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Moral confusion and the 1951 Refugee Convention in Europe and Australia

Adrienne Millbank

The Australian Population Research Institute <tapri.org.au>
PO Box 8107
Monash University LPO
Victoria 3800
Australia

Adrienne Millbank Adrienne.Millbank@bigpond.com
Mobile 0488 424 290

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Moral confusion and the 1951 Refugee Convention in Europe and Australia

Executive Summary

At least 1.3 million asylum seekers or migrants (the two notions are interchangeable in Europe) poured into the European Union in 2015. Over a million arrived by sea, crossing the Aegean and Mediterranean in overcrowded, often inflatable boats. They came from Middle Eastern countries (many from Syria). They also came from Africa, Asia and south-east Europe. Most headed to Germany (1.1 million) and Sweden (200,000). In January and February 2016 they were still coming, at many times the rate of early last year. In late March they were still coming, despite internal border closures and a deal with Turkey, whereby quickly screened asylum seekers deemed ineligible to remain in Europe will be returned in exchange for an equal number of Syrian refugees for resettlement.

As is obvious from the continuing chaos and confusion, the asylum seekers that overwhelmed Europe in 2015 did not come under any coherent European Union refugee policy or program. They came after Europe's external border controls (and internal asylum regulations) broke down. They came, as *The Guardian (UK)* informed its readers, 'to secure rights they are entitled to under the 1951 Refugee Convention'. The countries of 'Fortress Europe' did not lift visa restrictions or carrier sanctions designed to keep out people from poor and war-ravaged countries. The refugee convention obliges signatory countries to examine the claims for protection from persecution of every individual who gets through their borders; it does not oblige them to provide legal entry or safe passage. Nearly 4,000 people drowned en-route to Europe in 2015.

The 65-year-old refugee convention is the only international agreement for the protection of refugees. It is obviously outdated. The problems of trying to administer it in a changed world have been known for decades. In brief: it skews the refugee effort; it is used as a migration channel; it confers advantage on those with the resources to move to wealthy Western and industrialised countries; it encourages people to risk their and their families' lives; it diverts attention from more needy refugees and displaced people; it is impossible to administer with integrity (acceptance rates vary wildly and rejected claimants fail to leave); the asylum process lacks credibility with the broader public, yet is a constant source of tension in receiving countries between government and advocacy groups.

The moral confusion that is now at the core of the refugee convention-based asylum system has been on vivid and dramatic display in Europe. Germany's 1.1 million and Sweden's 200,000 asylum seekers made no difference to the United Nations High Commissioner for Refugees estimate, made mid-year, of 60 million refugees and displaced people by the end of 2015. The cost to Germany alone in 2015 of 'housing, feeding, educating and administering' its asylum seekers has been estimated at €21 billion (\$USD 22.6 billion). The UNHCR budget for 2015, to support the world's 60 million refugees, was USD 7 billion. The German government has acknowledged that about 60 per cent of the asylum seekers it welcomed in

2015 will be found not to be refugees, and will be required to go home. Such assurances have little public credibility; no European country has in previous years removed more than a fraction of its failed asylum seekers.

Chancellor Angela Merkel was named Person of the Year by *Time* magazine, in part for her moral leadership in declaring that the right to asylum ‘has no upper limit’. But the refugee convention only ‘worked’ over the preceding 24 years in Germany precisely because the numbers had been kept down through visa and external border controls and other deterrents. Germany’s refugee credentials have been courtesy of the EU’s institutionalised hypocrisy.

Time magazine did not seem interested in investigating the cruel ‘Hunger Games’ type of dystopia involved in ostentatiously welcoming asylum seekers as they arrived in Berlin—only after they had paid thousands of Euros to people smugglers, survived hazardous boat trips, trudged through cold and mud, and pushed through barbed wire and humiliation in countries where their presence was resented. Nor was it interested in interrogating the cruel unfairness of a refugee system that bestows enticing rewards—residence in a stable, wealthy country—to the relative few (mostly young men) who are mobile and able to pay the hefty price of ‘undocumented’ entry, while those refugees most in need of help remain stuck in their own countries or marooned in camps in neighbouring countries. Surely Europe and the rest of the international community can develop a better, fairer, more morally coherent refugee system.

What such a system would look like has become clear. It would be based on the right of people not to be driven from their homes rather than notions of permanent exile. It would sanction refugee-creating governments; it would include a right of return. It would provide more comprehensive aid to those who stay, and preserve resettlement places in third countries for the most vulnerable of refugees. It would create safe zones within and close to war-torn countries, where education and skills training could continue. It would keep refugees as close to their homes as possible, so that they can return and rebuild. It would improve economic and employment prospects for refugees within their regions through investment and trade concessions.

The general mood in Australia would seem to be relief that the boats have been stopped since 2013. Both major political parties in Australia are now aware of the domestic political dangers in using the 1951 UN refugee convention-based asylum system as a mechanism through which to exhibit supposedly superior values of global humanitarianism. Indeed, both parties are aware of the pitfalls in pretending to use it as a mechanism through which to administer a refugee policy that makes sense and is acceptable to the broader public.

In view of the object lesson playing out in Europe, any policy retreat that risks the return of boat arrivals to Australia’s shores is now unthinkable. Politicians in Europe (in Denmark, Finland, and the Netherlands) are calling for the refugee convention to be reformed or scrapped. Prime Minister Turnbull should apply his innovative mindset to how Australia might galvanize discussions around the development of a new refugee agreement.

Introduction

The 1951 United Nations Convention Relating to the Status of Refugees was born in Europe, has been given its fullest effect and most generous interpretation in Europe, and is now imploding, spectacularly, in Europe. The 65-year old convention has been crumbling for 20 years, under the difficulty and moral confusion involved in trying to administer it in a changed and changing world. The number of asylum seekers who flooded into Europe in 2015, particularly following German Chancellor Angela Merkel's statement that those banked up in Hungary would be welcome in Germany, was unprecedented. For much of the year Europe's political leaders seemed paralysed, caught between the difficulty of coping with rising numbers and the European Union's own rules and regulations, which have incorporated an expansive interpretation of the refugee convention.

