

Shattered Pasts and Uncertain Futures: Refugee Protection in the 21st Century

Carol Wang

In a dingy flat somewhere in England, several Iraqi Kurdish asylum seekers gather to discuss their situations. The dwelling is damp and unheated; it has been declared unfit for human habitation by the Chartered Institute of Environmental Health. These refugees, and thousands like them, are living in limbo between shattered pasts and uncertain futures. They are fearful for their loved ones, many of whom did not manage to escape. They are plagued by nightmares of the past—of torture and death—but continue to live a nightmare of complicated and hostile asylum proceedings. Among those gathered, three men have been given permission to remain; two have had their appeals rejected and are homeless while others are awaiting a decision on their claims. They are looking for refuge in the United Kingdom, which is currently waging a “just war” for the liberation of the Iraqi people.

It is thus profoundly ironic that the British government is “giving such a wretched welcome to many of those who have escaped [Saddam Hussein’s] regime, condemning them to misery in our cities or sending them back where they came from” (McFadyean). “Disappeared,” tortured, or killed—all gathered that day had lost someone to the regime. Farman Kdir, a shy 22-year-old, was ambushed by Iraqi security forces one night, along with his father and brother. He managed to escape to the UK, but has been denied asylum. ““They didn’t believe me because I have no evidence,” he said” (McFadyean). Marewan Rasoul Rashid, the former owner of a successful restaurant in Kirkuk, was imprisoned and tortured for witnessing two assassinations. During his time in prison, he witnessed a mass execution in which thousands were machine-gunned. He was offered a deal by the Iraqi

government—if he worked for them as an agent, they would release him. He agreed, but fled the country as soon as he was freed. He was given temporary admission upon arrival to the UK, renewable every two months. Neither Farman nor Marewan are allowed to work, and must survive on NASS (National Asylum Support Service) handouts (not exceeding \$50 USD a week), illegal sweatshop employment, or the goodwill of strangers.

The plight of refugees is a significant international concern for many reasons. The sheer number of displaced persons represents disorder and societal disintegration, but more importantly, our responses to this plight profoundly impacts the way we view human worth and international institutions. Now a defining characteristic of the post-Cold War era, the phenomenon of forced displacement is no longer a “matter of discretionary charitable concern to policymakers,” but a pressing issue on the international policy agenda (Troeller 1). Several points contribute to the dialogue on refugee protection: (1) the opposing forces of globalization and balkanization at work in the world today; (2) the evolving relationship between international affairs and the Westphalian concept of the nation-state; (3) the history of refugee protection during the twentieth century; and (4) national, supranational, and international documents in reference to human rights (and refugee rights specifically). An examination of these points will allow us to formulate an appropriate response to the refugee crisis.

For purposes of comparison in evaluating these elements, I will focus on the national laws of the United Kingdom and France, and on the experiences of the Kurdish people. As the largest ethnic group without a homeland, Kurds provide valuable examples across the full spectrum of migratory statuses, ranging from illegal immigrants to documented asylum seekers. These specific illustrations will enlighten our understanding of the refugee crisis, which extends far beyond this ethnic group in these countries to many other peoples in all

regions of the globe. As Michael Ondaatje reveals in *Anil's Ghost*, “One village can speak for many villages. One victim can speak for many victims” (Ondaatje 176). For the sake of these who have lost their homes and voices but continue to dream, we must scrutinize the current state of refugee protection and formulate a unified resolution that upholds individual rights in an affirmation of human worth.

Balkanization and Globalization

Farman and Marewan are victims of the oppressive regime of Saddam Hussein. They, like millions of others, have been forcibly displaced from their homes. Displacement today is often the result of the processes of national self-determination, new state formation, as well as ethnic and communal strife. As these conflicts detonate across the globe (e.g., the Balkans, Afghanistan, Iraq), they generate millions of refugees fleeing the violent collapse of their communities—the devastation, persecution, and poverty. Even as globalization speeds the integration of “nations into one commercially homogenous global network,” the forces of subnational factions seek to retribalize “large swaths of humankind by war and bloodshed...in the name of a hundred narrowly conceived faiths against...every kind of artificial social cooperation and mutuality” (Barber 4). Globalization makes everyone a consumer, while ethnic conflict forces every person to assume a tribal identity. Neither are concerned about individual rights. While the growing disparity of wealth between nations accounts for migratory movements, the forced displacement of peoples is a result of violence arising from parochial hatreds. Globalization, however, inadvertently provides us with the opportunity for transborder solutions to global problems, in creating international bodies—both political and economic—that address and enforce regulations for worldwide concerns.

A refugee is a victim of armed conflict and persecution, but also of the industrialized countries that turn a deaf ear to her pleas. The same countries that embrace the migration of capital “are often the fiercest opponents of the movement of peoples” (Margaronis). Adding to the confusion is the wide range of persons who seek entrance to these countries, from economic migrants to guest workers to asylum seekers. In addressing this issue, it is important to distinguish between economic migrants, who leave with a destination in mind, and refugees, who are running *from* rather than *towards* a country. Although economic migrants may have strong incentives to move, the situations in which most refugees find themselves leave them with no alternatives. This said, there remains a fine line between those whose economic circumstances at home leave them in poverty (perhaps as a result of discrimination) and those fleeing persecution as it is defined officially.

With balkanization, certain groups are persecuted by being denied access to economic opportunities rather than by torture. As governments have been more reluctant to acknowledge socioeconomic rights in the course of history, so they are more reluctant to accept refugees on the basis of economic rather than political persecution. A new, uniform definition must be sensitive to the validity of both political and socioeconomic rights. Although it is driven ruthlessly by the bottom line, globalization presents (unintentionally) an opportunity for a uniform refugee protection system. It repeatedly exposes the necessity of universal standards in economic, political, and social realms in today’s “global village.” From the history of refugee protection, we can see that traditional definitions of national interest must be broadened in recognition of an increasingly interdependent world.

