

Whatever Happened to Asylum in Britain?

STUDIES IN FORCED MIGRATION

General Editors: Dawn Chatty, Refugee Studies Programme,
International Development Centre, University of Oxford *and*
Chaloka Beyani, Law Department, London School of Economics

Volume 1

A Tamil Asylum Diaspora. Sri Lankan Migration, Settlement and Politics in Switzerland

Christopher McDowell

Volume 2

Understanding Impoverishment. The Consequences of Development Induced Displacement

Edited by Christopher McDowell

Volume 3

Losing Place. Refugee Populations and Rural Transformations in East Africa

Johnathan Bascom

Volume 4

The End of the Refugee Cycle

Edited by Richard Black and Khalid Koser

Volume 5

Engendering Forced Migration. Theory and Practice

Doreen Indra

Volume 6

Refugee Policy in Sudan, 1967–1984

Ahmed Karadawi

Volume 7

Psychosocial Wellness of Refugees. Issues in Qualitative and Quantitative Research

Edited by Frederick L. Ahearn, Jr.

Volume 8

Fear in Bongoland. Burundi Refugees in Urban Tanzania

Marc Sommers

Volume 9

Whatever Happened to Asylum in Britain? A Tale of Two Walls

Louise Pirouet

**WHATEVER HAPPENED
TO ASYLUM IN BRITAIN?**

A Tale of Two Walls

By

M. Louise Pirouet



Berghahn Books
New York • Oxford

First published in 2001 by

Berghahn Books
www.berghahnbooks.com

Editorial offices:
604 West 115th Street, New York NY 10025, USA
3 NewTec Place, Magdalen Road, Oxford OX4 1RE, UK

© 2001 M. Louise Pirouet

All rights reserved.
No part of this publication may be reproduced in any form or by
any means without the written permission of Berghahn Books.

Library of Congress Cataloging-in-Publication Data

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British
Library.

Printed in the United States on acid-free paper

ISBN 1-57181-991-6 hardback
ISBN 1-57181-468-X paperback

Contents

List of Abbreviations	vi
Foreword	vii
<i>Introduction</i> A matter of National Pride	1
<i>Chapter 1</i> Setting the Scene	9
<i>Chapter 2</i> The Tamils and the 1987 Watershed	28
<i>Chapter 3</i> Making Decisions	45
<i>Chapter 4</i> A Right of Appeal	65
<i>Chapter 5</i> Without Charge or Trial	81
<i>Chapter 6</i> Protecting Women and Children	108
<i>Chapter 7</i> Building Walls Round Fortress Europe	124
<i>Chapter 8</i> Keeping Them Out: A Wall Round the UK	143
<i>Chapter 9</i> Supporting Asylum Seekers	166
<i>Chapter 10</i> Afterword: What of the Future?	187
Bibliography	193
Index	201

List of Abbreviations

AI	Amnesty International
AIBS	Amnesty International, British Section
ARC	Asylum Rights Campaign
AVID	Association of Visitors to Immigration Detainees
CAB	Citizens' Advice Bureau
CIO	Chief Immigration Officer
CIREA	Centre d'Information de Réflexion et d'Échange en Matière d'Asile
ECHR	European Convention on Human Rights
ECOSOC	Economic and Social Council
ECRE	European Council on Refugees and Exile
ELR	Exceptional Leave to Remain
EU	European Union
IAA	Immigration Appellate Authority
IAT	Immigration Appeals Tribunal
IND	Immigration and Nationality Department
IO	Immigration Officer
IPPR	Institute for Public Policy Research
JCWI	Joint Council for the Welfare of Immigrants
JHA	Justice and Home Affairs
JRS	Jesuit Refugee Service
MRG	Minority Rights Group
NGO	Non-Governmental Organisation
RAP	Refugee Arrivals Project
RSP	Refugee Studies Programme
TP	Temporary Protection
UKIAS	United Kingdom Immigrants' Advisory Service
UNCAT	United Nations Convention Against Torture
UNHCR	United Nations High Commissioner for Refugees