By December 2015, the asylum systems in several north-Western European countries had been overwhelmed and a 'migrant crisis' was engulfing Europe. By March 2016, European countries with migration cultures and traditions very different from Australia's had joined Australia in being criticised for renegeing on the refugee convention's obligations and for violating its terms.

Calls are once again being made for the 1951 refugee convention to be reformed or scrapped in favour of new arrangements with more moral integrity and clarity. The basic thrust of any new agreement is clear: it will direct protection and support to refugees where they need it, in their home countries and regions.

2015 in Europe

At least 1.3 million asylum-seekers or 'migrants' (the two notions are fused in Europe) poured into the EU in 2015 (up from 714,000 in 2014, and surpassing the previous record of 900,000 in 1992). Over a million arrived by sea, crossing the Aegean or Mediterranean, from the Middle East and north Africa, in overcrowded often inflatable boats. Tens of thousands came by land, via Turkey, Bulgaria and Macedonia. They came from war-torn countries and relatively stable countries. They came from Syria (about 30 per cent), Afghanistan, Iraq, Iran, Ethiopia, Eritrea, Somalia, Morocco, Tunisia, and Algeria. They also came from Kosovo, Serbia, Albania, Ukraine, China, India, Pakistan, Bangladesh, Ghana, Zambia, Senegal, Sudan, Gambia, Mali, Niger and Nigeria. They came on trips organised by people smugglers.¹ Most headed for Germany (1.1 million) and Sweden (about 200,000). In early 2016, they were arriving at many times the rate of early last year: over 150,000 had arrived by mid March 2016.

As was obvious from the chaos and confusion resulting from the mass inflow in 2015 (thousands of arrivals a day, tens of thousands a week, over 150,000 in September, over 221,000 in October, over 150,000 in November), the asylum seekers/migrants did not come under any coherent EU migration or refugee policy or program. According to a fact-sheet type article in *The Guardian (UK)* intended to educate readers confronted with images of endless queues, exhausted, trudging families, sinking boats and, piteously, a drowned child, they came 'to secure rights they are entitled to under the 1951 Refugee Convention'.²

But the countries of ‘Fortress Europe’ did not lift decades-old visa restrictions or carrier sanctions designed to keep out people from poor, unstable, and war-ravaged countries. The refugee convention obliges signatory countries to examine the claims of every single person who gets through the border and lodges a claim; it doesn’t oblige them to allow legal entry or provide safe passage. According to the United Nations High Commissioner for Refugees (UNHCR), nearly 4,000 people drowned en-route to Europe in 2015 when their overloaded boats sank.³ In 2014, 3,419 are known to have drowned. In 2016, they continued to drown—464 by 17 March.

A number of causes have been put forward for the 2015 European ‘migration’ crisis, none of which was a decision by the European Union (EU), or any European country, to ease the world’s refugee burden.⁴ Germany’s 1.1 million, or Sweden’s 200,000 asylum seekers have made no difference to the UNHCR estimate, made mid-year, of 60 million refugees and displaced people by the end of 2015. None of the asylum seekers who reached Germany or Sweden were directly fleeing persecution by the time they arrived: they had paid people smugglers to get them across a number of borders into the country of their choice. Few of them would count amongst those displaced people most in need of help. The weakest and poorest of the world’s refugees remain within their own countries, or marooned in refugee camps in neighbouring countries. According to UNHCR statistics, in June 2015 there were 20.2 million refugees, many in camps (2.2 million in Turkey, over a million in Lebanon, 635,000 in Jordan), and 38 million officially-termed ‘internally displaced people’ (IDP)—that is, people who are refugees within their own countries.⁵

The number of asylum claims lodged in industrialised countries has risen in recent years: to about 600,000 in 2013 (the highest level since 2001); to 866,000 in 2014, and to about 1.5 million in 2015. As noted above, in 2015 Germany received the bulk of these—about 1.1 million ‘migrant refugees’. At the beginning of March 2016, Germany had over 770,000 unprocessed asylum claims: 370,000 awaiting decisions and up to 400,000 who had registered but had not yet submitted applications. An unknown number of ‘migrant refugees’ had moved on to other European countries, and an unknown number had ‘chosen not to register’, preferring to ‘live in the shadows’.⁶

Dealing with tens of millions of IDPs and refugees who have spilled over into neighbouring countries presents a greater humanitarian challenge than dealing with 1.5 million asylum seekers in industrialised countries. Yet for decades, industrialised countries have spent at least 10 times more each year on processing and supporting their asylum seekers (less than half of whom have been found to ‘need protection’) than they have contributed to the world’s refugee effort.⁷ The UNHCR budget for 2015, to support the world’s refugees and IDPs, following special appeals to donors through the year, was US\$7 billion, a record high. Following a special pledging conference in London in February, the UNHCR budget for 2016 was further lifted, to US\$9 billion.

The IfO Institute for Economic Research in Munich estimated in November 2015 that Germany faced costs of over €21 billion (USD 22.58 billion) in 2015 to ‘house feed and educate’ 1.1 million asylum seekers.⁸ (The German government has said that it anticipates

that, after processing, many of these will be asked to leave.) The German Institute for Economic Research (DIW Berlin) produced different figures: it estimated in December 2015 that Germany's spending on asylum seekers would rise from roughly €6 billion (USD 6.6 billion) in 2015 to €15 billion in 2016 (USD 16.5 billion) to €17 billion in 2017 (USD 18.7 billion).⁹

The 1951 refugee convention was obviously not designed for situations of mass inflow and it did not foresee people smugglers selling tickets to hundreds of thousands of people to the destination of their choice. EU rules and regulations built up over recent decades to manage and dampen asylum seeker entry, such as the Dublin regulation which requires asylum seekers to lodge their claim for refugee status in the first EU country they enter, collapsed in 2015 under the weight of numbers. In reality, the Dublin regulation has never worked—it has always been too difficult to identify, for each individual, the first country of entry. And, in December 2011, the European Court of Justice ruled that asylum seekers should not be returned to Greece because of 'unsatisfactory reception conditions', and 'the risk of infringement on their human rights'.¹⁰

