

Global migration and asylum

by Gerry Van Kessel

One area of debate and conflict between states with 'mature' individually-based refugee determination systems and many NGOs and academics concerns access by asylum seekers and the way they are treated once they gain access.

Controls on access and differential treatment for some asylum seekers imply, say many critics, that states are attacking refugees and their rights. For many of these critics, the measures adopted by states in the last decade signal a possible end to the international refugee protection system. States, for their part, see such measures as a necessary response to the phenomenon of 'mixed flows' - the inclusion among those seeking asylum of significant numbers of persons seeking economic betterment rather than protection. Such measures, states argue, are required to ensure the continued

protection of refugees in accordance with their obligation as signatories of the Geneva Convention. The focus of this paper is the context which have led states to act in this way.

Current migratory flows

Almost all parts of the world are witnessing major migratory movements. While in 1965 65 million people were living long term outside their countries of normal residence, by 1990 there were 130 million and in 2000 an estimated 150 million. Some are persons with legal status in their adopted countries. Most

are in an irregular situation and try by various means to regularise their status. A relatively small proportion are refugees. There are about 21 million persons of concern to UNHCR, half of whom are IDPs and refugees. These figures strongly imply that economic migrants place greater pressure on states than do refugees.

The majority of persons in these migratory flows, including refugees, remain in the geographic region of their birth. Increasingly, however, there are options, both legal and illegal, to move outside their regions. The problem for these people is that the rich industrialised countries do not accommodate the demand through legal migration. Demand far exceeds supply, with only between 2.5 and 3 million places available annually for immigrants.

There are two other options for would-be migrants. The illegal route has a long history. Immigrant-receiving countries know well the efforts of migrants to

Kosovo evacuation programme, Canadian Forces Base, Trenton, Ontario, May 1999.



resort to fraudulent documentation or to bypass immigration controls altogether in their efforts to achieve a better life. In industrialised countries, there is also the option of an asylum claim. In the 1990s, about 5 million asylum claims were submitted and about 1 million were successful, half as Geneva Convention refugees and the rest under other forms of protection and humanitarian relief. The ratio of economic migrants and refugees in mixed flows helps explain the rate of refusal of asylum seekers by the refugee determination system of states.

The attractions of the asylum system

What is it about asylum determination systems which makes them a choice for such migrants?

One reason is, perversely, the potential to exploit the high standards which states have established to

ensure that the determination system is fair. These standards are essential because the issue is so vital – to *refouler* or not to *refouler*? Asylum decision making is especially difficult. The facts are uncertain and often not easily verifiable. The procedures need to take into account the fear, confusion and ignorance of claimants about the process and how it functions. Because the outcome of a successful claim is the right to remain permanently, it is highly prized, including by those not in need of protection. These are among the reasons why the system attracts fraudulent claims and, increasingly, the attention of smugglers and traffickers.

Another feature of the asylum system is the length of the process. To ensure that the determination system is fair, states have introduced processes which take into account the challenges of presenting the facts and of making decisions on the basis of uncertain information. Appeals are an essential part of this process and fair results cannot be realised quickly. An unintended consequence is that even those interested only in using the system to ensure access to the country are assured of long periods in the country. It is assumed, not incorrectly, that the longer the stay the greater the chances of developing grounds for remaining permanently.

Complexity of asylum administration

Administering determination systems is very complex. Effective and efficient systems require processes which are simple yet fair, have sufficient decision makers with the staff and tools to support them and have stable volumes of asylum applications. These elements are closely interrelated and changes in any of them quickly affect processing times. The volume of asylum applications is the least controllable variable. It is very challenging for states to add skilled and trained resources quickly enough to maintain stability in processing times if volumes increase rapidly. Longer processing times mean uncertainty for genuine claimants and opportunities for non-genuine claimants. Processing times may

become so lengthy and the volumes so high that growing backlogs cannot be sustained. In some cases, there are

amnesties or other forms of regularisation of migration status so that a new determination process can start with a clean slate. The winners, of course, are those who do not need protection. While those needing protection receive it, the delays they have faced add to their uncertainty and delay the rebuilding of their lives in their new countries.