Foreword

This study has grown out of a personal involvement in the refugee scene over a number of years. As a researcher and lecturer at Makerere University, Kampala, Uganda in the 1960s and early 1970s I met Rwandaise and Sudanese refugees, and gained my first insights into what it means to be a refugee, separated from one's homeland and often from family members, and dependent on others for protection. In the late 1970s, when teaching at Nairobi University, I found myself immersed in the plight of former colleagues from Uganda who had been forced to flee from Amin's terror. Back in Britain in the 1980s I was asked to represent Amnesty International on the Refugee Council's Africa Committee where, several times a year, representatives of many of the major aid agencies met to consider the refugee situation in that continent. That committee eventually came to an end in the late 1990s when electronic communication rendered it obsolete.

Out of these experiences, and contacts with Helen Bamber and the newly established Medical Foundation for the Care of Victims of Torture, Antonia Hunt and I became aware that refugees seeking asylum in the UK were facing increasing difficulties. Charter '87 for Refugees was the result of that concern. This set out minimum standards for those seeking asylum in the UK under six heads. It urged that they should be treated with dignity and generosity in accordance with international standards; that there should be just and humane entry procedures with a right to legal representation; that there should be an in-country right of appeal for all those initially refused asylum; that only in the most exceptional circumstances should those seeking asylum be detained and that detention should be brought under judicial supervision; that asylum-seekers should be adequately provided with the necessities of life and that children should be given special protection.

Antonia Hunt and I found ourselves involved in an ongoing campaign. Charter '87 was signed by around ten thousand people, including several hundred of the great and the good, and nearly a hundred MPs from all political shades of opinion. We were able to help a number of individuals, and to contribute a little towards a better understanding of the plight of refugees, but it quickly became clear that the government of the day was reluctant to take notice of a campaigning group. However, whether or not government would listen, an ethical stand had to be made over the increasingly narrow interpretation of the UN Convention on Refugees, and the growing problems facing those who sought refuge from oppression.

Ten years later, in 1997, it was felt that Charter '87 was becoming redundant. Other organisations, with far better facilities than we had, were campaigning more effectively than we could do. The Steering Group which had guided us, and to which Charter '87 owed so much, agreed that this was so. Antonia wanted to move on to an increased commitment to the Medical Foundation, I to researching and writing up this study of asylum. So we held a final ceremony in the Jerusalem Chamber of Westminster Abbey in the autumn of 1997, just a decade after we had launched our campaign.

My involvement with the refugee scene has continued. I have frequently been asked by solicitors to provide expert witness reports for asylum-seekers from Kenya and Uganda who were appealing against refusal of asylum, and in 1999 I found myself involved in campaigning for the rights of asylum-seekers once again when a new reception/detention centre was opened near Cambridge.

I want to express my gratitude to the many people who have helped me with this study, including the members of the refugee organisations that I have got to know and with whom I have worked over the years. First must come my gratitude to the members of Charter '87's Steering Group who guided us so ably and from whom I learnt so much, and especially to Antonia Hunt, Joint Co-ordinator of Charter '87. The experience of being a member of the Co-ordinating Committee of the Asylum Rights' Campaign made this overview possible in the first place, and I owe a special debt to all the members of that group and of ARC's Consortium representing refugee community groups and refugee agencies, as I do also to present colleagues on the Board of Asylum Aid. Picking out individual names is always invidious, but particular thanks for help with this research are due to Sherman Carroll and Alison Harvey at the Medical Foundation, Natalia Berkowitz, Richard Dunstan, Liz Hales, Barbara Harrell-Bond, Jan Shaw, Peter van der Vaart, and many others who have answered questions and sent me material. Particular

thanks, too, to those who have read the whole or part of the typescript for me, whose help and criticism I have valued enormously: Antonia Hunt, Peter Hunt, Michael Mayne, Candis Roberts, John Roberts, Nicholas Sagovsky, Mary Salinsky and Prakash Shah. Any remaining imperfections are mine alone.