Other EU and European Commission rules and regulations, built up over decades through judicial decisions and rulings of human rights bodies to protect the rights of asylum seekers, have also constrained options to respond. Germany's Residence Act prohibits deportation of failed asylum seekers to countries where they may face serious harm, the death penalty, or human rights abuses. Following verdicts from the European Court for Human Rights, taking people into custody prior to deportation is no longer allowed. In Britain, deportations are only approved by the courts to four of Africa's 54 countries. Advocates protest removals and assist asylum seekers to file appeals and pursue all possible avenues (illness, hardship applications, church asylum). Boat turn-backs from Italy were suspended in 2012, after the European Court of Human Rights ruled that they contravened both the 1951 refugee convention and the European convention on human rights.¹¹

The refugee convention and its problems

The United Nations Convention Relating to the Status of Refugees (the 1951 refugee convention) was created in and out of the circumstances in Europe after the end of World War Two. It defines a refugee as a person:

(who) owing to (a) 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.

Obligations under the convention fall squarely onto the receiving state, and come into effect only after the asylum seeker has entered its territory and made a claim for refugee status. The most basic or core obligation of a signatory state is that of 'non-refoulement', that is, not sending someone back to a situation where they might face persecution under one of the listed grounds. Another important obligation is not to penalise asylum seekers for entering the

country ‘illegally’. Decisions regarding refugee status are made on a credibility-of-story, benefit-of-the-doubt basis.

The dilemma that the 65-year old refugee convention has created for Western countries that have tried to administer expansive, human-rights-based interpretations of its obligations, in an age of globalisation and migration, is obvious. The problems that have arisen through trying to administer the 65-year old convention even in countries that have adopted more literal, restrictive interpretations of its obligations have been known for decades.¹² In brief: it skews the refugee effort; it is used as a migration channel; it confers advantage on those with the resources to move to wealthy Western and industrialised countries; it encourages people to risk their and their families’ lives; it diverts attention from more needy refugees and displaced people; it is impossible to administer with integrity (acceptance rates vary wildly and rejected claimants fail to leave); the asylum process lacks credibility with the broader public, yet is a constant source of tension between government and advocacy groups.

Misgivings were being expressed by the late 1990s, following the rapid emergence of people smuggling as a global industry, about the refugee convention’s continuing viability. This occurred in countries with very different migration traditions and cultures: Australia and western European countries. (Australia is built on post-World War Two migration; it is arguably *the* pre-eminent country of migration management. While it has a history of offering resettlement to thousands of refugees as part of its planned migration, it does not have a long tradition of political asylum. Western European countries have long pre-War traditions of political asylum; they are not countries of planned immigration or refugee resettlement.) Politicians in both Australia and Western European countries called for the convention to be reviewed and reformed or scrapped in favour of a new international agreement.

In 1998 the Austrian Presidency of the EU suggested replacing the refugee convention with an EU asylum law ‘which meets today’s requirements rather than those of a geopolitically outdated situation’. In the same year the General Secretary of Germany’s Liberal party called in effect for default from the convention on the grounds that it was ‘an invitation to abuse and to unrestricted and unregulated migration’. In April 2000 the UK Home Secretary, Jack Straw, criticised it as ‘too broad for conditions in the 21st Century,’ and as ‘no longer an adequate guide to policy in the age of mass air travel and economic migration’. Then UK Conservative Party leader William Hague described the asylum system as ‘near collapse in today’s utterly different world’. In March 2000 the Australian Immigration Minister Philip Ruddock described the international asylum system as ‘open to exploitation and manipulation by non-refugees’, saying it should be toughened ‘either administratively or by reviewing the actual treaty document itself’.¹³

Discussions on reforming or replacing the convention fizzled out in the early 2000s, after new ‘border protection’ measures were introduced and the number of asylum claims being lodged in industrialised countries went down. Zeal to reform has waxed and waned with the numbers in different waves of asylum seekers. But the refugee convention has only ‘worked’ in industrialised countries in recent decades so long as the numbers that have got across borders have been manageable—politically, administratively, financially. And each new

barrier or deterrent introduced to keep numbers down has rendered the asylum system more morally incoherent. Barriers have increased but they have varied in harshness and effectiveness between countries and over time, depending on ‘push factors’, and whether politicians needed to appear tough and in control of borders (usually when numbers were higher), or to demonstrate superior values of compassion and progressive internationalism (usually when numbers were lower).

The 1951 Convention Relating to the Status of Refugees is still the only world-wide treaty governing the treatment of refugees and it is still (albeit with little conviction) upheld by the UHNCR as the ‘basic cornerstone’ of refugee protection. It still has little to do with the solutions applied for the vast bulk of the world’s refugees. These solutions are: to support refugees in their own or first, neighbouring country of refuge; to assist them to return home as soon as possible; to assist settlement close to their homes for those who cannot return, and, for the most vulnerable of refugees with limited prospects of returning home or remaining in their regions, to seek resettlement places in third countries: 70-100,000 refugees are resettled each year under the auspices of the UNHCR, mainly in the USA, Canada and Australia. And the number of asylum claims being lodged in Western European countries has escalated rapidly, to levels described through media coverage in such terms as ‘migrant crisis’, and ‘catastrophic’.

Fortress Europe, home of the refugee convention and organised hypocrisy

The refugee convention was created in Europe and it has mainly affected Europe. Over three-quarters of all claims for asylum have been lodged within an EU country, mainly Germany, the UK, and the Nordic countries. The number of people seeking asylum in the wealthiest European countries escalated rapidly from the late 1980s, with numbers rising and falling depending on ‘push factors’ in refugee-producing countries, and the effectiveness of measures to discourage asylum seekers.¹⁴ Since 1985, asylum seekers and subsequent family reunion have constituted the bulk of what is termed ‘migration’ in Europe. In 1992, after 450,000 claims were lodged in Germany, the government amended Article 16 of its Basic Law, which enshrines the notion of asylum, to qualify this right. (This qualification gave rise to the Dublin convention.)