Perhaps the most attractive factor for claimants who do not need protection is that the odds of not being returned to their country of nationality, even if their claim is rejected, are very high. Of the 4 million whose claims were rejected, only small numbers were formally returned. Most national systems are ill-equipped to enforce negative decisions. It is difficult and resource intensive to locate persons who have gone underground. Once they are located, a further problem arises if they lack travel documents needed for return to their country of origin. Many countries are unwilling to accept the return of their nationals and do not readily issue the required travel documents. These favourable odds are well known and encourage asylum applications from those not needing refugee protection.

Failure to remove undermines public confidence in the system. The UK Home Secretary, Jack Straw, has observed that

“non return fundamentally undermines the essence of the institution of asylum by calling into question the assessment process and undermining public support for the institution and those accepted as refugees”. Removal cases are rendered even more difficult by the public attention which they often attract. While the public favours removals conceptually, it is often ambivalent in individual cases where the only issue is the violation of immigration laws rather than reasons of public safety. Removals are an issue where the legitimacy of public policy and its application in individual cases often appear at odds.

How can states respond to the attractions of asylum?

States have acted to try to resolve the dilemma of maintaining their international obligation to provide protection to those who need it and their national obligation to manage migration. In addition to streamlining processes and adding resources, governments have sought to limit access to the country and to develop special procedures for those who have gained access to the country and who have the weakest claims to refugee protection. They involve visas, interceptions, carrier sanctions, pre-embarkation controls and specialist liaison officers abroad. These measures seek to ensure that persons who arrive in their countries have documents demonstrating that they meet admission requirements. For asylum claimants who have arrived, a series of measures have been introduced to deal with claimants who appear to be non-genuine. They include accelerated manifestly unfounded processes, the Dublin Convention for most European countries, safe third country, safe country of origin, readmission agreements, detention and limits on employment and social services.

States have adopted these measures in varying degrees but demand remains as strong as ever. Greater controls have resulted in the emergence of persons, often criminally organised, who have the knowledge, the ability and the resources to find ways around access controls. Many of the people who are using smugglers are in countries of first asylum where they have protection but no durable solution. Much has been written recently about human smuggling and trafficking and the immense profits to be made. Several recent tragedies indicate

the extent to which smugglers and traffickers will go and the dangers to which some of those being smuggled and trafficked appear willing to submit themselves. A UN Convention on Transnational Organised Crime with protocols on migrant smuggling and on trafficking of persons, especially women and children, was signed in December 2000. This Convention and its Protocols are important international instruments for combating organised crime and the trafficking of people.

Expense of asylum systems

The contrast between the amount states spend on asylum seekers and what they spend on supporting UNHCR is striking. In 1995 UNHCR estimated that the annual amount spent by states on asylum seekers was \$7bn. A more recent estimate is \$10bn. UNHCR's budget is now less than \$1bn annually. There are about half a million asylum seekers in Western countries while persons of concern to UNHCR total 21 million. On a per capita basis, \$20,000 is spent per claimant while UNHCR spends \$50 per refugee/IDP under its care. The amount spent by some countries equals or exceeds the entire annual budget of UNHCR. Justifying this huge level of expenditure can be a political challenge.

States are determined there will be no return to the freer access of the 1980s. The reality of the mixed flows which have emerged since that time has led to the responses described above. States have not found solutions which distinguish between those needing protection and those seeking economic betterment and which have the support of both the public and the refugee advocacy community. Migration is extraordinarily difficult to manage within the context of a process designed for protection. It is inevitable that the challenge is met by attempting to separate the protection and migration issues, realising that there is no clear distinction.

Canada's response to inadmissible applicants

A lesson which states have learned is that it is more effective and efficient to refuse persons who are inadmissible before, rather than after, their arrival. Stopping them before they arrive is sound migration management. In response to the rise in irregular migration and in the number of asylum

seekers, Canada has undertaken initiatives which include visa requirements, dedicated officers stationed abroad to halt the influx of irregular migrants and increased fines on carriers who transport improperly documented travellers. Documents have been made more fraud-resistant and laws amended to penalise those using improper documents and not establishing their identities.

The introduction of a new and better funded refugee determination system in 1990 coincided with an administrative review allowing almost all of the 100,000 applicants in the backlogged pipeline to remain permanently. Visas have been imposed on many countries (such as Trinidad and Tobago and Portugal) after large numbers of their nationals claimed refugee status but did not need protection. In 1995 Canada removed the requirement for a visitor visa on Chile but reimposed it a year later after 4,200 Chilean economic migrants travelled visa free to Canada and claimed refugee status.