Louise Pirouet
Cambridge
July 2000

Introduction

A Matter of National Pride

The United Kingdom has a long-standing tradition of giving shelter to those fleeing persecution. We are determined to uphold that tradition.

This comes from a briefing for Labour Party MPs before the Report and Third Reading Stages of the 1999 Immigration and Asylum Bill, but something very like it has been repeated like a mantra by ministers of both Conservative and Labour governments throughout the years 1987 to 1999, the period which this study surveys. It is indeed a matter of national pride that persecuted people have been able to find a refuge in this country. National pride comprises various elements: aspects of the national character, real or imagined (sympathy for the underdog, a sense of fairness, doggedness in adversity), battles won, great figures of the nation's history, achievements in the arts, economic success, the nation's standing in the world, the country's assets of scenery and natural products. A sense of pride in giving shelter to the persecuted – perhaps one aspect of sympathy for the underdog – reflects a moral achievement, and constant reference to it by government ministers shows how important it is felt to be. Generosity to one's own people is to be expected and is not particularly praiseworthy. Generosity to those outside one's own community is widely accepted as a virtue. Cardinal Basil Hume once said, 'It seems to me that the reception given to those applying for asylum is an illuminating indicator of the state of a society's health.'¹

1. Quoted in the Refugee Council, *Credit to the Nation: A Study of Refugees in the United Kingdom*, London, 1997, 8.

The British people have also, of course, defined themselves by what they are not as well as by what they are. Traditionally the British have seen themselves as free not oppressed, an island people not Continental Europeans, since the Reformation as Protestant not Catholic, not black or brown. But all these categories have been eroded. The Cold War is over so we cannot define ourselves over against the Eastern Bloc; we do now in some sense belong to Continental Europe though part of our national malaise stems from our uncertainty about what this should mean; Roman Catholics are now recognised as no less British than anyone else, and part of the British mainstream; black and brown people now form a permanent part of the population. Moreover we have lost an empire, and for many in the older generations this loss is of some significance. Hence there is something of a national identity crisis, and this fuels people's uneasiness about newcomers and further diversification of our society.

Have we, as a nation, a continuing right to the sense of moral worth we have assumed about welcoming those in need of safety and a refuge? Who is meant by 'we'? The government? Or the people as a whole? The government is less and less willing to give shelter to those seeking asylum, most of whom are branded as 'economic migrants'. There is much talk of 'bogus' or 'abusive' asylum claims, with Home Office ministers giving a lead in this. A recent publication cites the following headlines in large-circulation newspapers in late 1998:

'Why do we let in this army of scroungers?' (*Daily Mail*, 26 September)

'The Good Life on Asylum Alley' (*Daily Mail*, 6 October)

'When "asylum" means a free pass to paradise' (*Evening Standard*, 15 October)

'Refugee Crime Wave in London' (*Evening Standard*, 17 September)

'Asylum law buckling as false claims grow' (*Daily Telegraph*, 28 September)

'Brutal Crimes of the Asylum-seekers' (*Daily Mail*, 30 November)²

In the run-up to the local elections of May 2000 attacks on asylum seekers increased in the right-wing press to such an extent that the Asylum Rights Campaign complained to the Press Complaints Commission about the *Sun's* and the *Daily Mail's* hostile reporting. Although the complaint was rejected, the Commission members concluded their adjudication by warning that 'in covering such topics there is a danger that inaccurate or misleading reporting may

2. Quoted in Amnesty International, *Most Vulnerable of All: The Treatment of Unaccompanied Refugee Children in the UK*, London 1999, 19.

generate an atmosphere of fear and hostility,' and editors were reminded of their responsibilities to avoid discriminatory reporting. The Commission underlined their oft-repeated concern about racist reporting.³ The Refugee Council believed that racist attacks and attacks on asylum seekers increased as a result of this hostility.⁴

