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The French Response to the Asylum Seeker Influx, 1980-93

By CATHERINE WIHTOL DE WENDEN

ABSTRACT: This article analyzes the evolution of the asylum situation in France, the untoward effects of rigor, and the humanitarian price paid for French efforts to curb possible abuse of asylum. French asylum policy reforms in recent years have significantly reduced asylum applications, attesting to a certain, if limited, governmental capacity to prevent unwanted migration.

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THE adoption, in 1951, of the Geneva agreement on refugees led to the creation of the United Nations High Commissioner for Refugees (UNHCR) in the context of the Cold War, when the refugee was an individual very different from a migrant worker and was usually a victim of the Eastern European political situation. During the following years, the regime protecting refugees adapted itself to a series of unforeseen circumstances, and it was only in 1967 that the New York convention on refugees extended the definition of refugee to southern areas with other types of asylum seekers. Today, Africa, Central America, and Asia are the scenes of the major refugee problems. In Europe, the lessons from Yugoslavia are also showing that, as the UNHCR's Mrs. Ogata stated at a conference at Graz in May 1992, "movements of people are likely to become both a major and security issue in the near future. An issue that cannot be dealt with through charity. An issue that requires political vision, leadership and statesmanship. . ."¹

Faced with such pressures, democratic states can curb asylum seeker inflows but at a cost to democratic values and without solving a worldwide problem. Moreover, these states encounter pressures from quarters with contradictory and conflicting viewpoints and positions: respect for human rights, public opinion in support of law and order, movements agitating in favor of the defense of asylum seekers, and the logic of the European framework. Increasingly,

there is an awareness that Europe has reached a turning point concerning immigration.

Europe is relatively much less affected by refugees than are Third World countries, which produce but also welcome most of the world's 17 million asylum seekers, 3 million quasi refugees, and 23 million displaced persons, a total of 43 million people who scarcely meet the spirit of the criteria laid down at Geneva in 1951.² But the refugee flows are not equally distributed among the European countries. For instance, since 1945, Germany alone has welcomed half of all the applicants for asylum in Europe—438,000 in 1992. There are different legal and administrative situations among European countries because of differences in the interpretation of asylum law, the criteria used, the constitutional or legal rights to asylum, and the like. The geopolitical situation also varies from one receiving country to the next. For example, there are differences with regard to the degree of permeability of national borders in relation to the South, proximity to countries affected by serious political crises, traditions of migratory flows, cultural areas of exchange, involvement with ethnic populations, the existence or lack of colonial links, the democratic and/or prosperous image of the destination countries, and so on.

Nonetheless, the countries of Europe are moving toward a common asylum policy, as witnessed by the agreement signed in Dublin in 1990,

1. "Refugees in Europe," an international conference, Academy of Graz, Austria, May 1992.

2. Aristide Zolberg, Astri Suhrke, and Sergio Aguayo, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (New York: Oxford University Press, 1989).

and toward a shared control of their continent's external frontier. Europe is now confronting a new situation characterized by this dual imperative.

Measures to address this situation include, first, reasserting protection of asylum seekers by respecting humanitarian methods when repatriating unsuccessful applicants, by legalizing those refused refugee status who have effectively settled in the receiving country, and by avoiding treating asylum only in security terms. Second, a common European immigration policy linked with asylum policy must be adopted in order to avoid a disjunction between immigration and asylum policies. The absence of legal opportunities for economic migrants, the inflexibility of migration policies, and the difficulty of effectively policing borders lead to a confusion, in the mind of the public, between illegals and asylum seekers, because nondemocratic countries often are also poor countries. In many circumstances, law is contradicted by facts and one can wonder about the legitimacy of refugee offices whose role consists mainly of transferring 90 percent of the demands for asylum to appeals commissions.

A new type of asylum seeker is thus emerging. Instead of a single male who applies for asylum due to physical threats against him as a result of his political ideas, there is a trend toward collective asylum seekers, that is, a group of people who are in danger because of ethnic, cultural, or religious associations. These asylum seekers are not far removed from economic migrants, and they sometimes find it difficult to prove the threats they face.

Third, it is necessary to study seriously the alternatives to migration. There must be a real medium- and long-term analysis of the opportunities for repatriation, development, and cooperation. The public must be informed of the findings.

Fourth, it is necessary to promote human rights by establishing sanctions against countries that generate flows of refugees and by regularly reviewing a list of the countries considered as politically safe.