By the late 1990s, many Western European governments were struggling to dampen down the latest inflows, and asylum or ‘migration’ was at the top of voter concerns in many countries. European institutions and governments appeared to be both proud of their humanitarian credentials as significant receivers of asylum seekers, and unable to cope with the migration pressures. European asylum policy, by the turn of the century, came to be described as ‘organised hypocrisy’.¹⁵ The EU committed to the ‘comprehensive and humane’ application of the refugee convention and the European Commission proclaimed commitment to its protection principles. Asylum seeker protections were embedded in the European Convention for the Protection of Human Rights and safeguarded through the European Court of Human Rights. Meanwhile, the EU committed more money to external border protection, increased carrier sanctions and visa controls and introduced a (Dublin) regulation that was supposed to retain asylum seekers in border countries.

At the individual country level, those prosperous European governments most attractive to asylum seekers have implemented measures to make their countries less attractive than each other's, and devised their own measures to keep asylum seekers out of their countries. Denmark's decision to take valuables and money from newly-arrived 'migrants' (over a base value of US\$2,000), to help pay for their support, is no different from the welfare rules that apply to Danes. The aim however was explicitly to divert asylum seekers elsewhere. Immigration Minister Inger Stoejberg explained in parliament on 13 January 2016: 'Denmark must become significantly less attractive for asylum seekers'. In 2015, Denmark tightened its 'migration' laws (shorter temporary residence, delayed family reunion, increased deportation efforts, reduced benefits)—and in September it advertised these new laws in Middle Eastern newspapers.¹⁶ Norway and Finland have used Facebook to warn of reduced benefits, vouchers instead of cash and delayed family reunion.¹⁷

Asylum seeker inflows have been more established in Europe than in Australia, but have mostly been unwanted and unplanned-for. By 2000, when the viability of the convention was being questioned, it was already clear that it was impossible to meet the limitless obligations of the outdated refugee convention, generously, with integrity, and without betraying the interests of existing populations. Fifteen years on, seemingly spontaneous gestures and efforts to do so in Germany and Sweden, while heroic, have again inevitably reeked of moral confusion, hypocrisy, dissembling and dishonesty. These gestures and efforts have, predictably, inevitably, been followed by back-downs, attempted reversals, and popular and political backlash.

'Heroic' Germany

Chancellor Angela Merkel was named Person of the Year 2015 by *Time* magazine, in part for her 'moral leadership' in declaring that the right to asylum 'has no upper limit', and generously welcoming asylum seekers. 'Leaders are tested only when people don't want to follow', explained the editor; the award was 'for asking more of her country than most politicians would dare'. *Time* magazine did not seem interested in investigating the cruel 'Hunger Games' type of dystopia underlying a refugee system that involves welcoming asylum seekers as they arrive in Berlin—only after these asylum seekers have paid thousands of Euros to people smugglers, survived traumatic boat trips, trudged for miles through cold and mud, and pushed through barbed wire and exhaustion and humiliation in countries where their presence was resented.¹⁸

European Commission president Jean-Claude Juncker in October praised Merkel for ignoring public opinion in her efforts to tackle the refugee crisis. But there is arguably a democratic deficit in enabling such a sudden, mass, nation-changing inflow without consulting existing residents, indeed, in spite of the views of a majority of those residents. This democratic deficit was compounded by the imposition of quotas of asylum seekers in regional areas and towns within Germany, and on other EU countries, without considering the wishes of residents. Public anxiety increased.

By late 2015 resistance was apparent amongst those who saw Merkel's gesture as exercised at their expense, and were fearful of identity loss. Research undertaken by GfK Opinion in

Germany in December 2015 found a majority of respondents feared erosion of their standard of living in the near future, and a majority expected the EU to drift apart. A survey by DeutschlandTrend in January 2016 found a majority of respondents did not believe Merkel's claim that Germany could absorb the refugee inflow. In a survey in January 2016 sponsored by public broadcaster ZDF a clear majority (60 per cent) of respondents said that Germany could not handle the new arrivals; a larger majority (70 per cent) were fearful the influx would lead to more crime, and a growing minority (42 per cent up from 33 per cent in October 2015) were fearful that Germany's cultural values were under threat.¹⁹ In a survey in early February 2016 conducted for public broadcaster ARD 81 per cent of respondents said they did not believe the German government was handling the refugee crisis well.²⁰

In April 2015 the Swedish Prime Minister promised there would be 'no limit' on the number of people that Sweden would accept; Sweden 'will accept refugees according to the conventions that bind us'.²¹ In September 2015, Angela Merkel also pointed out that the right to asylum has no upper limit, and that there would be 'no limit' to the number of 'refugees' that Germany would accept. Germany, she claimed, was a strong country and able to cope: 'We can do it and we will do it'.²²

In December, under pressure from her political party the Christian Democratic Union, Merkel promised to 'tangibly reduce' the number of arrivals. In late October Sweden's foreign minister had also announced that Sweden was 'near collapse', that her country was 'approaching the limit', and that other countries needed 'to ease the strain on Stockholm'. In late November Vice PM Asa Romson of the Green Party wept as she announced tougher asylum policies for Sweden: border checks, temporary residence permits, and limited family reunion rights. In January 2016 Sweden passed a law requiring asylum seekers to have passports; those without (approximately 60 per cent) were to be turned away at the border.

At the end of November Chancellor Merkel led the EU into a negotiated agreement with Turkey, whereby Turkey is supposed to prevent asylum seekers leaving the country, in exchange for €3.3 billion (to help support its 2.2 million Syrian and other refugees), and visa-free entry into the EU for its citizens. This agreement was extended in March 2016 by a 'swap' deal, whereby the EU will resettle Syrian refugees from camps in Turkey in exchange for Turkey re-admitting asylum seekers newly-arrived in Greece via Turkey, on a same number, one-for-one basis. Turkey successfully requested a further €3 billion to give effect to the agreement.