Rights Beyond Borders

On September 20, 1999, UN Secretary-General Kofi Annan “spoke of rights beyond borders, of ‘individual sovereignty’ or the human rights and fundamental freedoms of each individual under the UN Charter, further challenging the old consensus based on the Treaty of Westphalia” (Troeller 10). In 1648, the Treaty of Westphalia created the modern state. “States came to dominate the international system not because of any ideological reason but simply because they worked better than the models of governance that had failed or any of the other models (such as a rebirth of city-states like Venice) that had been tried” (Weir 36). For nearly a millennium prior to Westphalia, local feudal authorities held political authority in units much smaller than most modern states. As the emergence of the nation-state is relatively recent, nation-states, as with any form of governance, “are best regarded as...vehicles to serve the interests of their citizens” rather than a permanent form of political organization (Weir 37).

Washington and Lee University

Security for its citizenry is the main function of the Westphalian state. A look at recent events, however, proves that states are often inadequate for individual protection and often perpetrate crimes against their own people. The refugee crisis stems directly from the inability or refusal of states to perform these duties. Furthermore, “[i]t can also be said that states are too small to do the big things” (Weir 46). Many problems facing countries today are of global scale and thus difficult, if not impossible, for any state to undertake alone. For these reasons, refugee protection must be based on mutual understanding and burden-sharing.

Recognizing this, the nations of the world came together under the auspices of the United Nations to “do big things.” In the decades since its formation, however, the international community’s continuing inability to achieve logical and consistent responses to

the problem of forced displacement prompts us to examine the “four underlying principles of world order—most of which are enshrined in the UN Charter and all of which... ‘are flawed and in conflict with one another’” (Troeller 1, 2). These are state sovereignty, national self-determination, constitutional democracy, and human rights. The first, state sovereignty, has been used throughout history as an excuse to ignore human rights violations. Victims of state-sanctioned persecution are often overlooked because external interference is viewed as a breach of state sovereignty. Second, the right to national self-determination requires a workable definition of “national self.” Traditional definitions are framed in cultural contexts, provoking tribal divisions. In its defense of “national self,” a group may incite violence and trigger displacement. The third principle is the endorsement of constitutional democracy, based on the Wilsonian theory that democratic (and thus rational) peoples do not go to war against one another. However, since not all UN member states are democracies and because even democracies can be illiberal (such as those ruled by majorities along ethnic lines), there is a need for the fourth principle—universal human rights. The universal protection of individuals, regardless of their country of origin or residence, should be considered the new backbone of international order. These four principles conflict more than they can peacefully coexist, as proven by history. Furthermore, respect for the first three principles does not guarantee respect for human rights. Since these principles, as they are currently understood, cannot be harmonized, they must be adjusted with respect to the fourth. Anchored by the intrinsic laws of peace, the value of any of these principles should be based on respect for an individual’s dignity and well-being as well as the advancement of peace throughout all regions.

With this goal in mind, governments should work together to share the responsibilities so that (1) no refugees are returned to countries where their lives are in

danger, otherwise known as the principle of *nonrefoulement*, and (2) the burdens are not borne by certain countries simply because of their geographic proximity to unstable areas. In an age where interdependency is not a choice but an inevitability, all nations must contribute as much as they are able to the protection of fundamental human rights. Since many forcibly displaced persons have no official status of any kind, the protection of rights beyond borders is the only way to assure human dignity for millions of people.

The Decades Since the 1951 Geneva Convention

The 1951 Convention Relating to the Status of Refugees is the most comprehensive treaty for refugees and other vulnerable persons. The first human rights treaty to transcribe the aspirations of the Universal Declaration of Human Rights into legally binding obligations, the Convention expounds upon Article 14 of the Universal Declaration, which affirms the “right to seek and enjoy in other countries asylum from persecution” (United Nations). During the Cold War, the Geneva Convention, with backing of regional conventions in Africa and Latin America, was able to facilitate asylum, resettlement, and safe return for approximately 35 million refugees (Troeller 4). The refugee situation today, however, is vastly different from that of “the massive, organized resettlement of the Indochinese in the 70s and 80s,” with spontaneous migratory movements of individuals and small groups (Troeller 4). Moreover, the European economic boom of the late 50s lasted until the early 70s and created an environment favorable to the influx of migrants, ranging from guest workers to refugees to immigrants (Oudenaren 210). The situation began to change in the 1980s:

The late 1980s and the early 1990s again became a time of rapidly expanding legal and illegal immigration into the Community, as migrants from the developing world were attracted to Western Europe by strong economic and employment growth,

political and economic turmoil in many parts of the developing world, and as borders in eastern Europe began to break down (Oudenaren 210).

Since the mid-80s, the refugee protection program has suffered setbacks as host countries began to implement hostile and restrictive policies. The solution adopted by most European governments is to slowly restrict application of the term “refugee” while paying lip service to the principles of the Geneva Convention. “For example, the convention protects anyone who has ‘a well-founded fear of persecution’ but does not specify by whom—France, Italy, and until recently, Germany have limited its application to persecution by the state” (Margaronis). This entails that victims of sectarian violence or civil war (e.g., Afghans escaping the Taliban) are ineligible for asylum. Furthermore, the European Union, in its path towards greater economic, political, and social integration, has demonstrated that it is less willing to protect refugees than in past decades. The 1990 Dublin Convention, the first major step towards harmonization, focuses on regulations and limitations rather than refugee protection and legitimate claims (“Britain: not my problem”). Especially alarming is the “absence of a shared understanding of the ways in which existing rules play out in the particular factual contexts,” resulting in procedures that vary widely between one country and its neighbor, and causing distress and despair for refugees (U.S. Committee on Refugees). In order to create a procedure that can be fulfilled by all Convention signatories, we must take a look at existing legal foundations that enable a moral response to the victims of hate and war.