The legislation passed in the last decade has made it progressively more difficult for anyone seeking asylum to find refuge in the UK, and life progressively more uncomfortable and uncertain for those who, against all the odds, manage to reach this country. In 1996 legislation was passed which deprived the majority of asylum-seekers of social security benefits of any kind, and left them without food or shelter. Mercifully the 1948 National Assistance Act was invoked, and under it asylum-seekers had to be provided with food and shelter. English law did not allow people to be left starving on the streets. In 1999 a Labour government recognised that its predecessors had gone too far and that a significant section of the population was shocked by what had been done. So the new government accepted that the UK had an obligation to continue to provide at least minimal food, warmth and shelter for asylum-seekers. But, arguing that cash was an inducement to economic migrants, the new government was prepared to subject 'genuine' asylum-seekers, as well as those it claimed were making 'abusive' claims, to a humiliating system of food vouchers to satisfy the anti-immigrant feeling reflected in, and whipped up by, sections of the press. Vouchers are humiliating because their users are instantly identifiable as asylum-seekers and hence targets for those who label all such as 'scroungers'. Some asylum-seekers seen shopping with vouchers have been abused and even spat at, whilst some supermarket check-out staff have treated them with contempt. Are the British people being robbed of a cause for pride with regard to those who seek refuge here? Is what is happening really the fault of 'bogus' asylum-seekers who have abused our hospitality, or has our welcome worn thin?

Sixty years ago, on 14 June 1938, the government of the day responded to the plight of Jews in Germany, Austria and Czechoslovakia by offering to accept ten thousand Jewish children into the country. This became known as the *Kindertransport*, and it saved the lives of those ten thousand children, most of whom never saw their parents again: they died in the Holocaust, as their children would also have done had they not been rescued by the *Kindertransport*. Sixty years later on 14 June 1999 the Chief Rabbi, Professor

3. Adjudication delivered to complainants in May 2000, published 26 July 2000.

4. 'Nailing press myths about refugees', Briefing April 2000; *iNexile*, June 2000, 9.

Jonathan Sacks, unveiled a plaque in the House of Commons to commemorate that act of humanity. Speaking on Radio 4's *Today* programme in the 'Thought for the Day' slot, the Chief Rabbi insisted that the spirit of compassion still lived. He told of how the head of the Refugee Council, visiting the Midlands to meet refugees from Kosovo, had become alarmed when someone told him there was a demonstration outside. Fearing the worst, he had gone to the window. There was indeed a crowd and a banner. On the banner was written just one word, 'Welcome'. 'And when those refugees return home', said the Chief Rabbi, 'they'll carry with them the memory of that moment – the knowledge that there is another way of treating strangers, not with hostility but hospitality.'⁵

That same day Amnesty International published a report on the organisation's concerns about the treatment of unaccompanied refugee children in the UK. It made uncomfortable reading. In an article in the *Independent* which linked together the unveiling of the *Kindertransport* memorial, and Amnesty's report on the treatment of child refugees in the UK, Natasha Walter noted that the very next day Members of Parliament would be debating yet another illiberal Asylum and Immigration Bill. She concluded her article by asking:

When members of Parliament see the plaque commemorating the *Kindertransport* unveiled in the House of Commons today, will they feel a warm glow that Britain once did its duty by 10,000 children who needed their protection? Or will they look into their hearts and wonder how they can bear to pass a Bill that will do nothing to help the children who are fleeing persecution and genocide today?⁶

It seems that when the British public understand the need for refuge of some individual or group, then the spirit of hospitality is still alive and well. But too often the public has been misled about those who seek asylum, and then xenophobia has triumphed, fuelled by illiberal legislation which seems to lend substance to racist fears. A clearer and more principled lead is needed from government.

There is no denying that there is a refugee crisis in the world at the end of this second millennium. 'The problem of forced displacement is one of the most pressing challenged now confronting the United Nations', wrote UN Secretary-General Kofi Annan in his Preface to *The State of the World's Refugees 1997-98: A Humanitarian Agenda*.⁷ This survey gave the total number of refugees worldwide as

5. Transcript of the Chief Rabbi's message, courtesy of the Office of the Chief Rabbi.

6. *Independent*, 14 June 1999.

