Labelling Refugees: Forming and Transforming a Bureaucratic Identity

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This essay examines how and with what consequences people become labelled as refugees within the context of public policy practices. Conceptual and operational limitations to the existing definition of refugees are noted. These, the paper contends, derive from the absence of a systematic study of labelling processes in the donative policy discourse associated with refugees.

The paper outlines the conceptual tools of bureaucratic labelling – stereotyping, conformity, designation, identity disaggregation and political/power relationships. These tools are then deployed to analyse empirical data collected from a large refugee population in Cyprus, supplemented by selective secondary research data on various African refugee populations. The analysis proceeds in three parts. First the formation of the label is considered in which stereotyped identities are translated into bureaucratically assumed needs. The label thus takes on a selective, materialist meaning. Alienating distinctions emerge by the creation of different categories of refugee deemed necessary to prioritize need. Next, reformation of the label is considered. The evidence shows how latent and manifest processes of institutional action and programme delivery, reinforce a disaggregated model of identity; in this case disturbing distinctions are made between refugee and non-refugee. Third, the paper considers how labels assume, often conflicting, politicized meanings, for both labelled and labelers.

The paper concludes by emphasizing: the extreme vulnerability of refugees to imposed labels; the importance of symbolic meaning; the dynamic nature of the identity; and, most fundamentally of all, the non-participatory nature and powerlessness of refugees in these processes.

'You don’t feel a second class citizen except with other people – then the housing is a label' – Greek-Cypriot Refugee

Introduction

Within the repertoire of humanitarian concern, refugee now constitutes one of the most powerful labels. From the first procedures of status determination – who is a refugee? – to the structural determinants of life chances which this identity then engenders, labels infuse the world of refugees.

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This paper is concerned with labels as a conceptual metaphor. It considers as a general aim, the conceptual language of labelling in the context of refugee studies. Then, using empirical data mainly from Cyprus but also from research literature on refugees in Africa, the specific tasks are to explore how and with what consequences people become labelled as refugees - how an identity is formed, transformed and manipulated within the context of public policy and especially, bureaucratic practices.

A popular conceptualization of the refugee is readily to hand. To the extent that some 14 million or so forced migrants are categorized - labelled - as refugees with an internationally recognized legal status, given credibility by an international agency specifically charged to safeguard their interests, endorsed most powerfully of all by spontaneous philanthropy - the meaning of the label seems self evident. Refugees are, like the places described in Waugh's first travel book, 'fully labelled' in people's minds (Waugh 1930).

Despite a widely recognized universal condition it remains the case that there is great difficulty in agreeing an acceptable definition of the label refugee. This is more than a taxonomic problem because, far from clarifying an identity, the label conveys, instead, an extremely complex set of values, and judgments which are more than just definitional (Zetter 1988: I).

There are a number of major difficulties in sustaining the popular assumptions. First, the interventionary and definitional practices of states, and their political interests, illustrate that the apparent simplicity of a de minimis legal label very quickly evaporates. (Montes 1988; Loescher and Scanlon 1986; Zolberg et al. 1989; Zucker and Zucker 1987). In practice there are many interpretations of the definition and, like currencies, they have fluctuating values and exchange rates.

These operational considerations co-exist with a second set of difficulties. There is extensive empirical evidence to illustrate that refugees conceive their identity in very different terms from those bestowing the label (Harrell-Bond 1986; Mazur 1986; Waldron 1988).

Third, there are severe conceptual difficulties in establishing a normative meaning to a label which is a malleable and dynamic as refugee. It is contingent upon notions of persecution, and sovereignty (Adelman 1988; Shaknove 1985) about which there is little consensus, a situation clearly recognized by the OAU Convention of 1969, for example, with its much broader conceptualization of refugee status (Kibreab 1985). Then there are internally displaced people, enduring physical and social trauma equal to that of refugees (Gersony 1988); but they are not officially labelled as refugees. More generally sociological distinctions between concepts of refugeehood and concepts of migration remain lacking in precision (Mazur 1988: 44-5).

Any conceptualization of the label refugee must contend with a fourth problematic area; it is this which forms the specific concern of this paper. Refugees inhabit an institutionalized world of NGOs, intergovernmental
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agencies and governments, in which a highly developed framework of public policy exists to provide emergency and developmental assistance. Given this conjuncture, there remains, in my view, an important lacuna in any attempt to define the label. There exists the need to establish more precisely the extent to which bureaucratic interests and procedures are themselves crucial determinants in the definition of labels like refugee. The challenge is a significant one because our concern is fundamental – processes by which refugees are socialized with certain identities and the structural impacts (control, regulation, opportunities) of these identities (Wood 1985:5).

There is a substantial literature on managerialism and patron-client relationships to which this concern relates. Yet within public policy discourse there has been little systematic development of a theoretical framework of labelling which might help to explore in more detail how bureaucratic labels are formed. It was to address this concern that together with colleagues (Wood 1985), we attempted to construct a language and a framework of conceptual tools of labelling target groups in public (especially development) policy. These theoretical developments, it is contended, offer a potentially rich vein of exploration of the refugee phenomenon. It is this framework which I deploy to examine the interaction between bureaucratic policy and procedures on the one hand and refugees' reactions on the other. The conceptual tools of labelling allow us to explore this interplay of interests at their 'point of organizational connection' (Schaffer 1975:7). Simultaneous examination of both the meaning of the institutional label and the reactions of the labelled, sheds new light on the ambivalent and disjunctive responses which refugees frequently display towards assistance programmes. This is the forming and transforming of a bureaucratic identity.

The Refugees

My own entry point to this problematic analytical situation was in trying to understand the reactions of Greek-Cypriot refugees to their newly acquired identity. In 1974 after a long period of intercommunal conflict between Greek- and Turkish-Cypriots, Turkey invaded and still continues to occupy northern Cyprus – approximately 40% of the land area. Some 180,000 Greek-Cypriots (from an ethnic population of about 500,000) became labelled as 'refugees', fleeing from the north to the south of the island. This was paralleled by a reverse flow of 50,000 Turkish-Cypriots from a total ethnic population of 120,000. *De facto* partition and the mass movement of people created an entirely new political and bureaucratic context for public policy. Of the many responses to this crisis, the one that is particularly significant for this paper, concerns the mobilisation of an extremely large rehousing programme for the Greek-Cypriot refugees in the southern part of the island, and the impact which this had on them.