In the absence of a generous and humanitarian policy toward asylum seekers, the Europe of nation-states will be in conflict with the Europe of human rights.³

In order to avoid the growing gap between North and South, East and West, Europe has to take into account global changes such as the end of the East-West struggle; the evolution of the situation in Third World countries; changes in the competence of the nation-state, whose powers with regard to border controls, asylum rights, and migration policies are being progressively transferred to the international European level; and transnational actors who try to influence the European-level decision-making processes by acting as so many pressure groups.⁴

NUMBER AND CHARACTERISTICS OF ASYLUM SEEKERS IN FRANCE, 1980-93

The Schengen group, created in 1985, has sought to harmonize and

3. Catherine Wihtol de Wenden, "Migrations et droits de l'homme en Europe," *Etudes internationales*, 24(1) (Mar. 1993).

4. Catherine Wihtol de Wenden, "Réfugié politique: Une notion en crise?" *Esprit*, pp. 73-86 (May 1990).

TABLE 1
ASYLUM SEEKERS ACCORDED REFUGEE STATUS, 1956-60

Number of Asylum Seekers	
1956	19,212
1957	28,813
1959	16,457
1960	9,119

SOURCE: France, Office for the Protection of Refugees and Stateless Persons (OFPRA).

coordinate policies toward immigration by fostering common policing of frontiers between the nine group members: France, Germany, Benelux, Italy, Spain, Portugal, and Greece. In a parallel fashion, the Trevi group, consisting of the 12 European Community countries, prepared the Dublin agreement of 1990, which, among other provisions, committed governments to accept as definitive most adjudication outcomes. One might think, then, that the responses of the European countries to the asylum situation would be roughly similar. In fact, this is not so. In spite of some convergence, each country tends to have its own policy, although they all are enmeshed in an international and European corpus of constraints. As for the French case, the years 1980-93 have witnessed dramatic changes in refugee flows and in policies.

The flows

France has a long tradition of offering asylum. Until 1960, an average of 15,000 applicants per year sought asylum (see Table 1), and refusals were rare, about 200 yearly.

Most of the applicants during this period were Europeans, and their welcome was facilitated by a policy of

assistance and integration. Perhaps because of the low number of applicants, the number of applicants who were granted refugee status was much higher than now. By 1956, 384,000 refugees had registered at the OFPRA, the French Office for the Protection of Refugees and Stateless Persons, created in 1952 to implement the Geneva agreement of 1951. In addition, there were 190,000 persons registered with the International Office for Refugees, a former office of the United Nations, located in France. In all, there was a total of 578,600 refugees with or without formal status, according to estimates of the OFPRA. In 1962, there were still 252,000 refugees in France and, in 1964, 174,000.

The rise in requests for asylum occurred in the middle of the 1970s. The turning point came in 1973-74, when recruitment of most foreign workers stopped while the situation in the Third World was deteriorating. Before 1974, many potential asylum candidates probably entered as foreign workers or came illegally, while after 1974, some who were unable to enter as immigrants asked for asylum. Asylum seekers from Eastern Europe gave way increasingly to Third World flows: Latin Americans, Vietnamese, black Africans fleeing

TABLE 2
ASYLUM SEEKER FLOWS, 1980-92

Number of Asylum Seekers	
1980	20,000
1987	27,000
1988	34,000
1989	61,000
1990	54,000
1991	46,800
1992	27,500

SOURCE: OFPRA.

civil wars, and new groups of relatively poor people who were fleeing persecution in countries such as Turkey and Sri Lanka but who were unable to assemble proof of their persecution. The increase in the number and diversity of asylum seekers prompted a change in the orientation of French policy toward them. There was now a much more suspicious attitude: the selective welcome of asylum seekers was replaced by dissuasive procedures.

Between 1973 and 1989, the number of asylum seekers grew from 1620, of whom 1237 were accorded refugee status, to 61,000. The Indo-chinese dominated in 1975-76; other Third World applicants dominated in 1984-85, mainly from Africa—Zaire, Ghana—and then, in 1989, there was a new surge of applicants from Africa—Zaire, Mali, Angola—and from Turkey, Sri Lanka, and the Indian subcontinent. France experienced a continuous increase in asylum seekers until 1990 (see Table 2). At the same time, the rate of refusals rose from 4 percent in 1976 to 85 percent in 1990.

