeding out of abuses. See Martin (in press).

4 Effects

To what extent has the raft to policy measures implemented to deal with rising numbers of asylum seekers been effective? The question of whether particular policies are effective cannot be disentangled from the question of *whom* they are effective for. There are at least three different perspectives: those of Western governments, those of people in need of protection, and those of the international community. Each reflects a different interest in relation to asylum and, consequently, generates a different standard for evaluating current practices. In what follows, we will briefly outline these different perspectives and consider, in broad terms, the extent to which the current amalgam of policies can be considered effective.

The Western government perspective. What have governments been trying to achieve through the array of public policy measures they have implemented over the last two decades? While there are difficulties in generalizing across states and in seeking too much coherence in their purposes, Western governments appear to have been struggling to put in place systems that achieve the following goal: the delivery to their borders of a manageable flow of asylum seekers and refugees that is stable in that it does not fluctuate dramatically upwards over time.

Two points are worth clarifying. First, the requirement of a *manageable flow* assumes that states do have reasons for accepting refugees and asylum seekers. These reasons emerge from the desire of states to be seen domestically and internationally as respectful of humanitarian goals, from the requirements of inherited legal commitments (notably, the 1951 Refugee Convention) and, in some cases, from pressure by internal interest groups, both economic and ethnic, and external actors, such as other states. What is interpreted as a manageable flow will vary, in numerical terms, between states depending on their size, migration history, integrative capability, etc. A manageable flow for Ireland is going to be different than one for the US. Second, the requirement of *stability* (that is, that entrants not rise dramatically over time) stems from the desire by governments to be seen as in control of the inward movement of foreigners. Large short or long term rises in asylum seeker arrivals are viewed as politically intolerable.²⁴ In sum, Western states have attempted to purge asylum seeker movements of their unruly and unpredictable characteristics. The aim of policy making has generally been to impose on asylum movements the kind of predictability and manageability associated with quota-based refugee resettlement schemes.

If the combination of manageability and stability is an accurate way of describing government aspirations, then very few Western states could, by 2001, be said to be operating effective asylum policies. Taking the criterion of stability, only in seven out of 21 countries was the difference between the highest annual intake of asylum seekers and the lowest annual intake between 1995 and 2000 less than 100 per cent: Australia, Canada, Germany, the Netherlands and Spain. Indeed, in 11 countries it was greater than 200 per cent. In terms of overall trends, only three Western states received fewer asylum applications in the three years between 1998 and 2000 than in the years between 1995 and 1997: Germany, Portugal and the US. Two other countries experienced only a small increase: Australia and Spain. In the rest, the volume of asylum seekers rose substantially and often dramatically. While Portugal and Spain have never experienced

²⁴ This aspect of the politics of asylum is discussed in greater depth in Gibney (2003).

substantial asylum flows, all the other states with falling (or fairly stagnant) numbers have been at the forefront of restrictive measures over the last decade. Germany pioneered ‘safe third country procedures’ and readmission agreements in an attempt to insulate itself from asylum claims; Australia and the US have both used interdiction and operate the toughest detention policies.²⁵

According to these criteria, we have a complicated story: only a small number of states appear to have asylum application volumes that have not fluctuated dramatically in recent years; fewer still appear to have applications on a downward trend.²⁶ The ineffectiveness of the policy responses of most states is reflected in widespread public dissatisfaction. The success of the far-right in elections in Austria, Denmark and the Netherlands (joining the governing coalition in all three), and the success of Jean Marie Le Pen (which was stunning from a political point of view, less so from a psephological one) all came on the back of anti-immigrant sentiment. The Howard government in Australia snatched electoral victory from the jaws of defeat by playing up public concerns over boat people claiming asylum. Finally, much is beyond the control of national policy. The US and Germany, the UK and most other Western states have substantial levels of illegal migration that do not enter into asylum statistics. It is possible that tough asylum policies have deflected potential asylum seekers into a life underground. It is also impossible to know whether low asylum applications in a country reflect the success of its policy or its relative unattractiveness to other asylum seekers vis à vis other destinations. The case of the UK, which five years ago could have been described as operating successful policies, suggests that harsh policy measures only deter while other countries operate more inclusive measures (Hansen 2002). If all states scramble to implement tough policies, any relative advantage in avoiding asylum seekers accruing to restrictive states is lost.

The perspective of those seeking protection. How might those in need of protection judge the effectiveness of recent asylum policies? It seems reasonable to assume that refugees would do so on the basis of whether the policies respected the basic human rights of asylum seekers and increased the likelihood that those in need of protection would receive it.