There are three main components in this programme. First, there are comprehensively planned contractor built estates on the periphery of the three
main towns in the south of the island. About 14,000 units have been built and those eligible for these houses are the poorer and larger refugee families. Second there are self-build schemes where refugees, with concessionary government grants and loans, build their own homes to prescribed plans on serviced government land. Again these are located, by and large, on the urban periphery but in some village locations.

Popular because this method mirrors pre-1974 housing processes, nonetheless, like the estate houses, the regularity of form and layout provides a dramatic contrast to the pre-existing morphology of towns and villages. About 12,500 units have been built in this fashion. In the larger self-build and government estates, schools, shopping centres and other community facilities have been built. Third, similar assistance is available for those fortunate refugees who owned or who have been able to buy their own plots of land freehold and a further 12,000 units have been built in this way. A range of smaller scale initiatives exists: By 1990, some 150,000 Greek-Cypriot refugees had been rehoused and over 40,000 houses constructed. Progress has thus been made towards rehousing a very large number of refugees in good quality housing. The programme is detailed elsewhere (Zetter 1986:108-109; 1987:117-196).

Closely linked to the housing programme have been far reaching programmes for reconstructing and restructuring the shattered economy, from an agricultural to an urban-industrial base and to achieving virtually full employment (Zetter 1987:173-184). Disaster as development (MEED 1981; Lewis 1980; UNDRO 1987), the response to the severe economic disequilibrium created in 1974, has been remarkably successful.

By many conventional evaluative measures, this appears, therefore, to be a remarkably successful programme and indeed there is much in the experience which is relevant elsewhere. The speed, quality and volume of housing output, the number of families rehoused, the organizational capability of the public sector, the equity-based allocative mechanisms, the rapid absorption of refugees into the productive economy, the evident achievement of many programme targets - these and many other criteria highlight what in many respects is an astonishing accomplishment. Over 40% of the total population has been rehoused in a decade and a half.

Many enabling conditions prevailed in Cyprus which do not occur in most refugee stricken countries - capital and material resources; technological, administrative and professional capability; ethnic, religious and linguistic solidarity; monopolistic control of the reconstruction by the government, for example. Thus the refugee housing is unlike the stereotyped image in other countries similarly struggling to respond to refugee influxes.

Despite these factors the Cyprus situation displays many of the complexities of other refugee situations to suggest that this is not a limited case. For, despite the effectiveness of the programme in these terms, there remains a series of outcomes, now displayed by the refugees and arising from the programme, which cannot be satisfactorily explained or understood by utilising orthodox forms of public policy evaluation. What has meaning to the refugees cannot be
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interpreted by the kinds of data which focus on programme output and normative policy assumptions. Rather, these indices, amongst others, are themselves indicative of highly instrumental, though not necessarily intentional, components of the programme which need to be more precisely revealed.

In the pre-crisis situation public sector housing scarcely existed. Now, confronted by a government-dominated programme located on easily identifiable 'refugee estates' at the urban periphery, the refugees simultaneously display a number of paradoxical responses. There is both client-group compliance yet also alienation in the refugees' reactions to the programme. They, paradoxically, appear to accept yet also to reject the label and differentiation which the housing gives to their situation. There is dependency assertively employed to maintain a separate identity. They are indifferent to, yet draw political solidarity and status from the programme. Many responses to housing, particularly in the self-help projects, seem to indicate settlement in the south; yet the refugees retain a profound belief in 'repatriation' to the north as a paramount and still achievable objective – a decade and a half since the crisis and with little immediate prospect of achievement. By and large there are few indicators now of temporariness. In part attributable to the physical characteristics of the housing, there are severe and disturbing changes in cultural norms, kinship patterns and family structure. Yet, confusingly, though widely replicated, these changes are rationalised by refugees as progressive.

From a number of complementary perspectives therefore, the dilemmas of refugee identity are now derived not so much from the legacy of exodus and the diaspora, movingly portrayed in the Cyprus case by Loizos (1977, 1981). Rather, it is differentiation and 'identity by programme' (de Voe 1981), which, through a process of incorporation, appears so clearly to label their status.

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The ambivalent and apparently incongruous outcomes, like those displayed in Cyprus, are widely documented features of refugee communities. They are well established phenomena consistent with the dilemmas and tensions generated by the relief and development programmes of most governments and NGOs responding to the assumed needs of refugees (eg Shawcross 1984; Harrell-Bond 1986; Waldron 1988; Hirschon 1989).

Because of the pre-eminence both of the government and of the post-partition housing policies, the institutional and bureaucratic characteristics of this programme, constitute an important arena for examining the reactions of the Greek-Cypriot refugees. A framework of analysis is needed, however, which allows the interrelationship between institutional action on the one hand and the apparently incongruent responses of the refugees on the other, to be more precisely observed and explored.

The literature on the general set of relationships between institutional action and refugee behaviour is now substantial; concepts of dependency and control
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figure highly (Harrell-Bond 1986; Shawcross 1984). So far as conceptualizing these relationships in terms of labelling, however, the literature is tangential. That there has been little systematic treatment of the conceptual framework of labelling in this context is surprising. Labels pervade both social and development policy discourse, donative discourses to which, I contend, refugees are particularly subject.

'Labelling is a way of referring to the process by which policy agendas are established and more particularly the way in which people, conceived as objects of policy are defined in convenient images' (Wood 1985:1). This conceptualization is predicated on a series of propositions; those more relevant to this paper are now briefly summarized (see Wood 1985:5-31; Schaffer 1985:33-66).

First, to the extent that my concern is to explore how and with what effects designation takes place, then it is the processes of labelling as much as the labels themselves which are of significance.

