

# Britain calls for revision of Geneva Convention on asylum

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British Home Secretary Jack Straw renewed his attack on the right to asylum in a speech to the pro-Labour Party Institute of Public Policy Research in London last week. At the seminar, entitled “Modernising Asylum”, Straw called for a “revision” of the 1951 Geneva Convention, stating that the obligation it placed on the 137 signatory countries to provide asylum to refugees is “no longer working as its framers intended”.

New technology, global communications and cheap international travel have today made long-distance migration a “realistic option” for many, Straw said. In addition, “the collapse of the Berlin Wall, and the Iron Curtain, the imploding of the economies of Eastern Europe, and civil and cross-border wars in the Balkans, Iraq and Iran, Afghanistan, the Horn of Africa, and elsewhere” meant that “new pressures” now existed on “every part of our immigration system”.

Straw claimed that the Geneva Convention was “failing” genuine asylum applicants because, whilst it legally provided for political asylum, it did not oblige any particular country to admit those claiming the right. Consequently, migrants were forced to enter a country illegally, leaving them prey to unscrupulous “human traffickers”.

The Home Secretary first called for a revision of the Convention at the European Union summit in Lisbon last June. He had used the terrible deaths of 58 Chinese migrants, found suffocated to death in the back of a lorry in Dover, England, to underline his point. In last week’s London speech, Straw pointed to a recent report showing the involvement of organised crime and even slavery in illegal immigration.

Straw’s invoking of such terrible circumstances is deeply cynical. The type of economic and social catastrophes engulfing much of the globe that he pointed to in his speech are not the outcome of “natural disasters”, but the results of the aggressive policies adopted by the Western powers over the last decade.

The global pursuit of profit, facilitated by the developments in telecommunications and microchip technology, and backed by the military might of the Western powers, leaves an ever-growing trail of economic and social devastation in its wake. Yet whilst capital is free to roam the world, its victims are denied that right.

The largest numbers of asylum-seekers in Europe originate from the former Yugoslavia and Iraq. Both countries have been subjected to a savage military bombardment by US-led NATO forces—which still continues in Iraq—that has destroyed or gravely weakened their basic infrastructure. Their economies have been strangled still further by Western sanctions.

Britain was America’s most fervent ally in these military operations, and in demanding the imposition of sanctions. These measures, carried out under the banner of “humanitarianism,” were really aimed at undermining the regimes of Slobodan Milosevic and Saddam Hussein, supposedly to prevent human rights abuses. Yet the Western powers refuse sanctuary to those fleeing the crisis that their policies have helped produce and reject as unfounded refugees’ claims of persecution levelled against the very

regimes they have deemed pariahs.

## From the Geneva Convention to the present day

Straw’s reference to the obscene growth of human trafficking is equally hypocritical. The desperate and often life threatening conditions faced by the tens of thousands forced to resort to such measures are not the product of an ill-defined right to asylum, as Straw claims, but due to its steady erosion over the last two decades.

The Geneva Convention was drawn up in the aftermath of the Second World War and the Nazi Holocaust, which had caused the displacement of more than 40 million people within Europe. The knowledge that the advanced capitalist countries had refused to open their borders to many fleeing fascist persecution led to a broadly held sentiment that never again should refugees be turned away.

These democratic aspirations were incorporated in the Convention, which set out that all asylum-seekers—defined as those having a well-founded fear of persecution—were to be guaranteed certain inalienable rights, specifically that of refuge.

But those who framed the Convention were also mindful of broader political considerations. In upholding the right to political asylum, the West sought to strengthen its democratic credentials against the Soviet Union and Eastern bloc countries, and specifically to hold the door open for political dissidents from the Stalinist regimes. As the United Nations Commission for Human Rights (UNCHR) acknowledges, “From the late 1950s US law defined a refugee as a person fleeing communism or a Middle East country, and refugee policy was almost entirely dictated by foreign policy interests.”

With the collapse of the Soviet Union and Eastern European states, the major powers felt themselves to have been “liberated” from the democratic restraints imposed in an earlier period. In the realm of foreign policy the US in particular sought to establish its control over strategic regions, resorting to military means, as in the Middle East and the Balkans.

Within the West, international recession, the development of global production and growing international competition saw a restructuring of labour markets through a combination of downsizing, de-skilling and unemployment. Wages fell and indigenous workers increasingly filled jobs previously considered the preserve of migrant labour, thus cutting off another avenue for legal migration.

The numbers of asylum-seekers soared—from under 70,000 in 1983 to over 200,000 in 1989 in Europe alone. The largest increases came from the former Eastern bloc, a process that began with thousands taking the opportunity to flee from the Stalinist regimes and which continued subsequently with tens of thousands more seeking refuge from the consequences of the severe social dislocation and civil and ethnic conflict associated with the restoration of capitalism.