Legal and Moral Framework for Refugee Protection

Propelled by the same forces that established the UN, the human rights movement gathered momentum in the wake of the unfathomable horrors of the Holocaust. Twenty-

four international human rights instruments have been established between 1948 and the present, including the Universal Declaration of Human Rights, the 1951 Geneva Convention, 1967 Protocol, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Charter of Fundamental Rights of the European Union.

These conventions, charters, and protocols assert a moral basis for their claims. The Universal Declaration speaks of the “inherent dignity and ...equal and unalienable rights of all members of the human family,” and of “the dignity and worth of the human person” (United Nations). The Charter of Fundamental Rights of the European Union proclaims, “Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity” (Council of the EU 12). It goes further to state that the enjoyment of these rights “entails responsibilities and duties with regard to other persons, to the human community, and to future generations,” in reference to moral rights and corresponding obligations (Council of the European Union 12). The Charter’s first article proclaims, “Human dignity is inviolable. It must be respected and protected” because it is not only a fundamental right in itself but “constitutes the real basis of fundamental rights” (Council of the European Union 16). Both the Geneva Convention and the European Convention reaffirm the “profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained...by a common understanding and observance of the human rights upon which they depend” (Council of Europe 2). Charters and declarations have enumerated the aspirations, while conventions and subsequent protocols (which are considered “legally binding”) have taken the first steps towards the collective enforcement of these rights.

International “Law”: Who Makes the Rules?

International law, however, relies on little more than a nation’s sense of duty. In fact, when a convention is said to be “legally binding,” it simply means that signatories have an obligation to incorporate the addressed rights into national legislation. Rogue nations can be reprimanded, but cannot be brought before any court or punished. Despite this fact, UN documents have been instrumental in paving the way for human rights. Next, international declarations of rights must be upheld in national courts. This requires a cooperative effort and a desire to find a humane system of refugee protection. I will examine laws on three levels: (1) international laws created by the UN, (2) supranational laws maintained by the EU, and (3) national laws enforced by local authorities in the United Kingdom and France. International charters, declarations, conventions, and protocols outline non-enforceable government obligations towards refugees, which then can be used as a measure for the enforceable laws of the EU, UK, and France.

The first and most basic of UN documents to address fundamental rights is the Universal Declaration of Human Rights, signed by the General Assembly on December 10, 1948. The preamble recognizes that “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind,” and thus declares the necessity “that human rights should be protected by the rule of law” (United Nations). The Universal Declaration was the first international document to claim that a person’s right to asylum should be protected by law. The forces behind globalization and balkanization enable the continued disregard for individual rights, while heinous acts have been committed under the banner of state sovereignty. Since the Declaration, however, refugees have had a champion to speak out against the indignities of forced displacement. Article 14 states, “Everyone has the right to seek and to enjoy in other countries asylum

from persecution” (United Nations). This principle recognizes that victims of human rights abuse must be able to leave their country freely and to seek refuge elsewhere.

Building on the foundation laid by the Universal Declaration, the UN Convention Relating to the Status of Refugees and the associated 1967 Protocol addresses three main issues. First, they define in broad terms who is and is not a refugee. They also “define the legal status of refugees and their rights and duties in their country of refuge.” The third type of provisions deals with the “implementation of the instruments from the administrative and diplomatic standpoint.” (Handbook, 4). Article 1 addresses the first category of provisions:

The term "refugee" shall apply to any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (UN Convention 2, Article 1(2)).

The 1967 Protocol eliminated the January 1, 1951, deadline, which was included in the Convention due to the desire of governments to limit their obligations to refugee situations that existed at that point. With the passage of time, however, the UN General Assembly realized that there was a need to broaden the application to refugees of new situations.

In Chapter II, the Convention addresses the juridical status of refugees. With regard to personal status, property, right of association and access to courts, refugees are to be accorded the “same protection as is accorded to nationals of that country,” or “not less favourable than that accorded to aliens generally in the same circumstances” (UN Convention 6, Art. 12-15). While the convention enumerates the obligations of

governments, it also states the reciprocal duties of refugees. “Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order” (UN Convention 4, Art.2).

Administrative Measures (Art. 25-34) include a minimum of administrative assistance, freedom of movement and accessibility to travel documents, a prohibition of *refoulement* or expulsion, and the possibility of naturalization for refugees. Article 31 protects refugees against punishment for illegal entry into the country of refuge, since they are “coming directly from a territory where their life or freedom was threatened in the sense of Article 1” (UN Convention 12, Art. 31). Although the first portion of Article 31 has proven beneficial for refugees, restrictive interpretations of the second part have become the basis of many rejected asylum applications.

The second part appends, “...provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence” (UN Convention 12, Art. 31). Farman was one of those who were unable to demonstrate “good cause,” in spite of the fact that he was ambushed by Iraqi security forces in the middle of the night. Another asylum seeker in the flat that day was denied on the grounds that he did not present himself “without delay,” which can be interpreted in the UK to mean as little as twenty-four hours. The inability of refugees to pass these qualifications results in the denial of official refugee status or the accompanying rights. Countries often fail to interpret the spirit of the Convention when incorporating its contents into national law.

The Convention is also silent on two significant points. First, it fails to address the types of procedures that should be used for the determination of refugee status. The lack of attention given to determination methods is the document’s main flaw and has led to

increasing difficulties for both asylum seekers and host countries in the European Union. The United Kingdom and France have adopted separate procedures in the absence of an overriding European policy.

Secondly, the Convention is silent with regard to the difference between economic migrants and asylum seekers. In 1979, however, the UN published the Handbook on Procedures and Criteria for Determining Refugee Status, which is meant to articulate the spirit of the Convention into specific procedures that should be adopted by countries. The Handbook is much more explicit in areas first addressed by the Convention, and defines an economic migrant in contrast to an asylum seeker:

A migrant is a person who, for reasons other than those contained in the definition, voluntarily leaves his country in order to take up residence elsewhere. He may be moved by the desire for change or adventure, or by family or other reasons of a personal nature. If he is moved exclusively by economic considerations, he is an economic migrant and not a refugee (Handbook 12).