Next, labelling is a process of stereotyping which involves disaggregation, standardization, and the formulation of clear cut categories. In the institutional setting these characteristics assume considerable power, for labelling simultaneously defines a client group and prescribes an assumed set of needs (food, shelter and protection) together with appropriate distributional apparatus. With this symmetry, especially in the context of humanitarian assistance, institutional action acquires its own legitimacy and apparent benevolence. It is, precisely through this prescriptive process that an institutional identity is being formed.

What is being exchanged . . . is the way in which people can present themselves as applicants and present their wants and needs for the items and privileges of institutional services. That is . . . a disaggregation into programme terms . . . It reduces the whole man and family into formal sets of compartmentalised data . . . a sort of individuation and alienation of a man from a large part of his being (Schaffer 1977:32).

Thus, in this separation of an individual's needs from their context, and the process of reconstruction into a programmatic identity, there is created the important distinction between 'case' and 'story' (Wood 1985:13). Delinkage takes place whereby an individual identity is replaced by a stereotyped identity with a categorical prescription of assumed needs. These categories are usually absolute not relative or comparative. Labels replicate the professional, bureaucratic and political values which create them; but a story is thus reformed into a case, a category. I examine in some detail, in the next part of this paper, how the formation of a refugee stereotype in this way took place in Cyprus.

The counterpart to stereotyping is control, since a considerable degree of client loyalty and conformity with the stereotype is required (Hirschman 1970), not uniqueness and individuality. Such control, though not physically enforced in Cyprus as in many refugee situations, has been nonetheless
instrumental in determining the meaning of the label refugee. These processes of categorization and differentiation have been significant factors in forming a stereotyped identity for the Greek-Cypriot refugees. Further, I argue that the need to conform to an institutionally imposed stereotype can both reinforce control and transform an identity.

Fourth, labelling is a process of designation, for it involves making judgements and distinctions; crucially, it is non-participatory. The process of labelling, by its very familiarity and ubiquitousness in bureaucratic activity, may almost go unnoticed or unquestioned. It suggests neutrality; the very conformity it produces conveys, 'a substantive objectivity ... ', (Wood 1985:7). But bureaucratic procedures, resource distribution and the underlying political interests they represent, suggest that the labelling of target groups and their needs is not neutral or precise (Rosenblat, 1984). These implicit values need more critical review. Refugee relief programmes, because of their self-evident humanitarian derivation, are particularly prone to the neutralising conformity which the label conveys about refugees' status and their situation. Labels then reveal 'the political in the apparently non-political' (Wood 1985:6) and the power displayed through administrative procedure and practice. Subsequent connections with theories of the state are considered but are not the main issue here.

Finally, and by extension, labels are not only political but also dynamic. A programme's goods and services acquire a status; a client group, like refugees does not necessarily remain acquiescent and 'loyal'. Accordingly, the label may not only be the consequence of, but also the cause of further policy development, institutional activity and demands by the labelled group. These may be factors in restructuring further, the political interests. I examine this characteristic in the last parts of my analysis.

Although much research into refugees, as I have indicated, makes significant contributions to my concerns with institutional labelling, the treatment is peripheral. There are in the literature, however, two rather more clearly exposed perspectives on labelling to which this paper connects.

Studies by Stein (1981), de Voe (1981), de Waal (1988) and Centlivres and Centlivres-Dumont (1988) implicitly draw on the concept but do not specifically deploy it. Stein draws attention to the effects which stigma and identity have on assumptions about status and the potential success or otherwise of resettlement schemes. Although suggesting that these factors may be institutionally determined, the conceptual basis of his analysis concerns processes of assimilation. De Voe studied the way relief agencies formed Tibetan refugees as clients. Her interest in ambiguous benefactor-beneficiary relationships focuses, however, on psychological anxiety in individual adjustment to agency intervention. Finally, studies by de Waal (1988; 1989) and Centlivres (1988) are closer to my own. Both illustrate how the superimposition of institutionally determined refugee status greatly destabilizes the co-existing ethnicities of hosts and refugees. Ambiguous identities emerge which, in the former study, are disastrous.
A second conceptual reference point has a bearing on this approach. It derives from Shacknove's question - who is a refugee? (Shacknove 1985). Here the label is painted as a minimal social bond of rights and obligations between a citizen and a state 'the negation of which engenders refugees' (Shacknove 1985:275). Defining a refugee in these terms is predicated on the argument that a 'theory and policy of entitlements' (Shacknove 1985:277) is separate from and subsequent to the former, although frequently, and erroneously in his view, the concepts are reversed. I deploy this distinction in my initial evaluation of the Cyprus data in the next section. Nevertheless, much of my paper, though not proposed as an examination of Shacknove's thesis, leads me to question whether such a distinction holds.

Our starting point is a concern with policy shortfall expressed in disjunctive outcomes of the kind found in the Cypriot refugee population. These outcomes - misconceived identities - we take as evidence of institutional failure. Although our explanations of this evidence are complementary, there are important differences of emphasis. These studies argue that the problem is attributable to the preconceived objectives and assumptions which institutions hold about their tasks and clients and an unwillingness to observe and enlist the resources, capabilities and views of the refugees. These factors, in some senses, I take as given: the attributes of institutional ideology. My emphasis is on what happens within the institutional arena. More specially, I contend that what is crucial to an understanding of how institutions (mis)conceive a refugee label, is an examination of the bureaucratic practices which are intrinsic to any public institution concerned with resource distribution. It is through the apparently normal, routine, apolitical, conventional procedures of programme design and delivery that identity is determined. For the instrumentality of these procedures lies in the conformity they demand from refugee clients to gain access to the resources and label. This is the 'political significance of organizational analysis' (Batley 1983:5).

Who Is a Refugee? — Forming an Identity

Many aspects of the situation in Cyprus were consistent with what the label, in conventional usage, implied. Ethnic conflict and persecution which were widely documented, accompanied the forcible removal of the Greek-Cypriots. Substantial UNHCR assistance, although not mandated, conferred added legitimacy. Contained within a small island, with a short migratory time period, easily controlled 'borders' and with sophisticated data collection, these factors eliminated the difficulties that have occurred elsewhere of documenting who was a refugee.