Chancellor Merkel also led, in late 2015, efforts to renew with African countries the sort of 'return' agreements that EU countries have been making for decades, involving significant funding, to encourage voluntary return of failed asylum seekers, and to encourage countries to take back their nationals.²³ Earlier arrangements have had limited effect. An Africa-Caribbean and Pacific Partnership Agreement, signed in 2000, and an Africa-EU Mobility and Employment Partnership, launched in 2007, included 'concrete action plans' for readmissions. But even where readmission agreements have been made between individual countries only fractions of the figures targeted in these deals have been achieved.²⁴

In December Merkel announced the end of automatic acceptance into Germany for Syrian (and Iraqi and Eritrean) refugees. She also undertook, in order to discourage new arrivals, to speed up asylum application processing and speedily deport those whose claims are rejected. She acknowledged that while all refugees in need should be helped, ‘not everyone who had come to Germany fulfilled those criteria’.

More efficient processing and more removals are undertakings that have been repeated year after year, over decades, by European countries. The return rate of failed asylum seekers for Western European countries in the early 2000s was estimated to be in the order of 10 per cent. Return rates appear to have increased since then. A return rate sufficient to deter ‘abusive’ claims, and instil public confidence in the asylum process, however, has never been achieved. In 2013 the European Commission, admitting that the EU had sent back less than 40 per cent of those refused asylum, acknowledged ‘with results like these, European citizens will not trust our asylum systems, and irregular migrants, people smugglers and human traffickers will take advantage of it’.²⁵ In 2014, less than one third of ‘non-EU nationals illegally present’ were deported from EU countries.²⁶ In Germany in 2014, 202,815 asylum applications were lodged and a total of 10,844 failed asylum seekers were deported.²⁷ In Germany more than 5,500 asylum seekers from North Africa were earmarked for deportation during the first six months of 2015. Just 53 were actually sent back.²⁸ Expecting large numbers of failed asylum seekers to leave voluntarily in 2016 is not realistic.

Sweden, overpowered humanitarian superpower

Sweden is a highly developed society with a small population, under 10 million. Under the long-term rule of its Social Democrats party it has had the most welcoming asylum policies in the EU. Sweden (that is, the Social Democrats, their main opposition party the Moderates and most of the Swedish media and academic elite), has long prided itself on its pro-‘migration’ and pro-‘migrant’ values, and its reputation as a moral superpower. The government has long promoted the country as proudly multicultural. ‘Migrants’, mostly asylum seekers from the Middle East and Africa, and their families, comprised 14 per cent of Sweden’s population in 2014.

A number of commentators and observers have pointed to a particularly entrenched culture amongst Sweden’s academic, political and media elite, whereby immigration via the asylum system has been an untouchable centrepiece of Sweden’s politics, and any questioning of the consensus dismissed as racist or xenophobic, or pandering to a backward and paranoid nativism.²⁹ In a country that prides itself on its pursuit of equality and multiculturalism, however, inequality has grown rapidly since asylum seeker inflows began in the late 1980s, and now appears to be entrenched. Concern has grown that Sweden’s many Muslim ‘migrants’ and their Sweden-born children are leading separate lives. In 2014, 58 per cent of welfare payments in Sweden were to ‘immigrants’, 42 per cent of long-term unemployed were migrants, and migrants who did work earned on average 40 per cent less than Swedes.

Sweden is estimated to have spent at least US\$4 billion in 2015 on settling its new refugees.³⁰ The Swedish labour market, like other Western European labour markets, is skills intensive. It is transparently disingenuous to tell the public that the unskilled ‘migrants’ who poured

into Germany and Sweden in 2015 will only enrich their countries economically by making up for some sort of demographic deficit,³¹ and culturally, through increased diversity. There is a cost to such sophistry and dissembling, a cost paid by taxpayers as well as the asylum seekers who end up living excluded lives in relative poverty or on welfare.

Such rhetorical posturing is transparent, at least to Australian observers aware of the costs involved in effective refugee resettlement³² as well as the significant benefits to be gained through managed skilled migration.³³ Voters can see that the asylum seekers/migrants who have flooded into Germany and Sweden in 2015 have not been selected for their work skills, that almost none speak German or Swedish, and that those who do enter their labour markets will struggle to find employment. Some will succeed in Germany and Sweden's highly skilled, rigidly structured labour markets; many will not.

Media collusion

Much of the coverage of the 2015 European 'migration crisis', including on the BBC or in *The Guardian*, showed images of families with young children. However, about 75 per cent of asylum seeker arrivals in 2015 were male, and of these, about 55 per cent were between the ages of 18 and 34. According to the EU border service Frontex, most arrived with little in the way of documentation and many refused to disclose their nationalities for fear of deportation. According to investigations reported in *The Guardian*, there has been a thriving trade in false identity, easily obtained through Facebook groups, with passports recycled or stolen from Syrian citizens.³⁴ While the media showed footage of grateful families accepting hand-out food and cast-off clothing during their journeys, there were also descriptions of well fed, well-dressed and assertive young men more interested in charging the batteries of their iPhones or obtaining a lap-top, and moving on to the European country of their choice. There were images of citizens in Germany welcoming arriving asylum seekers. There were also images of asylum-seeker centres that had been set on fire by less welcoming citizens.

The New Year's Eve assaults in Cologne, where hundreds of women were surrounded, groped and robbed by 'men of Arab and North African appearance', intensified the anger in the public debate in Germany about the government's asylum policies. People were shocked by the apparent boldness and sense of impunity of the men, as well as the nature of the assaults. The debate became particularly heated because Germany's national media did not report on the attacks for nearly a week, and then only did so after a wave of outrage on social media. The German establishment appeared keen to avoid criticism of its asylum policy; suspicion was fuelled that the public was not being told the truth about the extent of migrant criminality.