The interests of those in need of protection yield straightforward standards for assessing recent policy developments. First, do they make it easier or harder for refugees to gain the protection of asylum? Over a five year period, the number of refugees (as determined by the UNHCR) has fallen, as has the number of asylum applications across Western states. Importantly, however, the fall in the proportion gaining access to Western asylum systems has outstripped the decrease in the volume of the world’s refugees. In 1995, there were 14.5 million refugees, and 695,500 asylum applications in Europe; in 2000, the figures were 12 million (a 17 per cent drop) and 455,000 (a 25 per cent drop).²⁷ While this does not prove that asylum is becoming more difficult for refugees to access, it makes such a claim highly plausible, particularly given that anti-

²⁵ The statistical conclusions reached in this paragraph are based on the statistics in Table 1.

²⁶ In contrast to most other countries, the US has seen a large fluctuation in asylum numbers because it has managed to reduce its asylum numbers so dramatically in the final years of the 1990s.

²⁷ Statistics taken from <http://www.proasyl.de/g-world1.htm> and <http://www.unhcr.org/> (accessed 1 September 2002).

asylum measures have fallen indiscriminately on genuine refugees as well as economic migrants.

Second, do recent policy measures respect the human rights of asylum seekers? The position of asylum seekers has unquestionably deteriorated as a result of recent policies. First, the proliferation of preventative measures has driven asylum seekers into taking greater and greater risks (being sealed in lorries, jumping moving trains, etc.) to enter Western states. The increasing sophistication of barriers to entry has also meant that many asylum seekers must rely on traffickers to enter, a reliance that can lead to enslavement in an immigration underworld (Gibney 2000b). Second, deterrence measures used by states increasingly deprecate the rights of asylum seekers (to work, to live where they choose, to welfare, to freedom, etc.) in order to deter the arrival of others. Not only are these deprivations ethically dubious in themselves, but by reducing the gap between the rights the state offers and the relative freedom of living outside the law as an illegal, they may, as we have noted, encourage legitimate refugees to abandon the asylum system altogether (Morrison and Crosland 2001; Gibney 2000b). In sum, there is a strong, if not overwhelming, case that policy changes in the west have harmed the interests of refugees; for scholars working in the area, this conclusion will come as no surprise.

The perspective of international society. The perspective of international society refers to something more nebulous than the other perspectives we have discussed. Here we mean to denote a long-term or enlightened interest that all states (Western and non-Western) have in ensuring the survival of the institution of asylum. Asylum is both valuable in itself and linked to other common interests, such as humane governance, solidarity between states, and international stability. While it may be in the short-term interests of Western governments to reduce the number of asylum seekers they receive, their actions can have hidden costs both for other actors and, in the long term, for themselves. For example, policies that deflect or contain refugees can generate regional instability or corrode international norms on refugee protection by creating great inequalities in the burdens between states.

Considered from this perspective, recent policies enacted by Western governments certainly fall short of being effective. Given that such policies are not aimed at maximizing protection, this conclusion is unremarkable. The bulk of energy has gone into implementing practices that deter and prevent movement with little regard for the stability of the states or regions that asylum seekers attempt to move from. A number of observers have pointed out that Western policies effectively contain refugees in the South, and to the poorest countries therein; see, for example, Chimni (1998) and Helton (2002). Furthermore, many recent Western practices come close to corroding fundamental refugee norms, notably the principle of *non-refoulement*. The practice of interdiction is the clearest example, but the general movement to shift border control measures outwards is, at its worse, an attempt by Western states to escape 1951 Convention responsibilities at the expense of other states.²⁸ Even when their actions do not undermine the *non-refoulement* norm directly, the employment of non-arrival measures by Western states has served to underwrite the increasing reluctance of countries in the South to take in or to continue to host refugees (Loescher 1993).

²⁸ See Gibney (2003).

Finally, when they are successful, current policies aimed at deterrence and prevention discourage cooperation by states to deal with the long term economic and political causes of refugee and asylum seeker movements. For those states that manage to escape large refugee flows are sapped of any motivation to ameliorate the factors that give rise to refugees.

These deterrent and preventative policies do not, however, simply find their motivation in state malice and ill will. Publics, particularly in Europe but also in Canada and Australia, are suspicious of current levels of asylum seekers. That suspicion turns to hostility when numbers suddenly increase or arrivals generate media attention, as they did in Germany in 1992, the UK in 2000 and Australia in 2001. In all cases, the convergence of a series of factors places liberal democratic governments in an acute dilemma. Long first-determination processing times (ranging from several months to several years) and appeal rights mean that even ‘illegitimate’ asylum seekers may remain for several years once they have reached national territory. Costs associated with asylum seekers – for housing, medical care, subsistence and legal costs – are high, and are compounded by asylum seekers exclusion from the labour market and/or their poor performance within it. Finally, limits on deportation mean that, despite low recognition rates, the entry of asylum seekers correlates highly with the likelihood of their stay. In short, governments have turned to exclusionary measures in part because of the liberal and inclusionary nature of the liberal democratic polity itself. The relative liberality with which asylum seekers are treated once they reach the soil of Western states is closely related to the complex of exclusions designed by states to keep them from doing so.²⁹ With this basic dilemma in mind, we turn in the next section to possible future directions for asylum policy in the West. Of the four proposals, the first is most consistent with the current asylum regime; the last three would involve departures, possibly substantial ones, from it.³⁰ Space limitations present a full treatment of this suggestion; we outline it in the spirit of a thought-piece rather than a comprehensive programme.