The label appears clear cut. But who was a refugee? Whilst conforming to some aspects of what Vincent (1989) terms the 'narrow band' of convention refugees (persecution was undoubtedly a well founded fear) they were not outside their country of origin. They were protected by their (albeitemasculated)
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In these terms they constituted the rather less evocative category of displaced people. These contradictions and their precise consequences constitute an interesting subject for political and legal analysis. My concern, however, is not that of legal norms and sovereignty – who was a refugee? Rather, it was an issue of entitlements, in particular housing, and the institutionalization of those entitlements – who was a refugee for housing purposes? In this rather different formulation, two sets of principles can be seen in operation, often confusingly together. First there was a general set of equity-based assumptions designed to provide most for those in greatest need – families considered to be under greatest threat of destitution or breakdown. These substantive considerations – difficult enough to determine in themselves – then became translated into managerial requirements. Given the extreme scarcities that accompany most refugee crises, queues form, needs have to be prioritized and managed in relation to the general principles. Accordingly, access and allocation criteria were established, some categorical, some discretionary, based, in the first instance on family size and income thresholds.

To conform to the label refugee defined in these terms, putative beneficiaries adopted different strategies often simultaneously. Some, the reconstructors, altered their family circumstances to fit the criteria; reticulists sought assistance from contacts; optimisers who clearly understood rather more about bureaucratic procedures, judiciously sought to exercise some choice. Whilst different levels of pragmatism underpin these strategies, two conclusions are relevant to the general argument. Whether a strategist or a compliant client the objective was to be included. Because of the symbolic importance of housing (discussed in the next sections) exit or self settlement were not perceived as options. Second, and more fundamentally, inclusion, being labelled a refugee, required conformity; circumstances of 'story' had to be relinquished to the bureaucratic dictates of 'case'.

By and large, though, the criteria have ensured that it was the rural farming families and the urban poor who were suddenly unwaged in the diaspora, and those with larger dependent (though, significantly, not extended) families who were thus housed in the early phases – since their economic status was highly location specific to the north of Cyprus. Civil servants, salaried income earners, and wealthier families with perhaps more spatially diffuse land holdings and varied income sources were, initially, excluded although all were refugees. To this extent the criteria determining access to the tangible physical identity of the refugee label, a house, have been remarkably progressive, although even the first category families may have waited four or five years for an estate house. But in Cyprus, as elsewhere there is evidence of paradoxical outcomes from the distributional features of the policy. The label refugee now conveys a disturbing identity.

It may indeed have been advantageous, early on, to be labelled a poor refugee with a large family. In this way, with a rent free house and perhaps then a job in the rapidly reconstructed economy, these refugees became, in the short term at least, materially better placed than many of those originally...
excluded by higher income and smaller family status. The latter category have endured many difficult years perhaps in shared accommodation, almost certainly in unsatisfactory temporary shelter.

Yet, the equity intentions embodied in the label, have engendered unwanted and disturbing outcomes within the refugee community. Those who had least have become incorporated most by initial opportunities. Restricted mobility constrains the choices now available from the much more sophisticated range of housing options which currently exists. More disturbingly, it is the housing estates built in the early phases which are perceived as problem or 'ghetto' estates. They are inhabited by a population of uniform demographic and socio-economic characteristics (larger families and poorer means). This image is underpinned by physical characteristics as well, since the oldest estates are, generally, much larger, housing designs are more monotonous, maintenance problems with the then new technology are greater. But these outcomes are of course the precise image of the definitional criteria applied to the label refugee. Obviously unintended, these outcomes derive from more than one's self-perceived status as a refugee. It is the stereotyping of an identity; it is imposed not elective, and the more stigmatizing and alienating as a result.

Conversely the newer estates are smaller and more attractively laid out; the houses are better finished. Self build opportunities - replicating the traditional cultural processes - came later and increasingly generous grant/loan packages together with rising prosperity, have permitted much higher quality to be achieved. Paradoxically the queue for the label has thus been beneficial. Those towards the end of the queue; those in the pending category because of smaller families or higher levels of disposable income; those initially excluded from the label as less deserving by the stringently progressive criteria; these categories now have access to the label as the programme reaches its goal of housing all the refugee families from 1974. But unintentionally, of course, they are better housed in the popular image. Reflecting, then, on the spatially heterogenous structure of pre-1974 towns and villages, a new form of social stratification is evident in the refugee housing estates.

A second set of data reinforces this evidence of disjunctive and alienating outcomes which derive from the bureaucratic response. For rehousing purposes, refugees were classified according to marital status pre- and post- 1974 and their locational preference. Families which were constituted before 1974 (so called first generation) have had unconstrained access to housing. For the latter group (so called second generation), access was at first resisted. It was however conceded, though severely circumscribed, some years later. Dowry house provision was the reason for this concession since refugees no longer had land or finance available which would have been used in their past to carry out this cultural obligation. Only women (second generation) refugees were eligible and at first their spouses too had to be refugees although this was later relaxed. In addition to this major change, the general access criteria (income and family size) were also relaxed, to a small degree, in some districts. So, additional and more precisely defined categories obtained. At issue though is not
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just a response to changing needs. Compartmentalizing the refugees into these categories, was also, I contend, a bureaucratic way of fulfilling a set of managerial objectives. Widening eligibility helped to diversify the demographic and social character of the estates. It helped also in tackling the lumpiness of the construction process, since leads and lags were endemic in Cyprus as elsewhere. In any case, fluctuating refugee preferences accentuated shortfalls and overruns.

In much the same way as the primary criteria, these additional categories too, have reinforced a bureaucratically formed meaning for the label. In the government's terms, income, birthplace, marital status and family size, generation and age of children would, understandably, have appeared to be equitable, uncontentious and above all practicable criteria for defining refugee housing needs. But they embody concepts of time, family status and organizational structure rooted in a bureaucratic language quite unfamiliar to the refugees. From their point of view, they were refugees having fled the invasion in which the politico-historical antecedents to their situation were much more significant. Their identity was not, in their perception, predetermined by thoughts of housing programmes, eligibility and access rules. Rather it was constructed with a social language drawing on past norms – community, village, extended family, dowry house provision for daughter upon marriage.