From 1979 to 1989, the demand for asylum tripled. This increase took place in two stages. Circa 1985, re-

quests by Africans multiplied rapidly and continued to increase during the following years. Today Africa accounts for one-third of all asylum applications. Then, circa 1989, a new upsurge of requests by Africans occurred, coupled with a large increase in requests by Europeans, principally Turks and Romanians. Since 1989, the number of requests for asylum has decreased, as seen in Table 3.

The more the demand for asylum grew, the less asylum was granted. From a 77.7 percent acceptance rate for those seeking refugee status in 1981, the rate decreased to 15.5 percent in 1990, with the number of favorable decisions stabilizing in absolute terms at around 15,000 per year.

The refugee recognition rate of 29 percent in 1992 is higher than in many other European countries. At the frontier, those whose application is considered by the police to have an insufficient basis have an initial rejection rate of 50 percent. But one can observe strong disparities according to the country of origin of the applicants: chances are much better for an Asian than for an African to obtain refugee status. Moreover, the Refugee Appeals Commission tends to confirm the OFPRA refusals.

TABLE 3
ASYLUM ADJUDICATIONS, REFUGEES RECOGNIZED,
AND RECOGNITION RATE, 1981-92

	Number of Cases Adjudicated	Refugees Recognized	Recognition Rate (percentage)
1981	18,767	14,586	77.72
1982	21,210	15,670	73.88
1983	20,860	14,608	70.03
1984	21,928	14,314	65.28
1985	26,662	11,539	43.28
1986	27,274	10,645	39.03
1987	26,628	8,704	32.69
1988	25,425	8,794	34.59
1989	31,170	8,770	28.14
1990	87,352	13,486	15.44
1991	78,442	15,467	19.72
1992	37,202	10,819	29.08

SOURCE: OFPRA

In 1992, applications by asylum seekers rapidly decreased, falling to 28,000 from 61,000 in 1989. The recent decrease in applications has been accompanied by an increase in the recognition rate, now up to 29 percent. But it is difficult to explain this relationship. It is possible that recent deterrence measures have, in fact, deterred frivolous applications.

Currently, the asylum procedure is completed in six months. As for the displaced persons coming from the former Yugoslavia, a dispensation allows them to be granted a provisional residence permit of 3 to 6 months with a work permit. There were 10,000 persons with this status in early 1993. For most of them, France refuses to admit that their situation is definitive, as this would represent recognition of the enduring consequences of ethnic cleansing.

The refugee and asylum seeking population also varies in age. In 1991, the average age of Eastern European asylum seekers was 30

years; that of refugees, 57 years. African asylum seekers and Latin American asylum seekers had an average age of 29 years, and refugees, 37 years. Asian refugees averaged 38 years old.

While today there are 140,000 people with refugee status, thirty years ago, in 1962, there were 252,000.⁵

THE EVOLUTION OF FRENCH POLICIES: TOWARD GREATER RIGOR

The asylum right is mentioned in the preface of the French Constitution of 1946 and of 1958 (Fifth Republic) as being "among the principles particularly necessary to our period," inspired by the Declaration of Human Rights of 1789: "Every man per-

5. Luc Legoux, "Statistiques des flux de réfugiés depuis la création de l'OFPRA," in *Les réfugiés en France et en Europe: Quarante ans d'application de la Convention de Genève 1952-1992* (Paris: Primavera-Quotidienne, 1993), pp. 389-405.

secuted because of his action in favor of freedom has the right to asylum on the territory of the Republic." There is, thus, a right to territorial asylum, independent of the granting of the refugee status. It is not necessary to be a statutory refugee to benefit from asylum.

Following signature of the agreement for international protection of refugees embodied in the Geneva treaty of 28 July 1951, the law of 25 July 1952 created the OFPRA, which grants juridical and administrative protection to bona fide refugees and stateless persons and implements the international agreements related to this protection. The head of the OFPRA has to make a decision concerning the grant of refugee status in the four months following an asylum seeker's application. If the application is accepted, the asylum seeker becomes a registered refugee. He or she receives the right to stay, through a ten-year freely renewable residents' card, and the right to work and is welcome in specialized integration centers. If the application is rejected, an appeal is possible before an appeals board during the month following the notification of the negative decision of the OFPRA. In practice, however, due to the sheer numbers of asylum seekers, the procedure often is protracted, and many asylum seekers encounter difficulties dealing with the authorities in a climate of suspicion.

