Viktor Foerster, an attorney in Germany and a member of The Social Contract *editorial board, presents a view of the additional complexity of controlling immigration in general and refugees / asylees in particular when there is no overarching set of laws commonly agreed upon.*

The Right of Asylum in Europe

By Viktor Foerster

The political and social significance of the right of asylum in the European Economic Community and in its Member States has increased steadily over the past ten years.

And, in view of the fact that Member States have been unable individually to respond adequately to the challenge posed by the influx of asylum seekers, and because of the coalescing of the Community into a single market, this issue has increasingly become a matter of common interest. Moreover, the removal of controls at internal frontiers on January 1, 1993 makes it particularly important that there should be a uniform right of asylum throughout the Community.

There are two fundamentally different concepts of migration we must distinguish here:

- Firstly, there is "immigration" which is primarily an economic phenomenon. Immigration is, in the first place, determined by the relative economic situation extant in the country of immigration and in the country of origin. Of course, a component of such migration is also the question of family reunions and regroupings. Immigration is subject to the *discretion* of each Member State and depends on numerous economic and other factors — each Member State decides whether or not immigrants may be admitted.

- In sharp contrast, the right of asylum is a question of a legal right as defined by the Geneva Convention. All Member States are signatories to that Convention and recognize it as a fundamental common legal instrument in determining the situation vis-a-vis asylum seekers and refugees. In ratifying the Geneva Convention, the Member States entered into basic humanitarian commitments affording protection to individuals who fear persecution in their own country for political, ethnic, or religious reasons.

"Political refugees" are subject to the individual national laws of the Member State. At present there is no unified European Community law in this area. However, it is important to know that no discretion is permitted in the admission of asylum seekers. In any event, economic considerations are not taken into account in determining whether or not an individual is to be recognized as an asylum seeker. The basis for any such decision is the Geneva Convention. (Indeed, the definition applied in determining the status of "asylum seekers" in Germany is actually much broader than that laid down in the Geneva Convention.)

"A relatively large and growing number of asylum seekers have ... had recourse to the asylum procedure even though they do not satisfy the definition of political refugees..."

There is also a third category to be considered in this question: that is the group of "de facto" refugees. De facto refugees are those persons who flee their respective countries not in order to escape political persecution, but rather because their individual life or safety is threatened by such conditions as civil war or political unrest.

The Geneva Convention should remain the basis for determining asylum status. But, at the same time, there is a need to prevent any abuse of the rights of asylum. A relatively large and growing number of asylum seekers have in the past had recourse to the asylum procedure even though they do not satisfy the definition of political refugees as laid down in the Geneva Convention. This constitutes an abuse of the

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asylum procedure aimed at circumventing the restrictions on immigration for employment purposes. Such abuses, particularly in the case of manifestly unfounded applications, or in the case of applications from "safe" countries, must be stopped through the introduction of common procedures among the Member States. These procedures should encompass such matters as the adoption of speedy deportation procedures for rejected applicants and for the consideration of certain "safe country" applications to take place at the external frontier.

"The [Dublin] Convention is designed to prevent asylum seekers from becoming 'refugees in orbit' and from lodging multiple applications..."

There have also been moves to prevent so-called "asylum tourism" and harmonize the formal right of asylum in the Community. The Dublin Convention was drafted to determine which State is responsible for examining an application for asylum lodged in one of the Member States. The Convention is designed, among other things, to prevent asylum seekers from becoming "refugees in orbit" and from lodging multiple applications within the frontier-free area. The final aim [of the Dublin Convention] is to achieve harmonization of the laws concerning applications for asylum, the treatment afforded, and the substantive law throughout the frontier-free area of the Community.

The decision by a Member State to vet an application must be recognized in accordance with the Dublin Convention by all the other Member States. The opportunity to submit multiple applications in different Member States should not exist.

At the same time, the Luxembourg European Council has drawn a distinction between measures for the formal and substantive harmonization of the right to asylum among the Member States in the longer term, and the practical preparatory and transitional measures needed to cover the more immediate future before permanent measures can be adopted.