This point is well documented in African refugee studies (Harrell-Bond 1986; Christensen 1982, 1985).

These familiar kinds of attachments – re-establishing the pre-existing identity one might say – have been replaced by a bureaucratically imposed identity, often with perverse consequences. The state now provides dowry housing for a substantial proportion of the Greek-Cypriot population.

Most disturbing for all the refugees is the breakup of the pre-1974 village groupings, made fragile anyway in the diaspora. Many villages fled as entities, initially retained their cohesion in temporary accommodation and aspired to sustain their village communities intact in the rehousing programme. Re-establishing 'community', as noted above, is widely documented in refugee populations. By disaggregating the label in order to form it into bureaucratically manageable individual cases, the criteria have thereby prevented village re-formation. If practicable, a programme which rehoused them comprehensively village by village, might have removed the most profound consequences of their social trauma. Village fragmentation more than many outcomes, now dramatizes for the refugees the ambiguity of their changed identity. On balance, though, they paradoxically rationalise that the fragmentation of village life has consolidated their new identity of displacement, temporariness and abnormality. Ambiguity of the kind displayed here demonstrates, as Goffman observed, how even with a reformed identity, individuals seek to balance the complementary parts of the 'normal-deviant' drama (Goffman 1963:158).

Who is a refugee therefore, especially since housing is the most dramatic indicator of the label has assumed a socially divisive meaning. In being relabelled by bureaucratic requirements, refugee is differentiated from refugee – hence
the continuing sense of alienation and anomie. This 'spoilt identity' is not how the group would choose to perceive itself. But they deploy the co-existing yet contradictory languages to pursue their own agendas and interests - the need for shelter at one level; pressure for repatriation at another.

A review of several recent studies of the situation of African refugees endorses both the evidence and utility of these findings. Reference is now made to three studies with a thematic focus on food aid.

De Waal's study (1988; 1989) reminds us of the dangers of reacting to involuntary migration with stereotyped categories. He presents a disturbing explanation of how 'conceptual blunders' of this kind (1988:128) led to a famine disaster in Western Sudan (Dar-el-Masalit) in 1984/5. The disaster was preventable but for the crude categories by which the refugees were designated. Based on the false belief that the 120,000 Chadian refugees were drought migrants, assistance was withheld. Having precipitated the famine the error was reversed but compounded by a food distribution programme contingent upon a very prescriptive categorization of the refugees. Largely ignorant of indigenous and subtle cultural and ethnic resonances, the agencies created conflict between hosts and refugees thereby accentuating the crises. As in Cyprus so too here, who was a refugee was crucial. The extent to which bureaucratic needs create too simple a conceptualization of identity and the consequential and often traumatic results are the crucial points here.

Waldron too (1988) adds to this evidence in his work amongst encamped Somali and Oromo refugees from Ethiopia in Somalia. Three problematic situations - a severe firewood shortage, a food provisioning crisis and cyclical patterns of supplementary feeding programmes - are discussed. There were rather obvious explanations for what, superficially, appeared to be perverse patterns of behaviour in which aid, imposed for survival, was rejected. Necessarily summarising the detail, all three issues illustrate how a failure to look beyond inappropriate, stereotypical categories, led to misrepresentation or even non-recognition of the three problems and thus misconceived programmes. The bureaucratic label failed to articulate the salient factors which made up the refugee identity.

A third study concerns declining nutritional status of refugees. This formed the stimulus for a detailed assessment of food provisioning (commissioned by WPF) to the 850,000 Mozambican refugees in Malawi (Wilson 1989). A rather different reading of this consultancy shows it to be a significant reappraisal of refugee food aid concepts, which has direct relevance to my own concerns. Wilson contends that the singleminded emphasis on sustaining the basic ration is not so much wrong as misplaced and defective. It ignores context. He demonstrates that a proper understanding of feeding strategies and needs can only derive from a study of the livelihood strategies of the refugees themselves; this embraces matters as diverse as comodification of wild resources, family feeding patterns, wage and bartered labour, ecological impacts and so on. In short, as with housing, so with food aid: conventional bureaucratic practice disaggregates one identity and replaces it with a designated stereotype, shorn
of variety and individuality. If we return to our original question - who is a refugee? - it is one who conforms to institutional requirements.

Labels, like refugee, appear benign in their attempt to embrace many potential beneficiaries. But being labelled a refugee can come to mean a number of things over time, as we saw in the Cyprus data for example. These meanings are more than a simple materialistic eligibility for a house, a plot, food and so on. These examples show that in the institutional setting, labels assume a much more powerful significance. They serve as a linguistic shorthand for policies, programmes and bureaucratic requirements – practices which are instrumental in categorizing and differentiating between facets of an identity. Labelled with an identity in one conceptual language, refugees in all these cases have had imposed on them a radically different language. Whether deliberately or in ignorance, this imposition dominates the behaviour of refugee societies.

Transforming an Identity

Identities are not only formed by bureaucratic action, they are also transformed by it. Programmes develop their own momentum, rationality and continuing legitimacy in servicing perceived needs. It is these attributes of bureaucratic practice, frequently remaining unexplored, which need to be tested. By distinguishing between what the label implies is needed and what is actually provided through institutional action, we can highlight how contrasting images of identity are reinforced, and explain how alienation and ambivalence are the outcomes.

In Cyprus, two kinds of evidence from the housing programme sustain the significance of this distinction between manifest and latent intentions – economic reconstruction and housing morphology.