Washington and Lee University

The distinction remains unclear, however, when one considers that there may exist racial, religious or political discrimination behind economic circumstances affecting a person's livelihood. The Handbook clarifies, "Where economic measures destroy the economic existence of a particular section of the population, the victims may according to the circumstances become refugees on leaving the country" (Handbook 12). These measures include situations such as the withdrawal of trading rights or excessive taxation of a specific group. UN documents seem to agree that, while economic circumstances leading to deprivation in a refugee's country of origin may be considered a legitimate reason, the economic benefits a host country provides cannot be a motivating cause for the presence of genuine refugees. Most refugees, however, are escaping a combination of terror and poverty resulting from socioeconomic instability, thus rendering the distinction somewhat artificial.

More than Aspirations: European Fulfillment of International Law

Since the Convention does not address this point or that of refugee status determination, the trend is for nations to adopt restrictive definitions, thereby limiting the number of persons they must protect in accordance with Convention standards. Within the European Union, the differences between national policies have become increasingly problematic as the Union moves towards social and political integration. Refugee policy has been a complex and relevant issue for the EU even before the end of the Cold War. From 1985 to 1990, the number of persons seeking refuge in Western Europe increased from 160,000 to 441,800. In 1992, the number peaked at 696,500 asylum applications (Telöken). In 1999, the EU pledged to develop the Common European Asylum System, which will include the following:

[A] shared understanding of the method for determining the member state responsible for examining an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception for asylum seekers, and the approximation of rules on the recognition and content of refugee status (Oudenaren 221).

There was also some discussion of financial burden-sharing in cases where certain member states may become the recipient of unexpected influxes of refugees. This agreement is the most recent in a series of developments during the 1990s, with the transition of the European Community into the European Union. The simple name change carries with it deeper meaning—the EU is now concerned not just with economic, but also social and political integration. With regard to asylum seekers, the abolition of border formalities within the EU under the Schengen Agreement amplifies the need for a universal asylum policy.

While the Common European Asylum System is still a dream, several existing documents demonstrate the reality of EU asylum policies. These conventions and treaties attempt to harmonize conflicting national policies on the specifics of asylum procedures.

The first of these was signed by twelve member states in 1990 (but not legally binding until the 1997) and “set criteria by which to determine which country was responsible for examining an asylum seeker’s application and, if warranted, for granting that individual’s request under the terms of” the 1950 European Convention and the 1951 Geneva Convention (Oudenaren 209). The 1990 Dublin Convention on Asylum also stipulated that a country’s decision to admit an individual must be upheld by all states. Its main goal was to ensure that only one member state would be responsible for dealing with a claim. “[A]nyone arriving without a visa would have to file an application in the first Convention country he or she reached. An exception was allowed for people whose immediate family members were already recognized in another country” (Telöken).

Signatories are only obliged to shelter refugees who have already entered their territory. They take drastic measures to prevent potential asylum seekers from crossing their borders. For example, “Germany does not process asylum applications from refugees who arrive by land, as they have by definition passed through a safe third country to do so” (Margaronis). In effect, this means that refugees applying for asylum in a second or third safe country for various reasons are denied asylum and deported back to the first Convention country of entry. In the UK, many Kurdish refugees arrive through the Channel Tunnel from France, where many Afghani, Kurdish, and Iraqi refugees were detained at Sangatte refugee center until it closed in 2002. Indeed, many refugees have good reason to desire asylum in Britain over France; the latter did not accept “Afghan refugees on the grounds that the Taliban is not a proper government” (Clark). Neither does it allow asylum seekers to seek employment, which is a denial of UN rights. These are the very differences that the Common European Asylum System hopes to eliminate.

In attempting to harmonize asylum policy, the EU has utilized conventions that “establish a certain kind of law of general or partial application in the Union” (Oudenaren 215). Signed in 1992, the Maastricht Treaty created the “three pillars” of cooperation between EU member states. Issues classified as first-pillar matters (i.e., economic matters) made participation mandatory for signatories, while those falling under the third pillar were “adopted voluntarily by member states” in a looser form of cooperation (Oudenaren 215). The Maastricht Treaty specifies three points of cooperation: “(1) by adopting joint positions; (2) by adopting joint actions; and (3) by drawing up conventions among all or some of the member states for specific purposes” (Oudenaren 215). Conventions fall under the umbrella of the third pillar, and have been the primary vehicle of EU asylum policy.

To supplement the provisions of the Dublin Convention, the Maastricht Treaty empowered the Justice and Home Affairs Ministers to establish a framework for a European asylum policy, in the broader context of “activities pertaining to internal security” (Dinan 439). They approved three non-binding conclusions. “The first embodied a safe third country concept allowing states to refuse individuals access to their asylum procedures if the applicant could have sought protection in another ‘safe’ country” (Telöken). This echoed the primary purpose of the Dublin Convention. The second Conclusion addressed manifestly unfounded applications, giving member states leeway to reject asylum requests on formal grounds and for limiting appeal possibilities. The last Conclusion provided for an accelerated procedure “in the case of claimants coming from countries in which there is generally no serious risk of persecution” (Telöken). These conclusions reinforce the restrictive trend of asylum procedures, emphasizing regulation rather than protection. Amnesty International labeled EU policies a “network of organized irresponsibility” (Telöken).

On the other hand, the Treaty of Amsterdam provided the means towards improvement by revising radically the Justice and Home Affairs provisions. In its most striking innovation, the Treaty of Amsterdam transferred responsibility for visas, asylum, immigration, and other free movement policies to the first pillar (Dinan 448). This upgrade for asylum policy status authenticated the EU's proclaimed desire to create a genuine "area of freedom, security, and justice" (Oudenaren 220). This shift ensures that asylum policy will now be subject to more stringent and standardized decision-making processes, as well as the binding authority of the European Court of Justice. Furthermore, Amsterdam foresees "binding measures in (1) harmonization of social assistance for asylum seekers, (2) temporary protection of refugees in the event of any mass influx, and (3) burden sharing among member states" (Telöken).