7. Published by Oxford University Press NY for UNHCR, 1998.

13.2 million, up from just 2.5 million in 1978.⁸ An even larger number of people, 21.5 million, were internally displaced, driven from their homes by war and civil unrest and persecution to take refuge in some other part of their own country.⁹ A happier side of the picture is that 3.3 million refugees have recently returned to their home countries. They also fall within the mandate of the UNHCR.¹⁰ These figures are a measure of the conflict and poverty which has overtaken large tracts of the world at the end of the millennium: some 35 million people whose lives are broken and disrupted.

The brunt of the refugee crisis is borne by the poorer countries of the South, not by the rich, industrialised countries of the North. In 1998 the EU, with its population of around 300 million of some of the world's richest people, received some 300,000 asylum applications. Switzerland, by far the richest European country, received a further 42,000.¹¹ By contrast Malawi, one of the world's poorest countries with a population of around 9 million, for years hosted a million Mozambican refugees. By no stretch of the imagination can Europe be described as overwhelmed by the numbers of people seeking asylum.

Home Secretary Jack Straw has pointed out that Britain does not receive an undue share of those who seek asylum in Europe. In 1998, Germany, the Netherlands and Switzerland all received a greater number of applications, and when the ratio of asylum-seekers to population size is taken into account, the UK drops further down the list to eleventh place in the European league table. On this count Switzerland, Luxembourg, Belgium and the Netherlands top the European list by far, though some of these countries are more densely populated than the UK. Nevertheless the numbers of people seeking asylum in Europe are some ten times higher than they were fifteen years ago, but so are refugee statistics worldwide. Sometimes we know about the crises which force people into flight. Bosnia and Kosovo have become household names. But people know far less about the oppression in Sudan and Congo Brazzaville, for instance, and find it difficult to understand why people from those countries should need to find a place of refuge.

Over the years asylum applications in the UK, in the EU and worldwide have fluctuated. Crises such as those in Rwanda, Bosnia and Kosovo have led to huge displacements of population. But

8. UNHCR, *State of the World's Refugees*, 1998, 54.

9. Janie Hampton (ed), *Internally Displaced People: A Global Survey* (for the Norwegian Refugee Council, and Global IDP Survey), London, 1998, xiv.

10. UNHCR, *State of the World's Refugees*, 1998, 288–9.

11. Tables attached to Jack Straw's letter to the *Daily Telegraph*, 21 January 1999, but not published.

crises do not always lead to people becoming permanently displaced. Refugees usually want to go home, even when home is far poorer and less privileged than their place of refuge. People have returned from the UK to, for instance, Zimbabwe, South Africa, Namibia, Uganda, Chile and Argentina in the last two decades, and some are among those mentioned above for whom the UNHCR has a continuing responsibility to see that they are satisfactorily resettled. But not all who found asylum in the UK have returned home. For some, their home country remained unsafe. Sometimes a whole generation has grown up in the UK and become integrated into British life. The children of refugee parents who have grown up in the UK may have known no other home, and been educated and then married and found employment in the UK. The parents themselves are likely to have been naturalised as British citizens. Some refugees who try to return home discover that so much has changed that it is their home no longer, and they cannot readapt. Some of those who stay in the UK are high achievers in spite of what they have been through. The Hungarian, Arthur Koestler, made his name as a writer in Britain in spite of spending six weeks in prison because he entered the country illegally.

The Refugee Council's publication, *Credit to the Nation*, is a celebration of the contribution made by refugees to national life. Scientists, artists, philosophers, entrepreneurs and businessmen and women, religious leaders, poets, doctors, and entertainers are among those named in this impressive survey.¹² Dr Max Perutz OM, FRS, is just one of seventeen Nobel Laureates who came to the UK as refugees; Michael Marks of Marks and Spencer is the best known refugee entrepreneur; Manubhai Madhvani, one of Uganda's leading industrialists expelled by Idi Amin in 1972 is now a leading industrialist in this country; Minh To from Vietnam is a successful entrepreneur and manufacturer; musicians have included the members of the Chilingiryan String Quartet who came from Armenia as well as Siegmund Nissel and Peter Schidlof, co-founders of the Amadeus String Quartet; Wole Soyinka, the Nigerian novelist who won the Nobel Prize for Literature in 1986, lived in Britain for a while; and many more have become part of mainstream British society, playing a useful and productive role in their adopted country.

