

## **UN Refugee Convention, 70<sup>th</sup> anniversary – is the UK still compliant with the 1951 treaty?**

The Priory Rooms, Bull Street Quaker Meeting - 28 July 2021 at 19.30 BST

*Speakers: Oliver Robertson (QPSW – Quaker Peace and Social Witness), Larry Bottinick (UNHCR – United Nations High Commission for Refugees), Bridget Walker (QARN – Quaker Asylum and Refugee Network)*

**Oliver Robertson** reminded us that the first High Commissioner for refugees was actually Fritjof Nansen who created the “Nansen Passports” after WW1. At the time, the term “refugee” had a broader definition - anyone in need outside their country. Quite often when people talk now about refugees they are actually thinking about this wider definition.

After WW2 there was a narrower definition - the Convention uses the terminology “well-founded” fear of persecution because of political opinion, race, religion, nationality or membership of a particular social group.” There is, very deliberately, not a definition of what counts as persecution but there is a recognition of the range and scale of inhumanity towards others.

The 1951 Convention focused on refugees in Europe after WW2 – it was only with the 1967 Protocol that it was made permanent and world-wide. The Convention is strong and powerful and has done a lot to support and protect refugees around the world. One of challenges at the moment is trying to protect what we have. There are countries which want to have a more restrictive approach but it is in fact difficult to change international law.

A few years ago there was a lot of discussion about the Global Compact for Migration and also one about Refugees - neither were legally-binding treaties. These were attempts to create a global understanding of people moving from one country to another and about how to respond to the present situation - trying to find a more equitable and fair way of sharing responsibility. Many countries because of geographical proximity to trouble-spots receive more than others. Countries with the highest number of refugees are not the European countries with the exception of Turkey - which is followed by Iran, Pakistan, Uganda and Lebanon. Oliver has worked for QUNO in Geneva and described their “quiet diplomacy”, bringing diplomats and others together over meal - to talk in a way which they can't do publicly. On one occasion one of delegates was a refugee which was actually quite unusual. QUNO recently did some work about Conscientious Objection and refugee status determination - many countries rely on out-of-date information when identifying whether or not Conscientious Objection is a valid reason for granting refugee status. (See further at

<https://quno.org/timeline/2021/5/report-conscientious-objection-military-service-and-refugee-status-determination> )

There was a question about any Resettlement plan for the UK government this year as no quota has been announced. UNHCR also has some concerns about the nature of those sought. We were told that Birmingham has agreed to take 110 resettled refugees in the current financial year. Afghans will also be arriving on a Relocation Scheme but this will not be the same as resettlement. Larry pointed out that in different regions of the world (e.g. Latin America and Africa) there is a broader definition of what counts as grounds for asylum. A question was asked about homosexuality as a recognised ground for seeking asylum. Oliver pointed out that there is practical support from the UNHCR and also a body within UNHCR which makes recommendations regarding specific issues. As with many pieces of international law and standards, there is great reliance on national governments for implementing them, and regarding sexuality there are different views in different governments and countries, and therefore different responses.

**Larry Bottinick, Senior Legal Officer at UNCHR, joined the meeting from Geneva.** He is based in London, having recently spent five years in Israel, which he mentioned as a country which has engaged Rwanda and other African countries to take asylum-seekers, as Denmark and the UK are considering. The UNHCR performs advocacy, works with Members of Parliament, makes interventions in court, coordinates with civil society, supports resettlement and integration. It also works formally with the Home Office on quality assurance and capacity building, and working on improvements to rules and regulations – which is difficult when a statute itself violates the Convention.

Regarding the question of funding – UNHCR is funded by voluntary contributions, not every state chooses to fund it; EU and individual states are generous funders; UNHCR also takes private contributions.

Regarding the New Bill for Immigration – under the proposed legislation, anyone who comes irregularly from what is deemed a safe country can be deemed inadmissible. At the moment they are kept in limbo for six months to see if they can be returned to any safe country (even one they never traversed); they are not interviewed for the content of their case. After six months they will be interviewed – this can take a year or two; under the new proposals those found to be refugees will be given 30-month renewable visas. During those 30 months they will be kept under review to see if they can be removed, i.e. kept with a very precarious legal status. It is unlikely that they would be granted family reunion rights. UNHCR concerns are many in terms of violating the spirit of the Convention, the actual terms of the Convention, and the risks to the international protection system.

1. The threat to the global asylum system. In the view of UNHCR the Bill challenges the international protection system which at the moment largely benefits Britain. Around 86% of displaced people stay in their region, around 73% in neighbouring states e.g. Pakistan and Iran have 2.3 million Afghans, in Tajikistan, which is as poor as sub-Saharan Africa, they are preparing to accept around 100,000 displaced Afghans. Syrians are largely in Turkey (3.5 million), Lebanon, which is at risk of losing its water supply and a functioning economy, and Jordan, host 1.5 million Syrians between them, plus of course many Palestinians. Comparatively few make it to Europe and most of those do not try to get to the UK. In 2020 UK received around 37,000 asylum-seekers, a drop of 20% year on year, France over 93,000 Germany over 122,000, Spain 80,000, Greece 40,000. UK is at the end of the line and people stop along the way; if UK thinks that everyone should stay in France, what is to stop France from doing the same to the countries along the way. If prosperous countries like UK and Denmark are not willing to take their share, why should Lebanon, Jordan, or the neighbouring countries to Afghanistan do so? UK should not join a race to the bottom and destroy a system that works in its favour.