Public anger was further fuelled by the reaction, widely viewed as overly politically correct, of Cologne's Mayor Henriette Reker, who suggested a code of conduct for German women, including that they should maintain themselves 'at arm's length' from strangers. And by the reaction, on cue, of a Cologne-based imam, Sami Abu-Yusuf, who said that the women themselves were responsible for 'wearing perfume', and 'running around half naked'.³⁵

By early February 2016, over 1000 criminal complaints had been lodged with the police, including about 460 complaints of sexual assault. And by early February Germany's public TV channel ZDF had acknowledged a 'misjudgement' in not reporting sooner on the crimes. The government had also designated Morocco, Algeria and Tunisia as 'safe countries', lessening the chances of young men from these countries being granted asylum in Germany.

The Cologne assaults and similar incidents in other cities have, of course, only heightened anxieties in Germany and Sweden about the integration prospects of so many young men from Muslim countries.³⁶ Chancellor Angela Merkel had already acknowledged, in 2010, that multiculturalism in Germany had 'failed'. A YouGov opinion poll on 18 January 2016 showed a decline in support for her Christian Democratic Union to 32.5 per cent, an all-time low.

Asylum politics

The political backlash in Europe was evident from mid-2015. In June the Social Democrats in Denmark lost power to the conservative Venstre party (which won 47 seats), while the anti-Muslim Danish People's Party surged from 22 seats to 37. In Sweden, the anti-immigration Sweden Democrats party had long been dismissed as outside the bounds of decency, and tactically excluded from the workings of government by the other parties. In an August 2015 YouGov poll, the Sweden Democrats received 25 per cent of the vote, compared with 23 per cent for the Social Democrats, and 21 per cent for the Moderates. In Austria, the anti-immigration Freedom Party received its highest ever vote share in municipal elections in October. In Switzerland in October the anti-immigration Swiss People's Party won the largest vote, with 29.4 per cent, after campaigning against 'asylum chaos'.

In late October in Poland the anti-immigration Law and Justice Party won 39 per cent of the vote and formed government. By November in the Netherlands, Geert Wilders' anti-Islam Party for Freedom (PVV) was polling 33.5 per cent, far more than any other party. In France the 'far-right' anti-immigration Front National won the opening round of regional elections, with 28 per cent, its highest ever performance.

By December 2015 support for Chancellor Merkel's Christian Democrat Union party had dropped to 37 per cent (from 42 per cent in January 2015), and her personal support had slumped to below 40 per cent. By 18 January 2016, support for her conservative bloc had fallen to 32.5 per cent, its lowest since the 2013 election. Support for the 'far-right' AfD (Alternative for Germany) party doubled during 2015, from five to 10 per cent. According to an Insa poll, by mid-February 2016 support for the AfD had risen to 12.5 per cent.³⁷ Regional elections in mid-March 2016 confirmed that the AfD has made strong gains. In Saxony-Anhalt the AfD won 24.4 per cent of votes, reaching second place behind the CDU; in Baden-Wurtemberg it won 15 per cent, and in Rhineland-Palatinate 12 per cent. AfD's deputy leader Alexander Gauland has described Chancellor Merkel's asylum policies as a 'gift' to his party.

The migrant crisis in Europe has accelerated a swing to populist political parties in Europe, parties often deemed 'right wing' or 'far right' over the last decade. This swing has been

attributed to the forces of change and globalisation—fear of higher unemployment, rapid demographic change, high welfare costs, and declining social cohesion.³⁸ Particularly in Germany and Sweden, such parties had been kept on the fringes of politics, excluded through the collusion of the major parties, and, often, the national media.³⁹ The ‘migrant’ crisis has provided the impetus for these often nationalistic, anti-immigration parties to burst through.

Policy paralysis

Sweden and Germany appear to have underestimated the numbers of ‘migrants’ that would arrive under their generous asylum policies, and over-estimated their capacity to receive them. Measures announced late in 2015 to slow the inflow did not work. Of the (ridiculously ineffectual) quota of 160,000 asylum seekers supposed to be shared around amongst less overwhelmed countries, only about 600 had been moved by March 2016. By mid March 2016 about 40,000 ‘migrants’ were stranded in Greece, including thousands at the border with Macedonia.

A lot is now riding on the agreement with Turkey. Based on inflows in January and February 2016 the International Organisation for Migration (IOM) suggested that two million more asylum seekers could enter the EU by the end of 2016. As at 22 March 2016 the outflow from Turkey had slowed but not stopped: many hundreds of people were still arriving every day by boat in late March. ‘Migration’ from African countries was continuing despite renewed return agreements. The large reception centres supposed to be established in Greece were still to be constructed.

While the migration crisis has been at the top of the political agenda for over a year, and desperation seems to be mounting amongst politicians, as noted above the EU has appeared to be paralysed by its own rules and processes, and the commitment that some countries, particularly Germany and Sweden, have maintained to the 1951 refugee convention.

Lessons from and for migration-managed Australia

As noted above, Australia is literally a country of immigration: 28 per cent of residents were born overseas (compared with 16 per cent in Germany and 14 in Sweden). Over half of Australia’s permanent residents have one or both parents born overseas. Australian governments have always seen the country’s main contribution to the international refugee effort to be its managed annual humanitarian migration program, which politicians like to point out, is among the largest (per capita) in the world.⁴⁰ As noted earlier, under this program refugees are selected from refugee camps, on the advice of the UNHCR, from those in need of resettlement in a third country.

Australian governments have long held that public support for a sizeable annual intake of migrants and refugees depends on these being managed according to understandable, national-interest visa criteria and quotas. Australia has been a signatory to the refugee convention since 1954, and as a country that has punched above its weight in international forums, is expected, not least by itself, to take its treaty commitments seriously. However, the spontaneous ‘illegal’ arrival of people seeking to stay has always been hard to accept. Dealing with waves of boat arrivals in the 1970s, 80s and early 90s, from Vietnam, Cambodia

and China, proved confronting and divisive, with the introduction of tough control measures such as mandatory detention in 1992. In 2000, Australia confronted for the first time the beginning of a wave of boat people who had originated from far outside our region: North Africa and the Middle East.