Post-disaster studies frequently emphasize the destructive costs and the aggravation of development constraints. A different conceptualization is relevant in examining the economic impact of the 1974 invasion in Cyprus. Here, by no means entirely pragmatically, the disaster has been engaged as a developmental disequilibrium to which the response has been a restructuring of the economy both sectorally and spatially away from its rural agrarian base. In the decade and a half post-invasion, the economy demonstrated strong yet stable growth; virtually full employment was restored and GNP far exceeded pre-1974 levels. The pursuit of these goals stands, in part, by itself; but these outcomes also have a direct bearing upon the phenomenon of refugee labelling. A reconstructed economy, as the emergency development plans make clear, was a central component in government policy for the 'reactivation and reintegration of the refugees' (Republic of Cyprus 1977:5). To this end, these remarkable achievements have been contingent on the housing programme as the leading sector and government-led investment as the dynamic force, certainly in the first decade after the invasion. In so far as this set of relationships holds, the configuration can equally well be reversed. Reconstruction of the
economy could only have been achieved by deploying the refugees as a structural and spatial resource. They were a structural resource as producers and consumers. On the supply side they provided the wage labour essential for the housing construction programme and for rebuilding and extending the manufacturing and service base of the economy. On the demand side they have provided the market for light industrial/consumer goods which predominate in the relatively small economy. This structural reconstruction has been underpinned by spatial determinants. An economy dominated by the urban sector depended on mass urban housing to attract labour - exactly what the refugee housing programme has provided. Far from a burden, the refugees have literally and metaphorically rebuilt the economy.

What was being provided though, was not simply good quality housing for refugees, although the humanitarian objectives and achievements are undeniable. Simultaneously the housing programme was formulated to achieve an effective model of economic reconstruction and development. In short, one conceptualization of the label - housing need - legitimised the assertion of a rather different one, incongruent with the refugees' own perceptions. Incorporated from a rural setting into an urban economy and in a form of housing which reflected pragmatic interpretations of need - not individual requirements family by family - the meanings and outcomes of the label refugee assume distinctive yet divergent characteristics.

Evident in the physical design and location of the housing, is a second set of ambiguities. Large scale housing estates were a radical departure from the pre-1974 urban morphology - characterized by a piecemeal and incremental process of plot by plot development by individual owners. Motivated by the desire to provide material compensation, perceiving the overriding priority to be shelter provision and assuming total responsibility, these requirements became translated, by the government, into bureaucratized mass-housing solutions - functional designs, uniform styles, standardized layouts. These acknowledge nothing of the preceding cultural and vernacular characteristics. Designed for small nuclear families, they fail especially to reflect the prevailing requirements of the extended family. They are incapable of extension or adaptation to changing needs. Moreover programmes mean leads and lags and thus sub-optimal allocation - a wrong sized house, a less preferred estate, a longer wait in the pending category. The resulting discontinuities, between expectation and outcomes - an accentuated sense of alienation and deprivation, overcrowding, loss of privacy - are a clear and sharp reflection of an institutionalized definition embodied in the label refugee. Needs and aspirations became structured into technocratically manageable programmes with unwanted effects on the lives of the refugees.

Underlying these perceptions, it is the location of the estates which is more significant. Effectively a predominantly rural population (60% of the refugees) has been urbanised. Located adjacent to, but not contiguous with, urban areas and with easily identifiable characteristics (layout, form, size of schemes), the housing estates give a distinctive physical identity to the label.
This again has accentuated the development of a ‘refugee consciousness’ which is expressed in various contradictory ways. Solidarity and compliance are counterbalanced by pathological attempts to delabel – refusing all but the last, most isolated, house on an estate, for example – and adoption of Goffman-like metaphors to describe feelings: prisoners, foreigners.

Refugees do not necessarily complain that they did not participate in the shaping of policy. Housing is accepted with gratitude yet, ambivalently, the refugees feel stigmatised. Despite showing identical cultural norms with their hosts, they believe the housing, the obviously recognisable symbol of their status, may have encouraged enmity by non-refugees. There is continuing anomie and resentment at the control and conditionality which the housing represents. Conversely, it is recognised that policy failure is important. Were assimilation to be successfully achieved, a label would be blurred and pressure for repatriation would thus be lost. The refugees have managed to avert this marginalization of their interests, so far.

For the refugees their designation was instrumental in gaining access to important resources. In this process, their aspirations were filtered into the housing programme which became characterised by a particular formula of professional and technocratic assumptions. This lack of congruence has had dramatic consequences. Just as the access criteria have differentiated between refugee and refugee, so too, the form and location of housing, set within the context of economic reconstruction, have also tended to differentiate. In this instance though, it is a categorical distinction between refugees and non-refugees. The pattern of housing provision has created fundamental contrasts between what by other criteria would seem to be similar identities. The label has become, through powerful institutional processes, a potent tool of prescription and differentiation far removed from the initial premise that refugees need shelter.

Many of these themes are replicated in the findings of studies on refugees in Africa. In this context, perhaps the most significant demonstration of the confusing interaction between latent and manifest meanings of the label, relates to settlement schemes and self-settlement. These touch closely on issues of transitory or protracted status.

There is now, abundant evidence in the continent, documenting refugee preference for self-settlement, in so far as this exists in a pure sense (Hansen 1981, 1989; Harrell-Bond 1986;). The more obvious conditions conducive to this preference are documented in the sociological and anthropological literature (Mazur 1988; and above). And yet, it is conceded that scheme settled refugees are better provided for materially in the short term and evidently, too, in the long term (Hansen 1989). Moreover a substantial proportion of aid to African refugees is for settlement schemes (hereafter called schemes). Why therefore should only a quarter of Africa’s refugees live in schemes? I contend that these paradoxical findings can, in part, be clarified by considering them in the context of labelling. The negative findings for schemes derive, I suggest, from the transformations which take place in the label’s meaning.
Because schemes are established upon important misconceptions (Kibreab 1989), they tend to create, often simultaneously, false or confusing labels. On the one hand they purport to be a long term and durable solution. And in protracted refugee situations coordinated investment of this kind makes sense, as in Cyprus, to institutional ‘investors’ and the managerial requirements of their bureaucracies. As a solution however they are fallacious, since neither for host nor refugees can the implied meaning of the label – large scale first country asylum – be a durable solution to the African refugee crisis.