This is in spite of the fact that the UK does almost nothing to help people settle once they have been recognised as Convention refugees or been given exceptional leave to remain for humanitarian

12. Refugee Council, *Credit to the Nation: A Study of Refugees in the United Kingdom*, London, 1997.

reasons. There are no resettlement grants, little in the way of English language classes to assist newcomers, no special programmes through which people with professional qualifications can update them so as to be able to practise in the UK. People mostly have to struggle through on their own, or with the help of voluntary agencies who do their best, but find it difficult to make up for properly planned and funded programmes. Some refugees have suffered too much and found the strain of waiting for years to know whether or not they will be recognised as refugees too great to be able to adapt properly. If they are Black or Asian, then they may also have experienced discrimination in seeking employment.¹³

So it is a strange and patchy picture. On the one hand people seeking to find refuge in the UK may encounter blatant and often racist hostility fostered by sections of the media, as well as the cold, legal nit-picking of the Home Office as it examines their claims. On the other hand there is a large section of the population where genuine goodwill is found, though successive governments have done little to harness it except when it became politically necessary to admit some special group: Vietnamese or Bosnians, for instance. Because of restrictive legislation and the walls being built around 'Fortress Europe', Britain's tradition of granting sanctuary to refugees is under serious threat, and its people are apparently being encouraged to define themselves over against those they wish to exclude, instead of as possessing a spirit of generosity which welcomes and protects those in need of refuge. A mixed message is coming across from government when on the one hand it seeks to promote better race relations in the wake of the report into the murder of the Black teenager, Stephen Lawrence, and on the other hand it passes legislation which is likely to damage race relations.¹⁴ Racist crimes rose alarmingly in early 2000 at a time when hostility towards asylum seekers was being whipped up as local elections approached. Britain is now irreversibly a multicultural nation, and the only healthy kind of self-definition must take that into account. Rwanda, Bosnia and Kosovo are horrifying and extreme examples of what can happen when a people try to define themselves over against a section of their own population.¹⁵

13. Jenny Carey-Wood et al., *The Settlement of Refugees in Britain* (for the Home Office Research and Planning Unit), London, 1995.

14. Commission for Racial Equality, *Connections*, Winter 1998/9, 8–9; Yasmin Alibhai-Brown, *True Colours: Public Attitudes to Multiculturalism and the Role of Government* (for IPPR), London, 1999.

15. For a discussion of multiethnic nations see Adrian Hastings, *The Construction of Nationhood: Ethnicity, Religion and Nationalism*, Cambridge, 1997, especially Chapter 7, 167–84.

The reason for starting this account with the year 1987 will quickly emerge. In 1987 there was a somewhat muddly ad hoc system for dealing with asylum claims which had emerged over the years. The numbers applying for asylum were around 4,500 per year in the mid 1980s. The procedures were slow and somewhat amateur, and sometimes went badly wrong, but they were relatively generous in that two thirds to three quarters of those who applied for asylum were either recognised as refugees or given exceptional leave to remain for humanitarian reasons outside the immigration rules. European governments had begun to harden their attitudes towards refugees other than those from Communist countries in 1985. 1987 was the year when things started to change in the UK, and a harsher wind began to blow in this country and throughout the rest of Europe.