A limit of tolerance was reached in 2001, with the arrival in Australian waters of the Norwegian vessel the Tampa, carrying over 400 asylum seekers. The Howard Coalition government refused entry, and introducing off-shore processing on Nauru and Manus Island. From 2002 to 2007 annual boat arrivals dropped sharply. But after the election of the Rudd Labor Government in December 2007 the situation changed. In 2008 a so-called ‘more compassionate’ policy was introduced⁴¹ and the number of unauthorised boat arrivals carrying asylum seekers swiftly mounted. Another limit of tolerance was reached in 2012, with over 50,000 boat people asylum seekers, 1200 known deaths at sea, and an upward trending rate of arrival.

Australia’s experiment in softening its uniquely tough deterrents under the Labor Governments of first Kevin Rudd and then Julia Gillard (2007–2013) was short-lived, and is now treated as an object lesson for politicians. For a brief period, 2009–2012, Australia went from one of the least to one of the most welcoming countries to asylum seekers, with high approval rates, generous settlement services and quick access to permanent residence—but only for those ‘unauthorised maritime arrivals’ who managed to get here after breaking through enhanced ‘border protection’.⁴² Over the period 2009–2012, as noted above over 51,000 asylum seekers arrived on boats, 1200 had died at sea, and the rate of arrival was trending rapidly upwards. In 2012 the Labor government under Prime Minister Julia Gillard re-introduced off-shore processing. In 2013 the Coalition parties won an election, promising to ‘stop the boats’, a promise which the new government was able to keep by safely turning them back.⁴³ And in 2015, Labor in opposition adopted the Coalition policy of boat turn-backs.

The general mood in Australia, among the broader public and commentators observing events in Europe, would seem to be relief that the boats have been stopped since 2013. There would also appear to be, amongst a significant section of the population, a sense of uncertainty and fear that the boats (and the drowning) will start again should the resolve of politicians weaken and Australia’s toughest deterrent measures (mandatory detention, boat turn-backs and off-shore processing with no prospects of settlement in Australia) be softened. At present, these ‘border control’ measures are supported by both major political parties, Coalition and Labor. In recognition of this bipartisanship, and of the public mood, the focus of campaigns by asylum advocates and sections of the media has been on asylum seekers stuck ‘off-shore’ on Nauru and Manus Island in Papua New Guinea. Advocacy has focused particularly on those of them in Australia, supposedly temporarily, for medical treatment.⁴⁴ ‘Let them come’ had given way, by the end of 2015, to ‘let them stay’.

(It should be noted that stopping the boats has not stopped asylum-seeking under the terms of the 1951 Refugee Convention in Australia. In 2014 about 9000 claims for refugee status were lodged by people who entered on visitor or student or temporary work visas—many simply

using the process to prolong their stay. While these claims raise questions of visa integrity and fairness, they have not been a source of divisive debate.)

There is still polarised and emotional debate in Australia about ‘irregularly-arrived’ asylum seekers, but this is now led by the minority Greens party and asylum advocates. Both major political parties are aware of the domestic political dangers in using the 1951 UN refugee convention-based asylum system as a mechanism through which to exhibit supposedly superior values of compassion and global humanitarianism. Indeed, both major political parties are well aware of the pitfalls in pretending to use the 1951 refugee convention-based asylum system as a mechanism through which to administer a morally coherent refugee policy.

Research into public opinion in Australia in 2015 has shown that attitudes towards asylum seeking have remained negative, with only one in four residents in 2015 agreeing that asylum seekers should be eligible for permanent residence in the country. It shows that Australia’s annual refugee resettlement program is supported by 75 per cent of residents. It also shows that Australia is a relatively stable and cohesive society, with a high level of acceptance of immigration and cultural diversity.⁴⁵

Questioning refugee resettlement

Australia’s annual humanitarian program (which involves offering places to those in humanitarian need with connections to the country, and places for ‘women at risk’, as well as places for refugees determined by the UNHCR as in need of resettlement) has received long-standing public acceptance. However, concerns about costs and benefits arose in 2015 with the extra 12,000 resettlement places for Syrian refugees offered by the Australian government. The issue was raised for public debate: could not more be done with the \$100 million a year welfare tag if it were redirected to more people in need—for example, \$1000 each for 100,000 refugees stuck in camps?⁴⁶ Most who commented agreed.

Australians are well aware of resettlement costs and problems, including for the refugees themselves: many will not find employment because they don’t have the job or language skills. Cynicism was expressed regarding Australian government selection processes for the Syrians.⁴⁷ Politicians were suspected of being more concerned to display their multicultural credentials (posing with the first arrivals, predictably, a photogenic Sunni Muslim family) than delivering morally coherent refugee policy.

Similar sentiments have been expressed in other resettlement countries. Cynicism appears to be widespread about the gestural politics involved in politicians demonstrating their international credentials by offering meaningless (in view of the numbers involved) extra quotas of refugees for resettlement. The integrity and capability of the UN body, the UNHCR, as well as that of domestic governments, in selecting those most in need has been questioned. In Canada, which had received 25,000 Syrian refugees by the end of February 2016, the point was made that the government was generously assisting only a lucky few, and perhaps not those most in need. ‘A more enlightened policy would be to make the lives of the desperate majority a little more liveable’.⁴⁸ Plans to resettle 10,000 Syrians in the US have

been progressing very slowly because of security concerns (heightened in an election year) regarding Muslim refugees.

Resettlement is neither a sufficient response to the world's refugee problems nor a sufficient response to the problems created by the refugee convention and its asylum system. A new refugee agreement that directs attention and resources to those who need protection and help, where they need protection and help, is obviously called for. In the future, for resettlement programs to be broadly accepted as having integrity, they will have to be seen to be part of a more morally coherent refugee response.

The end of the 1951 refugee convention

The 1951 refugee convention has been slowly crumbling over the last 20 years, under the weight of the difficulty and moral confusion involved in trying to administer it in a changed and changing world. It appears to be imploding, finally, in Europe, where it was born, and where it has been given its fullest effect and most generous interpretation. As argued above, the convention has only ever 'worked' in any European country when the number of asylum seekers who could get in and lodge claims for refugee status has been kept to a manageable level—about 50,000 a year in a large, wealthy country like Germany. In 2015 Europe was overwhelmed by asylum seekers; by 2016 it was obvious that dealing with even larger numbers was neither administratively possible nor politically feasible.