In 1999 Canada issued 665,000 visitor visas while refusing them to over 100,000 persons judged to be inadmissible, non bona fide visitors who would not leave voluntarily at the end of their visits. Included in this number were 581 persons suspected of being war criminals. In the period 1996-1998 Canada stopped 600 persons from entering Canada who were known or believed to have links with organised crime. This was achieved because of the visitor visa requirement and the policy of intercepting persons with improper documents.

If Canada were to eliminate its access controls, the persons now refused and those deterred by access controls from going to Canada would have to be dealt with at the border or inland. It would mean rejecting the experience that demonstrates how difficult and costly it is to remove large numbers of inadmissible persons, including those who are a risk to Canada. It would put at risk public support because of the focus it would place on the challenges rather than the benefits of migration.

States are very aware of the importance of maintaining public support for the asylum process. Support for asylum is most at risk when there are large num-

bers of what are believed to be non-genuine claimants. The objective of states has been to adopt measures which address, to the extent possible, migration rather than asylum.

The nexus between asylum and migration

The need for a debate among all concerned about refugees seems evident. The competition between more controls and increasingly sophisticated efforts to evade the controls can too readily leave out the protection needs of refugees.

The Global Consultation process which UNHCR has initiated [see page 9] is an opportunity to debate these issues from the perspective of refugees. At the same time there is a need to examine global migration not as an element of the asylum debate

but as a distinct topic requiring the attention of states. The increase in the number of fora where migration is debated suggests that there is a heightened awareness of the need for state responses to the issues inherent in global migration flows. States need the contributions of academics, NGOs and all involved in the refugee field, particularly on the practical choices states face, choices which are not mutually exclusive and which accommodate both protection for refugees and state concerns about migration management. In this way, the public support critical to refugee policy can be secured. When the issues are clear cut, as in the case of Kosovar refugees, public support is readily forthcoming. Debate needs to move beyond reiteration of established positions to focus on how to safeguard protection for refugees within the larger context of migration management. Much of the current debate fails to acknowledge the nexus between migration and asylum.

For starters, we have to review what is currently happening. For persons seeking protection, the first question is how to ensure greater equity in receiving protection regardless of where the claim to protection is made. There is the question about how many have come from countries of first asylum where they have protection but no durable solution. Should there be greater focus on durable solutions, whether in the country of first

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asylum or through resettlement in third countries? Would more money from the West to countries of first asylum add to the level of protection in those countries and reduce pressures on asylum systems?

There are also questions about the manner in which asylum seekers get to Western countries. Given the phenom-

enon of undocumented, improperly documented and uncooperative asylum seekers, how many resort to this because

that is what they have to do to flee persecution and because they are fearful of authority and how many do so because it complicates the task of decision makers? How many asylum seekers with false documents come from countries that refuse to issue travel documents to their nationals? As long as states continue to have access controls, how can those who need protection be dealt with? Is it possible to build on the code of conduct which the International Air Transport Association has for airport

liaison officers which requires them to refer requests received for asylum UNHCR or to a diplomatic mission?

In the context of the UN Convention on Transnational Organised Crime, there is the issue of how to stop traffickers and yet protect refugees. For persons seeking economic betterment, there are

questions about whether economic immigration and more generous family reunification would reduce the number of

asylum seekers. (The Canadian experience of a high annual immigration intake - more than 220,000 in the year 2000 - and a high asylum seeker intake - 36,000 in the year 2000 - suggests caution in concluding this is the case.) Will it be possible for countries of origin, countries of transit and countries of final destination to come together to examine the issues of refugees and migration and come up with solutions? These are important questions, the answers to which will assist in the

complex matter of deciding how states should manage protection and migration.

In introducing Canada's new Immigration and Refugee Protection Bill on 1 May 2000, Elinor Caplan, the Minister for Citizenship and Immigration, said that "closing the back door to those who would abuse the system will allow us to open the front door wider - both to genuine refugees, and to the immigrants Canada will need to grow and prosper in the future". States have learned that they cannot leave their back door unattended. The debate needs to be about the protection of refugees and the relationship between the back and the front doors.

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Federal Border Patrol, German/Polish border

