

THIS IS NOT A CRISIS OF NUMBERS.

IT IS A CRISIS OF SOLIDARITY

(UN Secretary-General Ban Ki-moon)

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This report comprises a Review of the 1st Annual Conference of the Refugee Law Initiative 29 June -1 July 2016 and a discussion of the Refugee Family Reunion Project run by Plymouth Law School's Law Clinic.

1st Annual Conference of the Refugee Law Initiative

In July 2016 my colleague Sarah Guy and I were fortunate to attend the 1st Annual Conference of the Refugee Law Initiative (RLI) hosted by the School of Advanced Study at the University of London. The RLI is an academic centre concentrating 'specifically on international refugee law' and the title of this 1st annual conference was 'The Future of Refugee Law?'² - the question mark it seems representing the challenge ahead for all those engaged in working in this area. The programme took place against a backdrop of unprecedented crisis in Europe and beyond as a result of refugee movements with large numbers of people being forced to flee their countries of origin due to war, conflict and persecution. The exact nature of this crisis - often referred to in the media as the 'migrant crisis' or less often the 'refugee crisis' - was and is a major subject of debate and it was agreed at the Conference that it might be more accurately characterised as the 'response crisis'. Given the comments of the UN Secretary-General Ban Ki-moon in October 2016 at an Executive Committee of the UNHCR (United Nations High Commissioner for Refugees), in which he said 'this is not a crisis of numbers. It is a crisis of solidarity', the future of refugee law is a topic that must surely concern us all.³ The RLI conference provided the opportunity to hear from a range of eminent speakers and see the breadth of research currently being conducted, as well as for me to catch up with former colleagues and exchange ideas and thoughts including about our Refugee Family Reunion project which has been running in the Law Clinic since the end of 2014.

The highlight of the conference was the keynote opening address by Professor Guy Goodwin-Gill (All Souls Oxford), emeritus professor and internationally renowned expert in

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² sas.ac.uk/rli

³ <http://www.unhcr.org/uk/news/latest/2016/10/57f252169/un-chiefs-call-greater-solidarity-forcibly-displaced.html>

the field whose academic work has had an enormous and significant impact on the practice of asylum law in the UK. His talk entitled 'International Refugee Law: Yesterday, Today, but Tomorrow?' sought to consider the history of international protection, the crisis of the present and the direction in which national and international policy around refugee safety might move in future years. Professor Goodwin-Gill's work is renowned among other things for both the depth of his historical perspective and also his practical as well as compassionate human rights based approach. He spoke at first of the past; the early initiatives of the League of Nations in taking steps around destitution and vulnerability suffered by refugees and the appointment of a High Commissioner for Refugees in 1921 in response to the needs of Russians fleeing their homeland. He highlighted the ad hoc case by case approach of the international community to refugee issues at that time but then of the emergence of the concept of non-refoulement in 1933, one which was eventually embedded into Article 33 of the 1951 Convention relating to the Status of Refugees. Non-refoulement prohibits any signatory State from returning a recognised refugee to his or her country of persecution.⁴

Professor Goodwin-Gill referred us to events in 1939 when 500,000 Spanish refugees entered France within a matter of weeks. He spoke of the rise of fascism and Nazism that required a response so that at the end of World War II the plight of refugees was high on the agenda. In 1951, a new agency, an initially non-operational subsidiary organ of the UN General Assembly was charged with providing 'international protection' to refugees and seeking permanent solutions. The Statute of the United Nations High Commissioner for Refugees (UNHCR) was adopted on 14 December 1950, and the Office came into being on 1 January 1951. In July 1951 the Refugee Convention was signed by 144 State parties. He then reviewed the discussions that preceded the drafting of the 1951 Convention and the creation of the UNHCR which included a call in 1947 from the General Assembly to States to accept a 'fair share' of responsibility and asked whether that emerging legal principle of co-operation has ever become a reality. As regards the present he referenced the complex combination of events that has led to the current crisis, the strengths of the Convention but also the difficulties caused by the lack of consensus around solutions. The theme of responsibility sharing and solidarity was one that dominated the Conference in the light of the obvious failure of European nations to achieve coherence in recent years despite the attempts to enact instruments of harmonisation.⁵ To take the step of accepting that people will continue to move and then

⁴ Article 33 'No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'.