1

Setting the Scene

The decade 1987 to 1997 saw great changes, both in the pattern of asylum-seeking and in the procedures adopted by the Home Office, to deal with people who came to Britain as refugees. A shaping event was the fall of the Berlin Wall in 1989. Erected to keep people inside the former Eastern Bloc and prevent them from reaching the West, the Berlin Wall is the first of the two walls of the subtitle. Its demolition had global repercussions, and one of its long-term results was a large increase in the numbers of people seeking asylum in Western Europe. That in turn led to the heightening of another wall, the second of our ‘two walls’, an invisible wall round Western Europe, designed to keep people out. Neither wall has been impregnable, although it is somewhat easier to breach the second, invisible wall than it was to escape through no man’s land, past the borderguards’ field of fire and over the barbed wire of the Berlin Wall. As a row of graves demonstrates, many died in trying to escape over that wall. The invisible wall around what is often referred to as ‘Fortress Europe’ has its casualties too.

Refugees first became a matter of international concern and legislation in the years between the two world wars. In 1922, the League of Nations appointed the Norwegian scientist, explorer and statesman, Fridtjof Nansen, as a High Commissioner for Refugees.¹ The special passport introduced to allow refugees to travel is still often referred to as a Nansen passport. After World War II, the League of Nations was superseded by the United Nations. The UN Universal Declaration of Human Rights was drawn up in 1948 in the immediate aftermath of the war to try to prevent any recurrence of the appalling violations of human rights that had characterised the

1. UNHCR, *Quaderni, An Instrument of Peace*, Rome, 1991, 87–88.

Nazi regime. Article 14.1 of the Declaration runs: 'Everyone has the right to seek and to enjoy in other countries asylum from persecution'. What the Universal Declaration does not grant is the right to find asylum; that is the prerogative of the host country. Since 1951 the United Nations Convention Relating to the Status of Refugees, to which Britain is a signatory, has governed the treatment of those seeking asylum in all countries that have signed the Convention (the 'Contracting States'). This Convention was originally framed to deal with the thousands of people displaced by World War II who had still not been satisfactorily resettled. Most of its clauses set out the standards of treatment to which such people should be entitled in the countries that accepted them. These would protect them against unfair and discriminatory treatment, give them a guarantee of equality before the law, enable them to travel, and encourage countries to grant them naturalisation. The Convention was intended to clear up the problem of refugees once for all, and its provisions applied only to those displaced before the date of its enactment.

By 1966 it was clear that newer refugees in other parts of the world also needed protection and that the UNHCR should be enabled to offer that help. The Asian-African Legal Consultative Committee, recognising an ongoing refugee problem in its areas of the world, drew up a document entitled 'Principles Concerning Treatment of Refugees' which effectively extended the 1951 Convention to meet their situation. In 1967, a United Nations Protocol was enacted to extend the provisions of the Convention indefinitely. With the new Protocol in mind, ministers of the member states of the Council of Europe minuted a resolution stating that governments should 'act in a particularly liberal and humanitarian spirit in relation to persons who seek asylum on their territory'.² By this time Uganda, for instance, was host to some 130,000 refugees from Rwanda, 33,000 from Congo/Zaire and a growing number from the war in the Southern Sudan.³ The Organisation of African Unity decided that a further initiative was required, and in 1969 drew up its 'OAU Convention Governing the Specific Aspects of Refugee Problems in Africa'. This accepted the 1951 definition of a refugee but added the following:

The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nation-

2. Resolution 14 (1967) on Asylum to Persons in Danger of Persecution.

3. M. Louise Pirouet, *Uganda Historical Dictionary*, Metuchen NJ, 316-7.

ality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.⁴

Because the 1951 Convention is about the *status* of refugees, that is, of those people who are recognised as needing international protection from persecution, it does not set out procedures for dealing with people seeking asylum. Only three articles of the Convention relate to the asylum-seeking process. The first of these is Article 1, which defines a refugee as being a person who:

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.

Article 31.1 is also of great importance to people seeking asylum. It reads:

The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

Finally, there is Article 33, and both subsections need to be quoted:

1. No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

There are other international conventions that have relevance to decision-making in asylum cases, the most important of which are the United Nations Convention against Torture and, in Europe, the

4. Africans seeking refuge in the West who are often accused of being 'bogus' may simply not realise that the West does not accept this more realistic definition of a refugee.