5 Future directions

5.1 Expanded immigration

One possible way of relieving pressure on asylum systems, often proposed by activists and scholars, is expanding possibilities for legal immigration. Doing so would seem to have the great advantage of calling states’ bluff. The claim that large numbers of asylum seekers are ‘bogus’ economic migrants is made frequently; if there were any truth in the claim, expanding economic migration would take pressure off asylum queues. If there were little in the claim, then allowing new forms of legal migration would have no

²⁹ We develop this article in greater detail in Gibney and Hansen (2003).

³⁰ In the suggestions for future directions that follow we do not discuss solutions that address the causes of forced and voluntary migration movements, not least because we are focussed here on more short term policy responses. Nonetheless, it is important to note that policy interventions by Western states in the areas of trade, international development and debt relief to boost the economic prosperity and security of poorer states could help alleviate current migration pressures.

effect on asylum applications, exposing states' arguments as untenable. In practice, the matter is unlikely to be that simple. Western states face two sorts of labour shortages: an avowed high-skilled shortage, particularly in high-tech industries, and a concealed, low-skilled shortage for precarious, badly paid and unappealing jobs. An expansion of high skilled migration is occurring in Europe: in the last decade, Germany and the United Kingdom have expanded opportunities for high skilled immigration, and there is pressure for France to follow suit. In these countries, illegal migrants, some of whom are undoubtedly asylum seekers, now fill low-skill shortages. In Southern Europe, Spain and Italy have gone a step further, regularizing in 1993 and 1998 low-skilled migrant labour.³¹ As yet, these changes have had little impact on movements of asylum seekers. In Northern Europe, those gaining access to the high skilled labour market are highly educated individuals in either professional employment or education in their countries of origin; they are often selected directly by the companies themselves. In Southern Europe, the numbers accepted – some 30,000 in Spain – are too low to have any broader impact on asylum flows to Europe. It is true that applications to Spain and Italy are modest, possibly suggesting some local effect. Yet, it might also be the case that asylum seekers and traffickers view these countries as transit countries on the way to Northern Europe.

In short, expanding immigration categories might have some influence on asylum applications, but it is by no means certain and would require an ambitious programme for accepting large numbers of low-skilled migrants. There is little evidence to suggest that European publics would support such a move, and, even if an enlightened elite led them, trade unions would offer stiff resistance to low pay and poor working conditions. What's more, such a programme might also have to be linked with limitations on access to welfare if such benefits were greater than the market wage (see below).

5.2 Expanded resettlement

A second way of ensuring a future for asylum in the West would be through a greater focus by these countries on the resettlement of refugees. Resettlement, once a major tool of asylum policy in the West, has declined in a more or less direct relationship with increases in asylum applications over the 1990s. In 2001, only five EU countries (Sweden, Ireland, Finland, Denmark and The Netherlands) took part in the UNHCR refugee resettlement programme with a miserly quota of 2,652 refugees between them. Canada alone accepted three times as many – 7,500 in 2000, and the US set a 2001 quota for the resettlement of 80,000 refugees.³² The UK, in an effort to compensate for its restrictive attitude to refugees over the last decade, has offered to resettle a risible 500.

The current unpopularity of resettlement belies the fact that it could be a useful tool for managing asylum pressures. Resettlement programmes enable states to admit refugees in a way likely to minimize political controversy. By enabling the number of refugees arriving in any particular year to be publicly determined and announced in advance, present public concerns that the arrival of asylum seekers reflects policy failure on the

³¹ For a more detailed discussion, see Favell and Hansen (2002).

³² <http://www.ecre.org/factfile/realfacts.shtml#origin> (accessed 14 August 2002).

part of governments could be defused. The benefits for advancing refugee protection are obvious. By opening up new avenues for asylum in Western states, resettlement programmes could be used to discourage refugees from using irregular (and often expensive and highly dangerous) routes to gain the protection they need. The effects on asylum pressures would, moreover, grow in proportion to the number of states that agreed to operate such programmes or to increases in the number of people coming under current ones. A new and concerted commitment to resettlement might also strengthen the institution of asylum internationally. While the deterrent and preventative practices of Western countries are currently eroding the traditional willingness of Southern countries to accept refugees, greater use of resettlement in the West might well encourage a renewed faith in the institution of asylum and a greater willingness to host refugees.