Apart from immediate ratification of the Dublin Convention with a view to its entry into force,* the measures which could be given joint consideration at this stage in order to respond to the influx of asylum seekers could be summarized as follows:

a) Administrative and court procedures should be speeded up so that decisions can be taken more rapidly and the number of pending applications can be reduced. In this regard, procedures could be dramatically abridged in cases where there are manifestly unfounded applications. But of course, the individual right of the asylum seeker must always be safeguarded.

b) Harmonization of the rules on refusal of admission at external borders in terms of such matters as the meaning of "first host country" and the definition of "safe country."

c) Asylum seekers whose applications are turned down should be deported unless they can be allowed to stay under some other arrangement.

d) A procedure should be established for consultation and the exchange of information in connection with the right of asylum — particularly as regards the situation in the countries of origin and relevant legislation.

Thus, as a general matter, it can be seen that the measures to prevent abuse of the right of asylum are at the same time linked to the wider problem of the need to control economic migration into the area of the European Community. In the longer term, there must also be a harmonization of the formal and substantive right of migration among all of the Member States of the Community. All of these steps must be taken in consultation with the United Nations High Commissioner for Refugees using the Geneva Convention as the legal foundation for determining such matters.   ■

[* At their meeting on June 13, 1991, ministers of the EC countries recommended the ratification of the Dublin Convention with a view to its taking effect no later than January 1, 1993.]

Mark O'Connor has given us permission to publish his letter to the head of the [Australian] National Population Council (NPC), a government-supported study group. Mark, a poet and a member of Australians for an Ecologically Sustainable Population (AESP), attended the NPC seminar that stimulated this thoughtful letter.

When Is a Country Overpopulated?

By Mark O'Connor

Professor Glenn Withers, Chair
National Population Council

Dear Professor Withers,

I was impressed by the level of debate at the recent NPC seminar in Canberra.

There seemed to be a heartening awareness that indefinite exponential growth of Australia's population could not be recommended. Granted that there is still an obvious and powerful momentum for growth of our population, it seems most important to work out what are actually the limiting constraints — those which set some kind of identifiable ceiling that both the public and politicians might recognize and respect. One suggestion that emerged at the seminar was that environment might be the limiting factor; and both you and Phillip Toyne suggested that more precise data should be found to link population growth with environmental impact.

As the representative of one of the few conservation organizations to be specifically represented at that particular seminar, I would like to suggest some answers.

I believe the draft Report has correctly identified the four possible areas of constraint on population growth, viz. 1. Environment, 2. Economy, 3. Social Justice, and 4. Global/Humanitarian concerns.

I suggest that there are in fact three possible types or degrees of constraint, as follows:

1. **A general principle of caution which we might call "The Herpes Principle" or "The Prudence Principle,"** this is: while there are practicable ways for a nation to increase its population, there are no practicable short or medium term ways to reduce it markedly. Like herpes, overpopulation is not necessarily unbearable, but there is no known cure for it. Hence, unless one is very very sure that one doesn't mind the condition (and its possible further consequences), one should try to avoid it. Pro-natalist governmental policies might, in a different metaphor, be seen as like jumping into a smooth-sided pit. Granted that the majority of the world's nations seem to have, to more or less degree, tumbled into just such a pit, we should be skeptical of the argument that Australia is a special case and can jump in with impunity. Most of those other nations thought they were special cases too.

It should be noted that the "Herpes or Prudence Principle" does not set an absolute ceiling for population growth. However, it does at the very least suggest that any government policies which tend to produce marked population growth, unless they produce quite undeniably valuable or indispensable effects, should be wound down as quickly as practicable.

2. **Constraints that imply an absolute ceiling.** The Prime Minister's remark that it would be best for Australia's growth to level off at 25 million seems to imply a belief in some such ceiling, but gives no specific rationale for it. Tom Havas's research suggested the same figure of 25 million as a safe lower ceiling for Australia, and suggested that water resources might be the critical factor.

I will argue below that environmental (as opposed to resource) constraints set a much lower figure for Australia's desirable future population. Clearly, where absolute ceilings are concerned, the critical one is the lowest.

3. **Proportional Constraints.** These are ones expressed by equation or quasi-equations of the general form: *"The more people, the less of [something desirable]"* or *"The more people, the more of [something undesirable]."* There can also be multi-stage propositions of this sort, e.g. *"Assuming the present standard of affluence, 1. more people in Australia tends to mean 2. more imports, which means 3. more pressure to create exports, which means 4(a) more pressure to allow rapid draw-down or sell-off of mineral resources, or 4(b) more*