On the other hand, schemes are often validated on the again false premise that they offer potential for integration, itself often further confused with assimilation (Kibreab 1989). These terms denote important characteristics in the bureaucratic designation of a refugee. For in practice, either by accident or intention, schemes frequently marginalize refugees and undermine long term objectives. At worst they prevent integration by controlling the extent of social and economic interaction with host communities, as in Cyprus. At best they are devices to remove long term burdens by targeting assistance with the aim of attracting aid and promoting self-sustaining development. Even in the latter case the results are disillusioning. Armstrong (1988) notes in Tanzania a predilection, evident elsewhere, for physical investment as a demonstration of schemes’ credibility, with little regard given to less tangible community building investment – precisely the conditions observed in Cyprus. Rogge’s disturbing evidence in Sudan suggests that one objective of the label has been achieved – integration – but only at the perverse price of a local agricultural economy dependent on the extremely low wages for which refugees are prepared to sell their labour (Rogge 1985:86–98).

Karadawi (1983) cites a contingent issue in the confusion between integration and long term needs. He demonstrates how the government’s long term commitments to integrate refugees in schemes (pace Kibreab), were undermined by UNHCR and donors’ policies which were unwilling to embark upon comprehensive programmes and projects beyond emergency and rehabilitation phases. One set of labelling objectives were destabilized by another.

Most disturbing of all, schemes are mechanisms for control and, fundamentally, are a non-participatory vehicle for assisting refugees, as we saw in Cyprus. Whether it is the powerful interplay between food distribution and protection as a control mechanism in Zimbabwe (Zetter 1991) or controlling refugee food distribution in a drought (de Waal 1988) or the more pervasive processes of disaggregation and reformulation which underpin institutional management of organized schemes (Harrell-Bond 1986), or the identification of political interests of agencies and donor governments (Mazur 1989), control has a profound influence on definitions of label and identity.

From this albeit cursory evidence from the conceptual approach of labelling, what conclusions might be drawn? Clearly settlement schemes in Africa, as in Cyprus, have been vehicles for differing interests and objectives – although these have not always been coherently expressed. Schemes are
instrumental in transforming identity. Founded upon ambiguity, they impart an ambiguous status to refugees.

Schemes purport to offer long term autonomy; but, in effect they ambiguously create environments of control and dependency. Not necessarily intended, these are the concomitants of institutionalised distribution of assistance – food aid, building materials, income-generating start-up facilities. Moreover, with an emphasis on material provision, schemes require disaggregation of stories and conformity as cases. Transformation of an identity thus takes place.

Furthermore, proposed integration goes hand in hand with attempts, sometimes explicitly, to enforce segregation and inhibit interaction between refugees and hosts. Again these are mutually conflicting aspirations which confuse an identity. Next, whilst orientated towards developmental (and thus long term) aspirations, neither refugees nor host countries in Africa see schemes as a viable durable solution. They fear the implied permanency which long term programmes might impart to the label.

In short, the perceived advantages of settlement schemes are often illusory. They arouse hostility and rejection by refugees and uncertainty in the operational stance of governments. Schemes create a category of refugees, with an identity ostensibly based on development and integration as priorities. The reality however is a somewhat contrasting model of problem containment and management. In this alternative configuration, schemes become a vehicle for transforming an identity where refugees are marginalized into a segregated and permanently transient and dependent status. In contrast to Cyprus, exit becomes a popular option, in Africa, perversely accentuating the severe problems of self settlement which schemes are designed to alleviate.

These outcomes suggest that a labelled identity is being formed and transformed in ways unacceptable to refugees.

**Politicking an Identity**

Refugees, more than many target groups suffer from the dilemma of policies which seek to integrate and to create independence, yet which exclude, sustain dependency and differentiation. The labelled may not necessarily be unwilling victims of such discrimination and cooption. A ‘refugee consciousness’ maintains an identity, and the enhanced solidarity may be turned to advantage as a lever on governments and agencies.

An initially bureaucratic meaning, therefore, gradually assumes a distinctive, politicized identity. It expresses the strength of the target group’s influence on policy. Deployed as a tool to create marginalization, the political outcomes of the label may become dominant features in the refugees’ responses, accentuating the contradictions they seek to reduce. The evidence accumulated so far to illustrate the formation and reformation of an identity, is now brought together to demonstrate some aspects of the politicized identity
In Cyprus, the stance of both the government and the refugees is a commitment to 'repatriation'. Nevertheless, as the prospects for this recede, and as the material and economic provision designed to satisfy short term needs take on the appearance of a long term permanent solution, the physical identity of the label has gradually acquired a more explicit, politicized meaning as well.

The refugees have exploited the ambiguities of the programme to enhance their political profile in a number of ways. Extracting from the government the rights to second (and eventually third?) generation housing is one example. Proposals to charge rent or to impose maintenance charges are vigorously opposed. Dependency means that the providers have to adopt new responsibilities and widen existing provision, generation by generation. These provisions may well extend beyond the initial interpretation of the refugee label – a house.

Each year the progressive extension of housing support obtained by the refugees, is consistent with an extension of dependency too. These outcomes of institutionalized provision are essential features sustaining the 'refugee consciousness' vis-à-vis the government. Moreover, despite growing internal debate about open-ended commitments, sustaining the label is important for both the government and its dependent clients in order to sustain an international identity of an unresolved international issue. In this way the refugees resist the countervailing tendencies of the programme which are creating an emerging sense of assimilation. For, even presupposing a diplomatic solution, the mass housing provision and the substantial economic disparity between the prosperous south and poorer north consolidate de facto division and undermine the broader political objectives. To maintain repatriation as a central commitment, the refugees cannot exit from dependency on the refugee housing label: rather they have to use their voice to sustain a dependent and differentiated identity (Hirschman 1970). The price is heavy. Despite the identical social characteristics of hosts and refugees, the refugees feel stigmatized. Prejudice though often understated and subtle is painful. Some refugees feel that their hosts begrudge the housing provision, despite their losses. Attempts to conceal the label become, as we have seen, pathological.