The Bill proposes that anybody who arrives “irregularly” will not be in the queue – they will join an enormous backlog, their skills will deteriorate, emotional well-being will suffer. Even those recognised as refugees will be kept with a precarious legal status subject to frequent review. The backlog of up to 100,000 cases is what the Home Secretary means when she says that the system is “broken” – it’s not the arrivals. We are constantly being reminded that the country wants control of the borders – we are being told that it is a mass invasion, but the numbers do not support that.

2. The Convention. The Bill lists different treatments which people might suffer – no access to public funds or restrictions to family reunion; it would empower rules to enable Home Secretary to prevent recognised refugees from obtaining permanent status in the UK or to lengthen the time it might take to obtain such status.

The Convention's Article 31 prohibits penalisation of refugees on account of illegal entry. The Convention does not oblige you to ask for refugee status in the first country where this is possible. If you are transiting, you cannot be penalised. The Bill would criminalise people who come without a visa. At the moment the sentence is six months (and it isn’t used) but the Bill would make this four years. Other laws would prohibit anyone with such a sentence from seeking asylum. UNHCR is against criminalisation of asylum-seekers and also against criminalising people from “hand on the tiller” offences, i.e. the person who has been told by the smuggler to steer the boat. Currently this would mean a prison sentence of two years but that will increase.

The Convention has a prohibition on expulsion of recognised refugees (except in cases of national security or public order). The Bill says that recognised refugees will be kept under review to see if they can be transferred elsewhere – this violates specifically the terms of the Convention.

The Convention says that as far as possible states should facilitate integration and naturalisation – the new proposals hinder this rather than facilitate it. The new Bill allows the State to keep people on the edge of destitution – they will be denied any kind of public relief unless destitute. This violates the Convention term that states that refugees are entitled to public relief and assistance at the same level as nationals. There are examples of where it indirectly violates the Convention, e.g. family life is not specifically in the Convention but is found in Article 8 of the European Convention on Human Rights and is recognised by the UNHCR.

3. The spirit of the Convention – concern is aroused by options for offshore relocation such as in Australia, e.g. to islands or to other countries which have fewer resources as this amounts to “Out of sight, out of mind.” UNHCR endorses alternatives to dangerous journeys and exploitation by smugglers – but there is a fundamental contradiction between saving people at sea and then neglecting and mistreating them on land.

On legal pathways and resettlement – UNHCR welcomes the Home Secretary’s commitment to legal pathways and better integration support for those who are re-settled but fears that this will be set against those who arrive spontaneously. Taking in only 5,000 is not meeting responsibilities under the Treaty. The Convention does not allow setting re-settlement against domestic asylum. The number of people re-settled globally is miniscule compared to the need.

UNHCR favours efficiency in the Home Office to try to get through the backlog and acknowledges that some people do not have protection needs and could be returned. UNHCR has shared proposals with the Home Office for a fair and efficient system including simplifying the process and enhancing the screening procedures to get it right the first time. An initiative has been formulated to work with Home Office on a more sensible, humane and legally sound fix to what is called the “broken system”. The Bill as it stands is going in the wrong direction.

Questions were asked about a “fair system”. EU is negotiating a pact with a more even distribution of cases – meant to be about sharing responsibility. UNHCR is drafting a document. Regarding the backlog – UNHCR hopes that papers can be granted to people with a particular profile, e.g. unaccompanied minors or certain Syrians – sometimes status could be granted without a hearing. This happens in some countries, e.g. Canada has an over 80-95% grant rate for Eritreans without months and months of waiting and interviews.

On the burden of proof – some people have issues which might not come out in the first interview, so need to have legal support earlier on so that they can raise issues at that point and not have to prove things by documentation. A coherent story is important but that can be affected by trauma. UNHCR works with Home Office on identifying people with trauma and mental health problems; it is working on training decision-makers to change the prevailing culture of disbelief. Salary for decision-makers is very low, which doesn't help.

If the Bill does violate the Convention, what can we do about it? There is naming and shaming, but no sanctions as such – mainly court interventions. UNHCR usually comes in as a "friend of the Court", i.e. not party to the case but offering expertise and advice on policy. Conservative MPs say that "the public" want control of the borders. The costs will be incredible – people will be on the streets, the Local Authorities will have to pick up the pieces. Punishing those who come will not "fix the broken system".