Important challenges would of course still remain. A greater number of refugees accepted through resettlement schemes might reduce flows of refugees arriving ‘spontaneously’ in Western states, but it would not reduce such arrivals entirely, nor affect the volume of economic migrants. Moreover, for resettlement to have any real affect on asylum pressures, it would need to be embraced by a substantial number of states. Yet states have proven themselves notoriously reluctant to embark upon cooperative schemes in the refugee realm when the possibilities of ‘free riding’ (opting out of providing asylum in the knowledge that other countries would continue to take their fair share of refugees) would be high. Some kind of international legal agreement, such as an additional protocol to the 1951 Refugee Convention, that could enshrine the resettlement obligation of states in law might be necessary in order to encourage compliance.

5.3 Asylum without welfare: a market based approach

Another way in which asylum might be reformed would involve leaving the processing machinery untouched and instead reforming the social policies accompanying it. This would involve the radical step of ending the incorporation of asylum seekers into the welfare state; such a reform would have its greatest application in Europe. Asylum seekers would be processed as they currently are, but they would not be entitled to income support and housing benefits (they would retain access to health care and education). If granted refugee status, the right to such support would then follow. While their claims were being processed, asylum seekers would be entitled to work. It would be delusional to claim that such a radical step would not lead to considerable misery for asylum seekers, and perhaps discomfort in the form of crime and street violence for Europeans. But it would have the great advantage of undercutting one far-right argument against asylum seekers, and it would definitively resolve the debate about whether asylum seekers are fleeing violence or simply seeking social support. It would in effect involve accepting that asylum and migration are not distinct movements, and allowing the market to determine asylum movements.

Such a step is emphatically not a turn to open borders. Western states would continue to control their borders and, at least in the short term, to maintain the panoply of restrictive measures currently in place. If asylum seekers were able to integrate into labour markets with relative ease and/or if numbers of asylum seekers fell to a more manageable rate, states could then look to dismantling – with relative security from populist backlash – these measures. The asylum procedure system itself would be maintained, but efforts

should be concentrated on speeding application decisions, as it would generally be accepted that the difference between recognition and rejection is one between residence with or without social rights, and not between residence and return. After a determined period of time, asylum seekers who remained in the western states could be granted full social entitlements. Welfare incorporation would follow labour market incorporation rather than preceding it.

5.4 Expanded possibilities for return

A fourth possibility faces serious political constraints and is morally dubious, but it deserves mention if only for analytical purposes. If nation-states' desire to restrict access flows from limits on removal, it follows that policymakers and the public might be more willing to tolerate large numbers of asylum seekers if they could be confident that there would be a clearer relationship between rejection and return. Even if expanded return were morally acceptable, it would be difficult to implement in practice, as it would require much shorter processing times, further limits on rights to appeal and resort to mass deportations, likely with military carriers. It is hard to imagine such a regime being consistent with either national jurisprudence or liberal democratic norms. It would require moving the entire asylum system away from its individualist and legalist foundation to a much more utilitarian one. There would be many more false negatives (that is, genuine refugees would be denied protection) that would have to be set against greater ease of access to national territories for the thousands, if not hundreds of thousands, of legitimate asylum seekers who have no hope of reaching western soil. The fact that it is so difficult to imagine the implementation of such a regime is partly a reflection of how alien it is to our principles, and partly a reflection of the basic dilemma that renders the current asylum crisis so difficult to resolve: the battery of exclusionary measures adopted by Western states are closely related to the asylum standards the West seeks to maintain.

There is, in the end, a final alternative, namely the status quo. However inadequate in the face of raw state power, there are national and international constraints on restrictive asylum legislation. Despite the battery of measures instituted, states have little choice but to process and accept the majority of asylum seekers reaching, with the aid of the idealistic and the unscrupulous, their shores. Perhaps the Geneva Convention is preferable to any conceivable alternative; if it is, however, it is not because its original provisions and intent are being respected. Reinforcing the status quo requires acceptance of situation in which many of the most deserving will never reach western shores; in which the use of traffickers be widespread and increasing and in which the distinction between migrant and refugee – in some sense the whole point of the Convention – becomes even more attenuated. This is hardly a glowing endorsement, but it is perhaps a sufficient one. In making it, however, we should not delude ourselves into thinking that the asylum crisis can be solved through tinkering. Only dramatic developments – an unlikely resolution of the economic equality, political instability and violence that leads to asylum movements – or drastic changes – a major overhaul of the current asylum system – would move us beyond the impasse.

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