European Convention on Human Rights.⁵ The ECHR is nothing to do with the European Union; it is a Convention of the Council of Europe, a body that came into existence long before the European Economic Community or the European Union had been thought of, and has a much wider membership. The ECHR was drawn up in 1950, and it is of great importance in all its member states because cases concerning possible breaches of the Convention can be taken to the European Court of Human Rights after all other remedies have been exhausted. Article 3: 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment', is often relevant to asylum-seekers and has been resorted to in a number of test cases. The Convention Against Torture spells out in far greater detail what is involved in protecting people from torture, and the UN Committee Against Torture also provides a court of last resort provided the state concerned has signed a protocol allowing individual cases to be brought before it. The UK has not yet done so.

International law nowhere defines many of the terms used in the definition in Article 1 of the 1951 Convention. What is a 'well-founded fear', and who is to decide? What is meant by each of the terms 'race, religion, nationality, membership of a particular social group or political opinion'? With regard to Article 31 of the 1951 Convention, how are 'coming directly' and 'without delay' to be defined? There is enormous scope for legal argument, and a body of British case law has been built up regarding asylum cases helping to define many of these terms. In addition, the UNHCR provides Guidelines that have been drawn up by agreement among the Contracting States. These set out standards to assist states in dealing with asylum and in drawing up procedures for determining asylum applications, but they are only guidelines, and are not binding. Resolutions passed at the annual meetings of the Executive Committee of the UNHCR also provide guidance.

In spite of the 1951 Convention, politics, compassion and sensible management often come into conflict when states have to respond to desperate people seeking sanctuary. Accepting people who are fleeing regimes which are seen as one's own natural enemies is one thing; those who flee oppression in states considered to be allies or trading partners may not find a ready welcome because of the possible consequences. Small numbers of individuals who flee are fairly

5. UNHCR, *Collection of International Instruments*, Geneva, 1976, prints in full all the relevant instruments operative at that date. The UN Convention on Torture and the UN Convention on the Rights of the Child are among the Conventions that have come into force since.

easily accepted; a rise in numbers, or anything that looks like a mass exodus, will seem to pose a threat. A well-organised group of those whom a government has decided to accept and whose arrival can therefore be properly prepared for ('quota refugees') can be managed much better than a sudden unexpected surge. Even the most compassionate have come to believe that it is not usually wise to accept groups of children unaccompanied by their parents because of the long-term problems that this may cause. Host governments and humanitarian groups often find themselves at odds because of their different priorities and differently perceived scenarios. The 1951 United Nations Convention Relating to the Status of Refugees does not relieve states of these tensions. The tensions are amply illustrated in the decade under review as also in the half-century leading up to the introduction of the Convention.

Successive British governments have insisted that they comply strictly with the Convention, and the British people have usually felt that they have something to be proud of in the way that this country has offered a safe haven for people who have been persecuted. The UK has a good record with regard to those it recognises as refugees under the Convention. A tradition of providing refuge for those seeking sanctuary on our shores goes back centuries, of course, before the UN Convention was drawn up. As Bernard Levin, himself the descendant of refugees, has put it:

There have been moments in the long story when compassion has failed ... There has been, and still is, a varying amount of racial antagonism from the indigenous towards the incomers. And, of course, there have been anomalies and injustices in the framing and execution of the laws, themselves certainly necessary, to restrict mass immigration. But on the whole, no citizen of this country, whether his ancestors came here last year or last millennium, has great cause for shame at Britain's policy in these matters, and most have much cause for pride.⁶

That record needs to be examined briefly before the most recent decade of our history is discussed.⁷

Most people could name at least some of those who have been given sanctuary in this country. Among the best known are the

6. *The Times*, 6 April 1987, in an article deploring the Carrier's Liability Act of that year.

7. Accounts of asylum in Britain may be found in Ann Dummett and Andrew Nicol, *Subjects, Citizens Aliens and Others: Nationality and Immigration Law*, London 1990 and Tony Kushner and Katharine Knox, *Refugees in an Age of Genocide: Global, National and Local Perspectives during the Twentieth Century*, London, 1999.