By 1990, significant inroads into the right to asylum were being made. In that year the US adopted the policy of Temporary Protected Status, encroaching on the historic right for permanent residence and possible

citizenship after a certain period. In 1996, further legislation established new legal criteria for determining whether those arriving at the US border had a “credible fear” of persecution. This meant that even before their acceptance into the asylum process, each refugee had to prove his or her case before asylum officers. If refused they would be deported.

Alongside this, the US revived its policy of detaining would-be asylum-seekers, which had fallen into disuse during the immediate post-war period. Those accepted into the asylum process were placed in detention. Today the Immigration and Naturalization Service holds an estimated 13,500 detainees, including an unknown number of asylum-seekers—many of whom are held in prisons and denied access to family or legal representation.

In 1993 the European Union (EU) countries signed up to the Maastricht Treaty. Economically this lifted restrictions on cross-border investment, trade and production, but in immigration policy it sought to create a “Fortress Europe”.. Just months before, the European powers had agreed the so-called London Resolutions. With applications for asylum in Western Europe peaking at nearly 700,000 in 1992—primarily as a result of the civil war in Bosnia—the EC redefined the right to asylum. Several categories of asylum-seekers were introduced, including one for those that were deemed “manifestly unfounded” from the outset. A “third country rule” was introduced. This meant any refugee who had travelled via a “safe” third country could have his asylum application rejected and could be returned there. Most of these countries were located in Eastern Europe, which thus formed a type of immigrant “buffer” zone along the EU’s eastern flank. Having for years decried the Eastern European states for restricting their citizens’ rights to travel, the EU bolted the door on the peoples in these countries.

In 1993 Germany, then the recipient of more than 60 percent of all asylum applications in the EU, amended its constitution to remove the unqualified right to asylum. This became the basis for the EU’s “Joint Position” declaration in 1996, which introduced a restrictive interpretation of the Geneva Convention, in which only those fleeing persecution by a state were considered admissible for asylum. Adopted by France, Germany, Italy and Switzerland, it meant that applications from countries like Somalia and Algeria were automatically considered inadmissible.

The 1997 Treaty of Amsterdam committed the EU to developing a common immigration and asylum policy within five years. From this point on, immigration policy was approached as a coordinated pan-European policing campaign aimed at firmly sealing Europe’s borders. All regular arrival routes were closed through imposing a series of visa requirements, and heavy fines introduced for any firm or individual found to be carrying so-called “illegals” in lorries, trains, ships, airplanes and now even private cars.

According to Professor Guy Gordon-Gill, Oxford professor of international refugee law, only 0.3 percent of global refugees ever get anywhere near the EU. Most refugees in Africa, for example, are held in camps in neighbouring countries. With no legitimate means of entering the West, only those applicants able to raise enough money to pay smugglers or desperate enough to attempt other means of entry—such as clinging to the undercarriages of airplanes—stand a chance of making it in. Even then they face being held in reception camps or even prisons for unlimited periods of time, moved from place to place and forced to exist on the most minimal welfare provisions.

#### **Geneva Convention now regarded as an intolerable burden**

Some 50 years after the Geneva Convention was drafted, the right to decent housing, welfare, etc., is under attack in every advanced country. No longer willing to guarantee their own citizens certain basic rights, the ruling class is even less inclined to extend them to asylum-seekers.

Today the concept of asylum is routinely bracketed with that of “illegal immigration”, i.e., migration for economic reasons. In the first instance, the attempts of various governments to exclude those seeking relief from

often terrible hardship is deeply reactionary. Secondly, the attempt to draw an absolute distinction between economic and political refugees is impossible, given the complex interaction between the two factors. The purpose of identifying asylum-seekers as “illegal immigrants” is to make asylum an issue of criminal policy, with the aim of intimidating and terrorising would-be applicants.

But Jack Straw wants to go a step further, because even the minimal legal provisions allowing the right to asylum set out in the Geneva Convention have become an intolerable burden on its signatories. The Blair government has gone to great lengths to clamp down on asylum, and some 80 percent of all asylum applications in the UK are now routinely refused. Even so, asylum applications in the UK reached 76,000 last year, and Britain became the largest recipient of all asylum claims in Europe.

Labour blames this growth on the growing disparity between the formal obligations set out in the Convention and surreptitious changes to national laws, which has led to EU countries shunting asylum seekers from one country to the next.