⁵ For example, the Common European Asylum System

considering the extent of responsibility of States and the response once it is accepted was argued as the essential step forward.

Professor Goodwin-Gill is an inspiring speaker not only because of the depth of his knowledge and scholarship but also because his work as a barrister, an advisor to government, his work with the UNHCR and countless NGOs and charities give an immediacy and clarity to his words which speak to the practicalities and the real difficulties faced by refugees. He seems always to be seeking solutions that will work but which can be traced and grounded in international refugee law principles. It was a privilege to hear him speak.

Refugee Family Reunion Project in Plymouth Law School's Law Clinic

The conference was also an opportunity for me to discuss our work on Refugee Family Reunion which is the basis of the project run in the Law Clinic.

On 1st April 2013 the legal aid cuts enacted by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into effect. While the right to legal aid for a person seeking asylum was preserved, the cuts removed any available legal aid for refugees seeking to reunite with family members from whom they had become separated due to the conflict or persecution from which they were fleeing. Plymouth and the South West was already experiencing what has been called an 'advice desert' in a number of legal areas and following the closure of the Law Centre in 2010 this situation was only exacerbated. In 2014 in discussion with the Refugee Services department at the British Red Cross I decided that the Law Clinic could and should provide a response to a small area of need and the Refugee Family Reunion project was born.

Regulated by the Office of the Immigration Services Commissioner (OISC) to Level 2 the project opened at the end of 2014 and despite having limited time and resources has dealt with a considerable number and wide range of Family Reunion cases.⁶ Refugees are eligible to apply to reunite with their immediate family members from whom they have frequently become separated in the circumstances that defined their flight from their country of origin. Although not included in the text of the 1951 Convention itself the drafters linked the protection regime of the Convention with the need to maintain family unity in a clear recommendation in the Final Act of the diplomatic conference that adopted the Convention. In Recommendation B, they asked governments to 'take the necessary measures for the protection of the refugee's

⁶ The project has reunited more than 30 families and has around the same number of cases pending

family', and declared that 'the unity of the family... is an essential right of the refugee'.⁷ Issuing key guidelines for dealing with 'Europe's refugee crisis' in September 2015, the Head of the UNHCR António Guterres cited family reunion as an essential part of a co-ordinated approach stating 'If these mechanisms are expanded and made more efficient, we can reduce the number of those who are forced to risk their lives at sea for lack of alternative option'.⁸

There is clear evidence that the integration and well-being of refugees is enhanced by effective Family Reunion processes and it is my experience that refugees are far more concerned for the safety of their family members than themselves and literally will not rest until they know that their family is out of danger. Our cases have ranged from husbands and fathers reuniting with wives and children, to wider family units including over 18 children, de facto adopted children and orphaned siblings applying to care for each other. While international instruments recognise this wider family structure, the Immigration Rules⁹ applicable in the UK do not and thus a number of our cases have been refused by the Home Office and have become the subject of appeal before the First Tier Tribunal. In several cases we have assisted couples who fearing each other dead have been able to reunite after 6, 7 and 8 years following a successful family tracing.¹⁰ Here the difficulty is evidential; showing the Home Office that the relationship has remained subsisting despite that gap may be problematic but we have been able to provide evidence of the couple's efforts to find each other as well as their residual hope in the absence of other proof. Our clients are from a range of countries most frequently Syria, Iran, Eritrea, and the Democratic Republic of Congo.

Context

Having worked with asylum seekers and refugees in a legal context since 1993 I am familiar with some of the issues and problems that arise; the mind-boggling complexity of processes that the Home Office labels as straightforward, the incredible strength and dignity required by refugees to face the challenges of making a new start and providing some hope for their families, the presence of misinformation and mythology in the media about the people involved and the vulnerability of many of those seeking safety. I have not worked, however, against such a backdrop of media attention and an almost constant popular discussion of immigration much of it conducted in a tone of hostility, fear and blame. I do not know the

⁷ Final Act of the 1951 U. N. Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, Recommendation B.