The "communitarization" of former third-pillar matters, including asylum policy, was a cautious process that reflected the reluctance of member states to surrender national powers in these areas. Ireland and the UK both remain exempt from the provisions on asylum and immigration policy, as they did from the Schengen Agreement. As a result, the treaty divided implementation into two periods. The first, a transitional phase lasting from May 1, 1999 to April 30, 2004, allows the Commission and the member states to submit legislative proposals concerning immigration, asylum, police, and juridical cooperation. During this time, the European Parliament is limited to consultation and member states must come to unanimous agreements on all decisions. After this phase, the right to introduce legislation will be limited to the Commission, and member states may decide to adopt decisions by the Council with qualified majority voting and European Parliament co-decision (Oudenaren 219). In other words, decision-making on the free movement of peoples is intergovernmental during the transitional period, and then becomes supranational.

Dead Ends: National Laws and Refugee Futures

In the meantime, however, asylum procedures are still governed by national legislation. In spite of the existence of various UN and EU documents addressing refugees and asylum seekers, there is still a noticeable deficiency in uniform methods for determining refugee status. The UK and France represent relatively distinct policies with some similarities. First, they are perceived to have disparate treatments of asylum seekers. Britain is often seen as “soft-touch,” or more sympathetic to the plight of refugees, while France appears to provide a tougher reception. Second, they maintain opposite stances on the war in Iraq. Since the number of asylum seekers from the Middle East will no doubt increase this year, it is beneficial to consider whether the UK, as a primary instigator of the war, holds greater responsibilities. Third, their parallel positions in terms of economic standing and world leadership provide a helpful background for comparison.

In 2002, the UK was the largest recipient of asylum-seekers among the industrialized nations with 111,000 applications. Germany was third with 71,000 and France was fourth with 51,000 (UNHCR). When considered in proportion to their population, however, neither Germany nor France qualified in the top ten refugee-receiving industrialized nations. The UK ranked eighth. Although criticized for being too easy on asylum seekers, its procedures indicate otherwise. Britain recently passed the Nationality, Immigration and Asylum Act, which denies support to asylum seekers who fail to report to an asylum office as soon as is “reasonably practicable.” This phrase in Section 55 is often interpreted as within twenty-four hours. Even if refugees hurdle this obstacle, it is only the first in a seemingly endless series.

When Yasar entered the UK, he was assigned a solicitor by the Immigration and Nationality Directorate (IND) of the Home Office and set on his course for asylum application (Harwood). As a Kurd from Turkey, his situation differed somewhat from that of Iraqi Kurds such as Farman and Marewan. While the dangers awaiting Iraqi Kurds are well-known to the British government, discrimination against Kurds in Turkey does not reach the Iraqi level. The danger remains, however, for politically active Turkish Kurds.

One Kurdish man says, ““They told me that I was a smuggler and a member of the PKK (the Kurdish Worker’s Party, which terrorized the Turkish Army and the Kurdish civilians alike during the 1990s)”” (Parry). He explains the way the Turkish police tortured him:

“They gave me nothing to drink, they beat me with truncheons, they poured cold water over me, and they did this.’ He mimed a fist gripping his scrotum. Worst of all, they blindfolded him and bound him to a chair. Metal bracelets were attached to his wrists and he was given electric shocks. He screamed and writhed. After three days, he agreed to everything that they said (Parry).

In southeastern Turkey, the Kurds have suffered decades of systematic abuse. Approximately 2,000 villages have been razed to the ground and three million people displaced. “Many have been raped, while thousands more have been murdered or have ‘disappeared’” (Parry). Yasar fled to the UK in 1998 to escape any more trouble with the police.

Like most refugees, Yasar arrived without any travel documents, which had been confiscated by the Turkish police when they discovered his plans to leave the country (Harwood). Upon reporting to the IND, Yasar was screened to establish his identity and nationality, and had his fingerprints taken. The applicant must then complete a 19-page Statement of Evidence Form (SEF) in English and return it to the IND within 14 days or be charged with non-compliance (U.S. Committee on Refugees). Oftentimes, asylum seekers are

housed outside of London, and thus have difficulty obtaining the information, legal advice, and interpreters necessary for the completion of the forms. Although asylum seekers are officially entitled to free legal advice and representation at all stages of the asylum procedure (subject to financial means and legal merit tests), IND interviewing officers have no obligation to inform applicants that they may seek legal assistance. In 2001, 21,480 asylum applications were rejected on grounds of “noncompliance,” for one of three reasons: (1) they submitted the SEF after the deadline, (2) did not complete the form in English, or (3) were late or failed to attend their asylum interviews (U.S. Committee for Refugees). Even if they manage to complete the SEF, applicants encounter difficulties securing transportation to London—British train fares, for which vouchers cannot be used, are ridiculously expensive (Clark).

Rejected asylum applicants have the right to appeal their denials at several stages on grounds arising directly from the European Convention on Human Rights and the UN Convention on Human Rights, which have been incorporated into a national (and thus enforceable) Human Rights Act. In the summer of 2002, Yasar’s final appeal was rejected, despite his being consistent and honest about his situation from the start (Harwood). Ahmed (not his real name), another asylum seeker, fled to the UK after several Iraqi officials searched his house and took away his mother. Having been hidden in the attic by his mother, Ahmed escaped arrest. He received a rejection letter after his asylum interview, but the reasons for refusal were not conveyed to him for another two years (McFadyean). One of the listed reasons was the Home Office’s “inability to understand why the security forces failed to find Ahmed on the night his mother was taken,” implicitly “blam[ing] Ahmed for not being caught that night” (McFadyean). Yasar, Ahmed, and Farwan had not been able to demonstrate that they were “likely to be of adverse interest to the authorities should [they]

return” to their countries of origin (Harwood). Already evident, the Home Office’s apathy towards the refugees was compounded by the severe understatement of their home circumstances.