Austria in mid-February 2016 placed a daily limit on the number of 'migrants' it would allow to enter and pass through the country each day (3,200). It also imposed a daily limit on the number of asylum seekers it would process (80), and a limit on the number it would accept in 2016 (37,500). Austria's Interior Minister Johanna Mikl-Leitner explained: 'What we are experiencing has little to do with seeking protection, but the search for the most attractive country'.⁴⁹ The UNHCR has criticised border controls and closures within Europe for impeding and intensifying asylum seeker suffering and chaos, and condemned Austria's asylum seeker quotas as in contravention of the 1951 refugee convention.⁵⁰

By mid-March 2016 the main (Balkans) route to northern Europe was shut off, after Macedonia, Slovenia, Croatia and Serbia closed their borders. And by mid-March 2016 the EU had re-negotiated its deal with Turkey, whereby in exchange for €6 billion (USD 6.6 billion), visa-free entry for its citizens, and EU resettlement of Syrian refugees from Turkey, it will accept the return of the same number of 'migrants' people-smuggled to Greece. Turkey will do more to prevent boat departures. NATO ships will enter Turkish waters in order to (in language familiar to Australians) 'clamp down on smugglers' and 'protect the lives of migrants'.⁵¹ The UNHCR's EU coordinator, Vincent Cochetel, has described the plan as illegal: 'not consistent with international law'.⁵² In an address to the EU Parliament on 8 March 2016, the UN High Commissioner for Refugees, Filippo Grandi, stated that he was 'deeply concerned about any arrangement that would involve a blanket return of anyone from one country to another without spelling out the refugee protection safeguards under international law'.

UNHCR condemnation of Australia's off-shore arrangements and boat tow-backs as being in violation of its treaty obligations⁵³ has left government in Australia unmoved. In the face of overwhelming numbers of boat-arrivals in Europe in 2015 and the early months of 2016, the shallowness of the UNHCR's lecturing and hectoring about the importance and sanctity of the refugee convention has been fully exposed. Its advice to industrialised countries to resettle refugees each year in their hundreds of thousands, rather than tens of thousands, in order to take pressure off the international asylum system, is not helpful. It is politically unfeasible. It is also nonsensical: there are tens of millions of refugees. Its advice to the EU to open up other avenues of migration so that people who want to move to wealthier, more prosperous countries wouldn't have to use the asylum channel is politically unfeasible to the point of being risible. It hasn't warranted a response.

A new refugee agreement

European politicians are, finally, once again, calling for reform of the refugee convention, or for the convention to be scrapped in favour of a new international refugee agreement.

In December 2015 Denmark's Prime Minister Lars Lokke Rasmussen called for a revision to the 1951 refugee convention, saying 'we need to talk about adjusting the rules of the game'. The leader of the Netherlands VVD (People's Party for Freedom and Democracy), Halle Zijlstra, has called for the convention to be scrapped, arguing that the right to asylum should be restricted to refugees' own regions.⁵⁴

Prince El Hassan bin Talal of Jordan, commenting on the situation in Europe and in his own country, argued that the 1951 refugee convention is inadequate to deal with today's refugee situations. He has called for new solutions focussed on safe havens, temporary protection and return, so that societies are not stripped of the people they most need post-conflict.⁵⁵

Osmo Soininvarra, former chairperson of Finland's Green League, has called for 'the rules on refugees' to be updated as soon as possible. He has argued that the current tide is disorienting Europe, while doing nothing for the world's refugees: 'We offer excellent legal protection to those who have somehow gained access into the EU and leave those who do not have the funds or strength to do that for dead'.⁵⁶ Finland's President Sauli Niinistö, addressing the Finnish parliament early February 2016, said: 'At some point, someone has to recognise that, here and now, we cannot fulfil all of our obligations under international agreements. ... Europe cannot withstand uncontrolled migration for much longer'. He has argued that the EU 'must choose whether to protect its values and the people who are truly in danger or to inflexibly adhere to the letter of international obligations with no regard for the consequences'.⁵⁷

What a new refugee agreement would look like is clear. It would be based on the right of people not to be driven from their homes, not on 1950s notions of permanent exile from irredeemably persecutory regimes. It would sanction refugee-creating governments; it would include a right of return. It would preserve resettlement places in third countries for the most vulnerable of refugees, and provide comprehensive aid to those who stay. It would create safe zones within and close to war-torn countries, where children's education and skills training

could continue. It would focus on keeping refugees as close to their homes as possible, so that they can return and rebuild. It would focus on securing safety and improving life opportunities for these refugees through investment and trading concessions to promote employment and economic and business development in their regions.⁵⁸

A new refugee agreement would not privilege those with resources to move. The government of any country would of course retain the capacity to grant political asylum to whomever it wants.

Some commentators in Australia think that Prime Minister Turnbull's instincts are to soften some of the harshest aspects of Australia's asylum policies, including off-shore processing (and thus relieve its immense cost, as well as earning the approval of advocates in the nation's broadcaster, the ABC, and other sections of the media).⁵⁹ In view of the object lesson playing out in Europe—where the outdated and corrupted convention-based asylum system is threatening the very survival of the European Union—any policy retreat that risks the return of boat arrivals to Australia's shores is unthinkable. There are now clearly better ways for Australia, a country of successful migration, to demonstrate its refugee and internationalist credentials.

The Prime Minister should apply his innovative mindset to how Australia might galvanize discussions around the development of a new refugee agreement. It is not the best and most exciting time to be alive for the vast bulk of the world's refugees whose plight has been overlooked while governments in Western countries, most spectacularly in Europe, have grappled with wasteful, dysfunctional and morally incoherent asylum systems and policies. Or while governments, including in Australia, have played gestural politics with refugee resettlement quotas.

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