The French response to the upsurge in applications was an increased demand for proof and measures to avoid fraud, as if the policy toward refugees was an instrument to control immigration flows. In

1989, the OFPRA decided to reform its structure.

The reform includes a shortening of the decision-making process concerning refugee status. Before 1989, cases were often in adjudication for several years, which gave the applicant time to find a job, to establish a family, and so to settle in France. Since 1989, applications have been dealt with in 55 days, which is called by the defenders of human rights a "T.G.V. procedure"—as rapid as the French "train à grande vitesse." The applicant must appeal a negative decision within four months.

Another new measure is the taking of fingerprints. Each applicant must be fingerprinted; the prints are then computerized. This permits authorities to identify possible multiple applications made by one person. It has dissuaded asylum seekers from making more than one application.

Other measures include an increase in the financial support and in the number of civil servants granted to the OFPRA, together with improvements in efficiency. But one might wonder about the aims of such a reform, when some cases have very little chance of being heard. Only half of the applicants benefit from an oral hearing with the OFPRA, although such an interview is considered more or less essential if an OFPRA officer is to be persuaded to grant refugee status.

During the years 1990-92, new restrictive measures were added, sometimes because of the pressure of the European context.⁶ First, the notion

6. Danièle Joly and Robin Cohen, *Reluctant Host: Europe and Its Refugees* (Aldershot: Gower Press, 1989).

of manifestly unfounded requests developed. These requests are linked to proof of persecution, which is at the center of the debate over the granting of refugee status. The OFPRA case officer has to be convinced by evidence given by associations, embassies, and consulates of the asylum seekers' country of origin. If the pieces of evidence are convergent and compelling, refugee status is granted.

Second, sanctions were imposed against transporters. Air companies are fined if they agree to carry undocumented passengers. The law of February 1992 sanctions transporters carrying illegal immigrants. If such individuals seek asylum and their demand has no documented basis, then sanctions are applicable in principle. Transporters have to pay a fine and to lodge and eventually repatriate the illegals. There are worries about the legality of transporter sanctions, however, as they give transporters the right to assess by themselves the nature of asylum applications.

Third, agreements on readmission were adopted at the European level—by France, Germany, Austria, Switzerland, and Spain—that allowed states to send denied asylum applicants home. Responsibility for multiple asylum applicants is borne by the state that granted a visa for the longest period. If a visa is not requested, the responsible state is the one that the applicant enters first, according to the Dublin agreement.

Fourth, international areas where the Geneva agreement is not implemented—*zones de transit*—were established at entry points such as air-

ports. The government now has the right to assess and to refuse manifestly unfounded requests when applicants enter the country and to detain those foreigners in areas of transit. This innovation is highly controversial in the eyes of associations working in defense of asylum seekers.⁷

Fifth, the government stopped authorizing asylum applicants to work from 1 October 1991, the same time that Germany restored access to employment. The evolution of this policy is significant. In 1975, employment of asylum applicants was permitted, and in 1981, they did not even have to ask for work permits, as they had an automatic right to work. Applicants even obtained the possibility of legalization if they found employment, and they could receive housing assistance and help with integration. In 1991, this automatic right to work was abolished, and employment authorization for asylum applicants has since depended on the state of the labor market.

Sixth, measures to deal with asylum seekers at the moment of their application were given priority over longer-term integration measures. Reception Centers for Asylum Seekers were established in 1991 to carry out the new measures.

All these reforms—in addition to the effects of more restrictive access to the national territory resulting from the Pasqua Law, and the more rapid processing of cases, with resulting shorter stays in French territory

7. Groupe d'Information et de Soutien aux Travailleurs Immigrés, "Droit d'asile: Suite et . . . fin?" *Plein Droit*, no. 18-19 (Oct. 1992).

—may explain the decline in asylum applications in 1993. If we consider in addition that the country an applicant chooses for asylum is limited by the chances he has of receiving asylum according to his geographical area of origin, we observe that the right to asylum is strongly restricted. A source of further restriction can be found when an applicant requests asylum in various countries. A state receiving such a request may, since the Edinburgh resolution of 1992, send the applicant to the country of first asylum.