Although it seems marginally easier to seek asylum as an Iraqi rather than as a Turkish refugee in the UK, all asylum seekers must be able to provide evidence of their persecution. Tony Blair’s recent dossier on Iraq demonstrates the Labour government’s awareness of the situation: “Iraq is a terrifying place to live. People are in constant fear of being denounced as opponents of the regime. Between three and four million Iraqis, some fifteen percent of the population, have fled their homes rather than live under Saddam Hussein’s regime” (McFadyean). The sympathy is cut short, however, when these people seek Britain’s aid through asylum.

Not only do asylum seekers face the daunting task of completing the SEF and undergoing several asylum interviews, they are ill-treated with regard to shelter and food. The Chartered Institute of Environmental Health’s working party on asylum issues discovered that (1) nine out of ten HMOs (houses in multiple occupation) lodging asylum seekers are unfit for human habitation as a result of “unacceptable risk of fire, faulty gas appliances, and flammable furniture;” and (2) there are instances in which adolescent girls are lodged in hostels with adult men and children who are living without adult supervision (Blackman). Furthermore, asylum seekers are sometimes detained and kept in facilities with common criminals in violation of UN rules (Margaronis). As for monetary means of support, an asylum seeker is entitled to twenty-five pounds (about thirty-two USD) in vouchers per week, and an additional ten pounds (fourteen USD) in cash (U.S. Committee on Refugees). This covers the most basic of needs.

These conditions are not ideal, but those who receive any form of support are the fortunate ones. The Home Office, which already brokered an Anglo-French deal to minimize the number of applicants, is taking further measures to reduce the number of refugees arriving at British shores. In February of this year, under terms of a “restricted” joint Cabinet Office-Home Office policy document, the government aims “to slash the number of asylum seekers coming to Britain by deporting most of them to UN ‘protection areas’ in their regions of origin, where their applications for asylum will be processed” (Milne & Travis). This is an attempt to eliminate economic migrants who pose as refugees. Another new development is the enforcement of a trial period during which language tests will be used to crackdown on asylum seekers posing as Iraqis. “Ministers believe that the language experts will establish, for example, when a Turkish or Syrian Kurd is posing as an Iraqi Kurd” (“UK: Language tests to uncover...”). Inaccuracy in the tests, which were pioneered by Sweden, has reportedly resulted in deportation of asylum seekers to the wrong country. These restrictive measures, however, are not surprising in light of the Anglo-French deal to close the Red Cross refugee center at Sangatte.

As a result of British complaints that Sangatte’s proximity to Calais and the Channel port enabled refugees to sneak through the Chunnel to seek asylum in the UK, France agreed to close the camp and tighten up security along the French coast if Britain conceded to the resettlement of 1,000 Iraqi Kurdish refugees (Aoudia). These refugees, however, were granted economic migrant status and given four-year renewable work visas, which adds to the confusion surrounding asylum proceedings (Pati). More disturbing, however, is the cooperative effort to prevent the arrival of future refugees. According to Tony Fuller of Migrant Helpline, “It is morally indefensible to erect security barriers to prevent refugees from entering the UK when those very refugees are displaced precisely because of a war

conducted by the UK” (McFadyean). While it appears that the Blair government believes that most Iraqi refugees fleeing the war will remain in the Middle East region, this assessment and response remains ethically questionable.

As a result of Sangatte’s closure in December of last year, some three hundred refugees are now wandering the streets of Paris (Webster). When interviewed by Paul Webster of The Guardian, expelled refugees said that they believe the French have a harder line on refugees and have “no intention of giving residence permits and were determined to make life as uncomfortable as possible to discourage newcomers” (Webster). This observation is true to some extent. Asylum seekers who approach the French border are either turned away or permitted to enter France on a six-day pass. Within those six days, they must proceed to a *préfecture*, where it is determined whether or not the asylum seeker is admissible under the provisions of the Dublin Convention. The Office for the Protection of Refugees and Stateless Persons (OFPRA), an autonomous body within the Ministry of Foreign Affairs, then takes one of two actions based on the decision. It either issues a deportation order and detains the applicant or provides a one-month residence permit and asylum application form (U.S. Committee on Refugees). The applicant is then given one month to submit the form to OFPRA, which takes an average of one year to arrive at a decision. Unlike in Britain, asylum seekers are provided with free legal assistance only if they entered the country legally, which is not usually the case. As in Britain, there is a hierarchy of appeals for the rejected applicant, whose case is first heard by OFPRA, then the Refugee Appeals Commission (CRR), and finally at the highest administrative court, the Conseil d’Etat.

At any of these stages, asylum seekers may be granted one of three types of statuses, which entitles them to various benefits. The first and most desirable is UN Refugee

Convention status, which entitles applicants to accommodation, meals, and an allowance. In 2001, these refugees received 2,000 francs (about 285 US dollars) up front, and 1,800 francs per month (about 255 dollars) (Clark). Since victims of gender-based or non-state persecution are not eligible for asylum under UN Refugee Convention status, they may apply for the second type, territorial asylum. Territorial asylum, however, consists of little more than protection from deportation. These applicants do not receive accommodation, food, or an allowance. They are not allowed to work. In the rare instance that an applicant is successful, she is given a 1-year residence permit, renewable twice. After 3 years, the holder is entitled to apply for PR status (U.S. Committee on Refugees). Territorial asylum in France “has been granted so restrictively that the National Consultative Committee for human Rights has called for its suppression as a status distinct from that of the Refugee Convention” (U.S. Committee on Refugees). The third status, that of “constitutional asylum,” may be approved for individuals who are “persecuted because of their activities in support of freedom” (U.S. Committee on Refugees). Unlike territorial asylum, however, the requirements and benefits of constitutional asylum are nearly identical to that based on the Refugee Convention.