On two occasions over the last months, the High Court has ruled in favour of asylum-seekers, finding that the government had abused their rights as set out in the Convention. As a result of one case, the government faces paying compensation to a possible 1,000 asylum-seekers, thought to have been prosecuted each year between 1994 and 1999 for travelling without legal documentation. In his ruling, Lord Justice Simon Brown stressed that article 31 of the Geneva Convention states that asylum-seekers should not be penalised for entering a country illegally. In addition, he continued, the combination of visa requirements and carriers’ liability “has made it well nigh impossible for refugees to travel to countries of refuge without false documents”.

In the second case in December last year, the High Court ruled that Straw had acted unlawfully in attempting to return two asylum-seekers to the third countries through which they passed en route to the UK—France and Germany. As the Home Secretary knew that both countries apply the right to asylum restrictively, he would also have known that the applicants’ claims would not be treated fairly, the court said.

In court, Straw argued that the Convention had a “band of permissible meanings”. But the High Court dismissed this argument, ruling that the Geneva Convention had a “true autonomous and international meaning,” i.e., the right to protection from persecution was unconditional and stood above national law. If it was illegal to return an asylum-seeker directly to his country of origin knowing he would be subject to persecution, it was equally unlawful to send him back to a third country knowing it would return him, the court ruled.

These rulings have fuelled Straw’s campaign to “modify” the Geneva Convention. He proposes three categories be created for considering asylum claims. The first would include applications for asylum from countries like the US, from whence no claims “should be entertained”. The second category, containing unidentified countries, but said to include China, would work on the “presumption that the application would be unfounded” if it was made in the state where the asylum-seeker is seeking residence. The final category, again unspecified, would feature states where asylum-seekers would be considered automatically.

The intention of Straw’s proposals is to ensure that asylum claims cannot be made in the refugees’ final destination country, but only in the nearest “safe” country their journey takes them to.. This would mean, for example, Afghans fleeing the Taliban regime should apply for UN refugee status in neighbouring Pakistan, where they would be held in special areas until their claims were decided.

Straw’s plan would effectively end all migration, except for those “invited” by the respective countries, such as skilled computer programmers. It would, moreover, establish permanent refugee camps similar to those holding thousands of displaced Palestinians in the Middle East, and transform entire countries into garrison states.

## Defend the right to asylum

Whilst the fate of Straw's proposals is not yet clear, they have received a sympathetic hearing from Germany, France, Italy, Australia and Canada. Last week, Prime Minister Blair met with French President Jacques Chirac to present his proposals for "bilateral repatriation", under which refugees entering Britain via the Channel Tunnel would be deported back to France immediately. Earlier this month, Blair joined with Italian Premier Giuliano Amato to write an article for the *Observer* newspaper, setting out their plans to further coordinate asylum policies, concentrating specifically on strengthening security and intelligence arrangements.

Leon Trotsky, the Russian socialist and opponent of Stalin, had occasion to write about the place of asylum in the West's supposedly democratic system, when in June 1929, as an exile in Turkey, he was refused entry to Britain by Labour Home Secretary Joseph Clynes.

In defending his refusal to grant Trotsky asylum, Clynes argued in the House of Commons along similar lines to Straw, that the right of asylum did not mean the right of an exile to demand asylum, but the right of the state to refuse it. "Clynes's definition is remarkable in one respect: by a single blow it destroys the very foundations of so-called democracy," Trotsky wrote. "The right of asylum is only one component part of the system of democracy. Neither in its historical origin, nor in its legal nature, does it differ from the right of freedom of speech, of assembly, etc."

On Clynes' criteria, he continued, it should be concluded that the right to freedom of speech, amongst others, stood not for the "right of citizens to express their thoughts, whatever they may be, but for the right of the state to forbid its subjects to entertain such thoughts" (Leon Trotsky, *Writings on Britain*, vol. 3, p. 3).

The attitude of social democrats to the co-leader of the Russian Revolution is almost universally applied to those now seeking asylum some 70 years later. Moreover, Trotsky's warnings about the implications of any limitation to the right to asylum for democratic rights in general has been more than confirmed. Legislation enacted by the Blair government dealing with the right to strike, access to the Internet and freedom of information, for example, is framed so as to curtail democratic rights, not uphold them.

That this is the case speaks volumes about the stage reached in class relations in Britain and internationally. The impoverishment of the vast majority of the world's peoples, coupled with the accrual of obscene wealth by a privileged few, is incompatible with the preservation of previous democratic norms. Consequently, the ruling elite in every country is dismantling all measures they perceive to be an obstacle to the untrammelled drive for profits, whilst working to reinforce national divisions and promote xenophobia. The right to protest, organise and even travel freely is being removed, while at the same time the state is granting itself ever greater powers. Working people, acting independently of the political representatives of big business, must champion the democratic right of asylum and oppose all anti-immigrant measures taken by the world's governments.



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