THE UNTOWARD
EFFECTS OF RIGOR
AND ITS MORAL PRICE

An asylum seeker now has more chances to be refused (*débouté*) than to be granted the status of refugee, and many asylum decisions may be dissuasive, more to respond to the anti-immigrant mood both in France and internationally than to supply a long-term solution to the flows of asylum seekers and displaced persons. Fifteen thousand refugees are officially recognized as such each year in France, but there are very few family reunifications.

Such a policy may lead to unclear situations for those whose request for asylum has been refused but who nevertheless remain in France. Two years ago, it provoked a campaign advocating refugee status for 100,000 people who had been refused asylum. In 1991, hunger strikes developed and prompted the adoption, on 23 July 1991, of an exceptional circular requiring prefects, senior civil servants in charge of the administration of departments (the major

French administrative units), to legalize the refused applicants if they were successfully integrated and employed. The situation of these applicants was reexamined, and roughly 13,500 of 50,000 were legalized. This legalization brings some discredit to the initial criteria of selection of refugees because it makes them appear very unpredictable. Since a decision of 2 February 1992, the right to asylum has been a principle of French constitutional law, as in many other European countries. But the right to ask for asylum and to benefit from territorial asylum is now granted in a very limited fashion. What credibility can the asylum procedures have when private associations have to fight constantly to protect the human rights involved from deteriorating?

A policy that is too dissuasive may also lead applicants to enter and remain in the country illegally instead of asking for asylum and being thereby threatened with expulsion from the territory. Illegal residence would become a reward for clandestineness. At the same time, there is a policy of refugee integration, and help is given to asylum seekers. Refugees are placed in provisional housing for six months; roughly 3000 refugees a year are welcomed after a stay of two weeks in a transit center. Asylum seekers waiting for a decision on their status are hosted in specialized centers. Refugees learn the French language, are helped to locate housing, and are given pocket money and professional training. Many refugees and asylum seekers, however, do not utilize government services, and they find housing and employment through their own networks. They

TABLE 4
ASYLUM APPLICATIONS BY CONTINENT, 1981-92

	Africa		North and South America		Asia		Europe		Stateless Persons		Total Number
	Number	%	Number	%	Number	%	Number	%	Number	%	
1981	3,583	18.04	1,685	8.48	11,842	59.62	2,658	13.38	95	0.5	19,863
1982	3,733	16.59	1,252	5.56	13,858	61.58	3,628	16.12	34	0.2	22,505
1983	4,590	20.54	1,684	7.53	12,816	57.34	3,195	14.30	65	0.3	22,350
1984	4,043	18.62	1,518	6.99	13,197	60.78	2,866	13.20	90	0.4	21,714
1985	9,984	34.52	1,110	3.84	14,136	48.87	3,579	12.37	116	0.4	28,925
1986	10,708	40.73	1,057	4.02	9,795	37.26	4,636	17.63	94	0.4	26,290
1987	10,478	37.86	1,247	4.51	8,934	32.29	6,909	24.97	104	0.4	27,672
1988	14,725	42.87	2,236	6.51	8,377	24.39	8,915	25.94	99	0.3	34,352
1989	23,456	38.19	3,352	5.46	13,950	22.71	20,614	33.56	50	0.1	61,422
1990	22,122	40.36	1,712	3.12	13,333	24.32	17,543	32.01	103	0.2	54,813
1991	16,494	34.82	1,091	2.30	14,730	31.10	14,968	31.60	91	0.2	47,374
1992	9,392	32.53	923	3.20	11,092	38.42	7,159	24.79	307	1.1	28,873

SOURCE: OFPRA.

also have access to a grant of money to help them integrate into society.

In the summer of 1993, the debate on asylum seekers and their human rights was renewed. The Constitutional Court ruled that certain provisions of recent governmental policies were unconstitutional, and the new conservative government requested revision of the Constitution. The French Constitution was amended to adopt European rules concerning asylum on 19 November 1993. Many opponents of the new conservative government denounced the revision as incompatible with the fundamental republican ideals of France.

CONCLUSION

The Geneva Convention of 1951 was conceived as a tool of remedy for political phenomena different from those that we have today (see Table 4). The expatriation of the middle classes that had no hope of promotion in their home countries, exile due to poverty and authoritarian regimes, and collective demands by ethnic groups instead of individual requests for asylum by well-known persons all constitute challenges to the international regime for refugees. The problem can be summarized in the question, Why should asylum seekers from the South not have the same legitimacy as those from the East? This is a very controversial question in France.