Although France may provide more support for Refugee Convention asylum seekers, it is much more difficult to be granted such status than in the UK (which does not have different asylum statuses). In 2001, 22,090 out of 47,260 applications were considered; only 2,380 were successful. An estimated 14,000 to 15,000 persons applied for territorial asylum, with a three percent success rate (U.S. Committee for Refugees). France’s strict asylum laws “are designed to deal with individual cases,” and thus was unprepared to deal with the large influx of Iraqi Kurds who arrived at the French Riviera in Feb 17, 2001, after a 3-week journey across the Mediterranean (Clark, D.).

Transported to France by mafia “slave-traders,” 912 Iraqi Kurds found themselves locked in the hold of a decrepit cargo ship as it began to sink. The smugglers had run the *East Sea* onto rocks on the French coast and then escaped the authorities. The Kurds were rescued and accommodated at an “extraterritorial waiting zone” in Frejus. They were then given “safe-conduct” passes for 8 days, permitting them to present their application for political asylum (“Debate shifts on the fate of 25m Kurds”). The reaction from politicians and the public was sympathetic. Prime Minister Lionel Jospin emphasized the importance of a humanitarian response, but stated that the cases must be heard on an individual basis. He indicated that the response would be significant not only at the French level, but also for the EU. Indeed, by early March, many of the refugees from the *East Sea* had attempted to gain illegal entry to other European countries in violation of the safe-third-country rule (Clark, D.).

Washington and Lee University

In the Aftermath of September 11

In spite of the variations in welcome, refugees face extreme difficulties wherever they apply for asylum. The events of September 11, 2001, have negatively impacted the situation for asylum seekers, both in terms of government restrictions and racial tension. The Anti-Terrorism, Crime and Security Act, rushed through the UK Parliament in the fall months of 2001, “allowed authorities to detain indefinitely, with limited judicial review, foreign nationals who have been certified by the Home Secretary as threats to national security or who are suspected of being terrorists” (Amnesty International). As a result of the vagueness of the phrase, “certified by the Home Secretary,” refugee rights have been violated:

Governments have subjected refugees to arbitrary arrest, detention, denial of social and economic rights and closed borders. In the worst cases, the most fundamental principle of refugee protection, *nonrefoulement*, is violated, and the refugees are forcibly returned to countries where they face persecution (Human Rights Watch).

Although refugees have escaped persecution and poverty at home, their situation is sometimes only marginally better in countries of refuge where they are discriminated against by their new communities. In England, asylum seekers have been distributed to small towns in the north—areas unreceptive to the presence of foreigners. Conservative politicians and the media have inflamed racial tensions, and created a world of “public indifference and increasingly overt hostility” for refugees, says award-winning author Beverley Naidoo (Garner). In France, areas outside of Paris have been known to experience a considerable amount of discrimination against Muslims (most Kurds are Sunni Muslims).

Social tension is a result of outright racism, but is often compounded by the confusion between economic migrants and asylum seekers. Locals, hearing that many asylum seekers are actually economic migrants in disguise, are led to the belief that most refugee claims are bogus. This leads to resentment, straining relations between the refugee and local populations. Since laws and social behavior are mutually reinforcing, societal tensions may be alleviated by a shift in policy focus and an effort at education. Sympathetic policies may not rid the world of racism, but they can serve as a moral compass for individual conduct.

Brighter Futures

This survey of UN, EU, and national law demonstrates that most of the tools to deal with conflict resolution and human rights abuses already exist. UN documents have created a moral framework for refugee protection. They have called for a humane and ethical response, and challenge nations to realize those aspirations. The European Union is slowly progressing towards a just and tolerant society, in which the fundamental rights of refugees can be respected. Its goals for asylum policy will eventually replace the national asylum

policies of member states. During this transitional period, however, as they retain control, national legislatures must assure the existence of rights beyond borders in concrete ways.

The most pressing need for both countries and the EU is the adoption of uniform procedures for the determination of refugee status. Uniformity in this area will improve the treatment of refugees and fairer policies for a framework founded on a reverence for human dignity. It will set a reasonable standard for the treatment of all claimants, regardless of their official designation. Once a designation has been appropriated, a uniform definition can ensure that governments meet their clearly-stated obligations. This is a task that the United Nations cannot fulfill, due to the nature of its power and organization. Laws can be modeled after the spirit of UN conventions, however, as the High Commissioner “has always pleaded for a generous asylum policy in the spirit of the Universal Declaration of Human Rights” (Handbook, 5). Most importantly, respect for the fundamental worth of every individual is the highest purpose of any law. Establishing uniformity in refugee law is an acknowledgement of its importance, and also serves to eliminate ambiguous and arbitrary national policies. This alteration simplifies the process for governments, but more significantly, it will ease the already shattered lives of refugees and pave a straighter path towards brighter futures.

“Do I count in this world?”

Refugees are not an abstraction; they are not simply an international issue. They are children, brothers, mothers, grandfathers, husbands, and aunts. They are human beings. In a speech to the UN, Latvian President Vaira Vike-Freiberga urged world leaders to remember their own humanity and that of others through an autobiographical narrative:

It is a painful condition not to know where you are going to lay your head, to look at the lights shining in distant windows, to think of people living their normal lives,

sleeping in their own beds, eating at their own table, living under their own roofs. And later when you come to refugee camps—and some people spend decades and much of their lives in refugee camps—you are living outside of space and of time, you have no roots, you have no past, you don't know whether you have a future. You have no rights, you have no voice, you have nowhere to participate in, you are not a citizen, you have no papers, sometimes you haven't even got your name, and you have to pinch yourself to reassure yourself that yes, I am alive, I am me, I am a human being, I am a person. Do I count in this world? I don't know, I'll wait until tomorrow (U.S. Committee for Refugees).