### **Bridget Walker – the impact of the Bill on women in particular**

Bridget stepped in at the last minute as Priscilla Dudhia from Women for Refugee Women was unwell and unable to join us. Bridget did however have a copy of the briefing written by Priscilla. There have always been specific problems for women seeking asylum.

In 1988 Bridget went to a conference in Geneva on refugee women with about 33% of those present being refugees. QUNO had been involved in preparing this conference. The conference looked back at the UN Decade for Women and UNHCR indicated that the Convention did not adequately address

gender-based persecution and asylum claims of women who had experienced sexual violence or face harmful traditional practices. WfRW say that women still struggle for protection within the asylum system and the New Bill will make things much harder for them. The two-tier system distinguishes between re-settlement with support, and arriving irregularly on unsafe routes – women are often compelled to take these unsafe routes and may not feel able to disclose their reasons for flight until they feel safe to do so. Sometimes women from sexual minorities may not even realise that this could be a ground for seeking protection and also may feel unable to disclose. There are 69 countries where same-sex relationships are criminalised, and in some the death penalty still exists as a real threat.

For some women, guilt, shame, fear for family members, threats from traffickers may all lead to a delay in applying for asylum, which will be counted against them under the new rules. Even if they are accepted, there is no automatic path to settlement. In the absence of a specific reference in the Convention to persecution on grounds of sex and gender, it is that bit harder to claim asylum.

The restrictions on family reunion will lead more women and children to make dangerous journeys.

The Bill talks about “finding a safe place in their own country” which is unrealistic. The proposed accommodation centres are inappropriate for women but particularly problematic to women who may be survivors of sexual violence both at home and on the journey. Offshore processing is a serious risk and there is damning evidence from Australia of how this will affect women. The Bill will make things harder for victims of trafficking – the government claims that this will stop claims to be trafficked by people who aren’t – but there is very little evidence that this happens. 81% of rejections of applications on grounds of trafficking have been overturned, i.e. there is very weak decision-making.

A disqualification on grounds of “threat to public order” i.e. for those who have served a prison sentence of 12 months or more – is a double punishment for women who have been exploited and trafficked into criminal work. A proposal for accelerated appeals, where victims have been traumatised, is not realistic. The previous detained “fast track” process was found by the Court of Appeal to be systematically unfair.

The WfRW campaign calls for an increase in safe routes, a culture of protection rather than disbelief, availability of legal representation at all stages, specialist mental health support, end to enforced destitution, and an end to the detention of women.

The government is planning a new women’s detention centre. There is a petition against this here: <https://www.change.org/p/the-home-secretary-stop-the-new-detention-centre-for-women>

### **Plenary:**

The Bill talks about taking people directly from countries of origin, this means one or two high-profile cases but UNHCR is not necessarily involved.

Regarding the backlog – this should include the UK having a large Refused Cases Management Unit where there are thousands of cases. UNHCR is in favour of some people being returned if the situation in the home country has changed and not too much in favour of multiple fresh claims – but people who suffer trauma need to be treated fairly. Overstayers make up a much larger number in the backlog than refused asylum-seekers.

There was a question about women asylum-seekers who arrive with children – during the time of application they stay together but there is a fear that if the woman is refused then the children will be taken into care. UNHCR has a concern about unaccompanied minors as the medical assessments are not very

appropriate and often not accurate. Some unaccompanied minors have been noted in detention centres and this has been noted in inspectors' reports – under the new proposals there will be no such checks and balances.

There was a question about asylum-seeking children attending school – they are required by law to attend school but often there is a very long waiting list although most authorities have a Fair Access Panel or something similar. Bridget showed us a book of poems by refugee children at a school in Oxford. (*England: Poems from a School* Ed. Kate Clanchy and published by Picador.)

Can asylum-seekers volunteer with the UNHCR? There are some programmes but it depends on what the office does whether or not it would be appropriate, e.g. regarding confidentiality of files.

Regarding trafficked women, Bridget mentioned the National Referral Mechanism. There is a terrible backlog and many women are in special charitable projects for years and years waiting for a decision. There is also the Medaille Trust which works specifically with trafficked women and have safe houses.

Regarding what other political parties are saying about the Bill – at the moment the SNP is very much in line with the UNHCR concerns.

In the UK, some people wait ten or fifteen years for a decision – this is not only the case in the UK but also in many other countries. The UNHCR works with specific countries to advise e.g. on group decisions.

Re the question about countries wanting to get rid of their citizens – some countries get a lot more money from remittances than from international aid so they might be keen for young men to leave who might find it difficult to find employment. It is a question of good governance.

A question was raised as to whether more people are stateless than are actually recognised as stateless. Iran is a country which allows young people to leave and which does not readmit them (except for voluntary return) when their asylum applications are refused. Do they have a case for statelessness? The answer was that if you fail to return voluntarily and will not be readmitted otherwise, you do make yourself de facto stateless even though you are not stateless by law (de jure) and are unlikely to be determined as stateless. You are still Iranian.

***The meeting was attended by 45 people, in person and on Zoom.***