⁸ <http://www.unhcr.org/uk/news/latest/2015/9/55e9793b6/unhcr-chief-issues-key-guidelines-dealing-europes-refugee-crisis.html>

⁹ Immigration Rules HC395 as amended, Part 11.

¹⁰ <http://www.redcross.org.uk/What-we-do/Find-my-missing-family>

exact contribution of the issues around immigration to Brexit but there is no doubt that it played a part. UKIP's Nigel Farage posing in front of a poster titled 'Breaking Point' depicting refugees from Syria was a low point and the deliberate confusion of complex issues of different types of immigration has the effect of obscuring any chance of clear policy discussion.

But perhaps there is a positive side - the interest and compassion of many; those who could not stand by watching the misery of people attempting to flee death and destruction in tiny boats and who were appalled by that one terrible photograph of a toddler's body found on the beach after he drowned in the Mediterranean sea. People frequently ask why so many of the asylum seekers we see depicted in the media are relatively young men in groups. The answer to that lies in the process of seeking safety. Applications for asylum can only be made once someone is outside their country of origin and present in the country where they will apply for asylum. There is no visa you can apply for as a refugee and only very small numbers of people are selected for resettlement by the UNHCR. Therefore, people have no choice but to take treacherous journeys and families will often decide that the strongest male should undertake that journey. These men are usually not single but have families that they have attempted to place somewhere temporarily safe until they can reach a place of asylum and apply for their family to join them – and it is this application that the Law Clinic assists with. The image of the group often portrayed to seem somehow threatening is in fact in my experience the reality of support. Refugees tend to support each other as all humans do when in dangerous and difficult situations; this observable level of cooperation and assistance is in my view one of a number of the humbling and life-affirming features seen by those privileged enough to do asylum work.

One of the other features of the immigration debate concerns statistics (the tabloids often use words and analogies such as 'wave', 'swamp' and 'flood') but interestingly the numbers of current asylum applications in the UK are far fewer than in the early 2000s. Figures show that asylum applications increased from 4,256 in 1987 to 84,132 in 2002, before falling to 25,712 in 2005. Applications declined temporarily to 17,916 in 2010 but since then have risen each year to reach 32,414 in 2015¹¹ and 36,465 in the year ending June 2016¹². Therefore, despite there being the highest ever recorded numbers of refugees globally; 21.3

¹¹ Blinder, Scott "Migration to the UK: Asylum" - Migration Observatory 20 July 2016
<http://www.migrationobservatory.ox.ac.uk/resources/briefings/migration-to-the-uk-asylum/>

¹² Home Office National Statistics - Asylum <https://www.gov.uk/government/publications/immigration-statistics-april-to-june-2016/asylum>

million people (in fact over 65 million people are currently displaced from their homes – this number includes internally displaced people and stateless people)¹³, the numbers of people claiming asylum in the UK are less than has previously been seen in recent memory.

There is much discussion of numbers but little agreement about what they mean or what acceptable statistics for immigration are and while the debate rages refugees are continuing to die crossing the Mediterranean. A response is urgently required.

Conclusion

Returning to the messages of the RLI conference as I read them; we are in crisis, but the structure is available which would enable a more effective response. Professor Goodwin-Gill spoke of the need for leadership from a credible organisation and radical institutional change but also of practical solutions such as group recognition (rather than individually assessed applications thus reducing strain in the system), the radical reform of processes which have clearly ceased to work such as the Dublin Convention. When the Refugee Convention was first drafted it contemplated the possibility of responsibly sharing; for such a principle to be enshrined, for existing legal instruments to be used creatively and to be part of larger agenda of global cooperation on climate, planetary preservation and justice was the message of hope.

¹³ United Nations High Commissioner for Refugees (UNHCR) – Figures at a glance
<http://www.unhcr.org/uk/figures-at-a-glance.html>