With the power to restore or devastate, world leaders must abolish the excessive and unfair restrictions on refugees seeking asylum. Ethically unacceptable, these policies degrade vulnerable persons and, in some cases, violate their fundamental rights. Although there are countless reasons to improve and unify asylum procedures, the most convincing is also the most basic—human life is sacred. President Vike-Freiberga along with Yasar, Farman, Marewan, and Ahmed comprise a mere handful of accounts in a sea of 19 million refugees. In times of peace and in times of war, for both citizens of stable regimes and the unprotected refugees of volatile regions alike, moral conduct and respect for humanity must not be compromised in the name of national interest or bureaucratic efficiency. These are secondary matters, the importance of which should pale when compared to a far greater principle that should guide our actions and decisions as individuals and policymakers: the inviolability of human worth.

References (APA)

- Amnesty International. (2002). Rights denied: the UK's response to 11 September 2001. Retrieved March 10 from: www.amnesty.org
- Aoudia, D. (2002). 'We are already dead. This is the cemetery of the living.' *The Guardian Observer*. Retrieved on May 25, 2003 from www.observer.co.uk
- Blackman, D. (2001). Refugees dumped in unfit homes. *The Guardian*. Retrieved on May 15, 2003 from: www.societyguardian.co.uk
- Britain: Not my problem; Refugees. (2001). *The Economist*, 360, 8238, 60-61. Retrieved February 13, 2003, from Periodical Indexes Online database.
- Clark, R. (2001). The land of opportunity. *The Spectator*, 287, 9031, 12-13. Retrieved February 13, 2003, from Periodical Indexes Online database.
- Cohen, N. (2002). How gunboats can beat the refugees. *New Statesman*, 15, 727, 29-31. Retrieved February 13, 2003, from Periodical Indexes Online database.
- Council of Europe. (2003). *Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11*. Retrieve February 13, 2003 from: www.echr.coe.int
- Council of the European Union. (2000). *Charter of fundamental rights of the European Union*. Retrieved February 13, 2003 from: www.europa.eu.int
- Debate shifts on the fate of 25m Kurds. (2001). *World News*. Retrieved on March 15, 2003 from: www.unhcr.ch
- Dickey, C. (2001). Riders on the storm; Europe already had a Kurdish problem—last week's surge of refugees.... *Newsweek, int'l ed.*, 22. Retrieved February 13, 2003, from Periodical Indexes Online database.
- Dinan, D. (1999). *Ever closer union*. Boulder: Lynne Rienner Publishers, Inc.
- Eltom, A.K. (2001). Internally displaced people—refugees in their own country. *The Lancet*, 358, 9292, 1544-1545. Retrieved February 13, 2003, from Periodical Indexes Online database.
- Franekova, A. (2002). Refugees or migrants. *Harvard International Review* 24, 1, 8-10. Retrieved February 13, 2003, from Periodical Indexes Online database.

- Harwood, K. Email correspondence from April 2-4, 2003.
- Human Rights Watch. (2003). Iraqi refugees, asylum seekers, and displaced persons: Current conditions and concerns in the event of war. *Human Rights Watch Briefing Paper*. Retrieved on March 15, 2003 from:
www.hrw.org
- Human Rights Watch. (2003). NGO background paper on the refugee and migration interface. Retrieved on March 15, 2003 from:
www.hrw.org
- Kurds' plight in France exposes disarray in EU asylum policy. (2001). *World News*. Retrieved March 15, 2003 from
www.unhcr.ch
- Margaronis, M. (2002). Europe's unwelcome guests. *The Nation*, 274, 20, 14-20. Retrieved February 13, 2003, from Periodical Indexes Online database.
- McFadyean, M. (2003). A cold shoulder for Saddam's victims. *The Guardian*. Retrieved on March 24, 2003 from:
www.guardian.co.uk
- Milne, S. & Travis, A. (2003). Safe havens plan to slash asylum numbers. *The Guardian*. Retrieved February 24, 2003 from:
<http://society.guardian.co.uk/asylumseekers/story/0,7991,889116,00.html>
- Ondaantjie, M. (2000). *Anil's Ghost*. New York: Vintage International.
- Oudenaren, J. (2000). *Uniting Europe*. Oxford: Rowman & Littlefield Publishers, Inc.
- Parry, R. (2003). Tortured Kurds fear return of Ankara's repression. *The Times*. Retrieved March 24, 2003 from:
www.the-times.co.uk
- Pati, A. (2003). Sangatte 1,000 ordered to find new homes. *The Guardian Observer*. Retrieved on March 15, 2003 from:
www.observer.co.uk
- Seeking a better life. (2002). *Canada & the World Background*, 68, 3, 16-19. Retrieved February 13, 2003, from Periodical Indexes Online database.
- Telöken, S. (1999). It's a long way to...harmonization. *Refugees Magazine*, 113. Retrieved March 15, 2003 from:
www.unhcr.ch

Troeller, G. (2003). Refugees in contemporary international relations: reconciling state and individual sovereignty. *UNHCR Working Paper No. 85*. Retrieved on March 15, 2003 from:
www.unhcr.ch

United Nations. *UN Convention Relating to the Status of Refugees*. Retrieve February 23, 2003 from:
www.unhcr.ch

United Nations. *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*. Retrieved February 23, 2003 from:
www.unhcr.ch

United Nations High Commissioner on Refugees. (n.d.) Retrieved February 23, 2003, from:
www.unhcr.ch

UK: Language tests to uncover bogus asylum seekers. (2003). *The Guardian*. Retrieved March 25, 2003:
www.unhcr.ch

U.S. Committee for Refugees. (2002). *World refugee survey 2002*. Retrieved February 23, 2003 from:
<http://www.unhcr.ch>

A victory for humanity. *The Guardian Leader*. Retrieved on March 15, 2003 from:
www.guardian.co.uk

Webster, P. (2003). Sangatte refugees freeze on Paris streets. *The Guardian*. Retrieved March 25, 2003 from:
www.guardian.co.uk

Weir, K. (2002). The waning of state sovereignty. *Primis Online*. Retrieved on September 30, 2003 from:
www.mhhe.com/primis/online

Proofread by Grace Harbour and Peter Rudiak-Gould.