These paradoxical outcomes are dramatized by what is perhaps the most tangible indication of temporariness – the refusal of the refugees to accept property title. Title would imply permanency, the status quo partition, manifestly a softening of the negotiating position was the Turkish Cypriots. Conversely the lack of title maintains a powerful commitment to the refugees that their situation is still temporary, that they are not, despite appearances, becoming assimilated and that they will be repatriated. Refusal to accept title maintains, again, a label and special status of dependency and it is deployed as a stratagem to legitimize a continuing commitment to their political objectives. Even, perhaps especially, in a country so firmly adhering to the precepts and status of private property ownership, refugees say they would refuse the gift of title even if their houses were gilded – 'these are not ours'. With a programme so comprehensive, this is perhaps the last clear vestige of the temporariness of
the situation. Title would remove an uncomplicated image of dependency – this
would mean permanency of division. Encapsulated here are all the dilemmas
of refugee identity as it has come to be expressed in the outcomes of the housing
programme.

Proposals to curtail support, merely strengthen the refugees' tendency to
display a politicized identity vis-à-vis state interests, although these interests are
not articulated by a particular political party. This position is consistent with
the general conclusions so far: that is the retention of specific identity but
located centrally within a national political context of displacement. From the
refugees' point of view this prevents marginalization into a single issue party
which, though large, would be a minority.

From the state's point of view these outcomes can be interpreted rather dif­
ferently. Politicization of refugee identity cannot yet be described in terms of
class interests. It is too soon to conclude whether a proletarian political class
has been created on the housing estates and whether this presages a
state/capital, refugee/left wing class struggle. Left parties have always been
strongly supported in Cyprus. The salient difference now is the spatial con­
solidation of a poor working class on the estates. A 'refugee' consciousness
exists and one might expect this to be mobilized as class consciousness if
repatriation remains a frustrated option; particularly might this be the case as
the interests of capital have benefited so widely from the successful economic
and housing policies on the divided island. Again the paradoxical position
of state interests is evident. For, to diminish support for refugees might reduce
the burden on public revenue; but simultaneously it might intensify the
development of the identity of a class under threat. Conversely, classified as
refugees waiting to return – this has an apolitical and less threatening implica­
tion for state interests.

Although housing is no longer the explicit need, its symbolic value is in­
estimable. It is manoeuvred by the refugees as a negotiating device because of
the things that go with it: special interest group status; proxy for repatriation –
housing in Cyprus gives the label a link, albeit tenuous and convoluted, with
this dominant aspiration.

These entangled political interests help to explain the contradictory
responses of the refugees. The state, incorporates, in part intentionally, yet it
wants to disengage. The refugees acquiesce in the creation of dependency; but
they wish also to disengage from the unwanted outcomes of the policy.
Dependency and independence, integration and the wish for the repatriation
occur, ambiguously, together.

Turning briefly to the African situation, as might be expected, given the very
different contexts, there are significant contrasts with the Cyprus case.
Nonetheless, case specific issues apart, the general proposition holds.
Displayed in different ways, there is, in the research literature, demonstrable
support for the evidence on the politicization of the refugee label.

Familiar in Tanzania is the response of refugees to the withdrawal of
assistance (Armstrong 1988) that we have already seen in Cyprus. Though this
research suggests a concern primarily with the consequences for material well-being, conceivably the underlying concerns of loss of political status are equally significant. Certainly the unwillingness to accept Tanzanian citizenship would seem to confirm that that is the case.

Salient differences in the way political identity is perceived and utilized are as follows. Whereas in Cyprus I have argued that a balance currently exists between refugee politicization and the state’s growing interest in depoliticizing refugee status, African studies seem to confirm, as Karadawi tellingly asserts in his work on Sudan, ‘pacification and depoliticization may be the prerequisites for humanitarian action’ (Karadawi 1983:540). In deploying political solidarity, African refugees are inevitably in a weaker position vis-à-vis the interests of their hosts. They are less able to lever their hosts and command the kind of solidarity which is evident for the refugees in Cyprus. If a political identity is deployed then it is more likely to be by the host countries. The symbolism of settlement schemes is much more a political tool to attract international assistance (Harrell-Bond 1986; Karadawi 1983) than a policy instrument to serve refugee interests. Moreover this category may be tightly conceived to ensure that it remains sufficiently small in order not to threaten the status quo. Conversely it is reasonable to suppose that the essentially diffuse nature of self settled refugees in Africa creates de facto a diffused political identity. Despite material deprivation, conditions of self settlement, as we have seen, are conducive to a more integrated pattern of life with hosts. Moreover, the threat of detection, and thus encampment or repatriation, reinforces a tendency to merge with the landscape and not to declare a political identity, as Hansen’s study demonstrates was the case with early Angolan influxes into Zambia (Hansen 1981). Caution should be exercised in driving this supposition too far. It is a matter of degree and circumstances.

These formulae point to the political marginalization of African refugees as a major objective and outcome of government and agency policies. Deploying the label in this way, however, need not always produce negative conditions. Preliminary research in Malawi hypothesizes that the state adopts a mediating role between different interests in its attempts to coordinate refugee assistance (Zetter 1991). In this instance the label refugee has achieved an important political currency (for the state at least), invested to encourage considerable assistance of a developmental nature for both refugees and hosts. This I suggest is a positive outcome, facilitated by an open door policy which, significantly, has not yet sought to create clear cut categories of self settled and scheme settled refugees. This is an important precondition; it removes the labelled distinctions, so powerful in Cyprus for example, between refugee and non-refugee, and also between refugee and refugee.

There is probably no more telling example of the refugee label concealing the ‘political in the apparently unpolitical’ (Wood 1985:6) than in the matter of food aid and in close proximity agreeing census figures for the number of refugees (Journal of Refugee Studies 1989; Clay 1989; Cuny 1989). Waldron (1988) demonstrates precisely this configuration in the study earlier cited. For
the Eritrean refugees in the camps, the principal meaning of their label was a basic one – access to food. For the various institutional factions the same debate sought to deploy the label in rather different ways. The issue was not one of declining food delivery and rising malnutrition (only some 59% of prescribed daily intake was available), even presupposing that logistical constraints in supply could be overcome. It was instead an issue of overall identity. With census estimates varying by as much as 200,000 (low 500,000, high 700,000), the real purpose of enumerating who were refugees was not to determine food provisioning but the ‘total investment in the Somali relief effort, which was a major component of the Somali economy’, (Waldron 1988; 160).

Labels, then, have powerful political meanings. They are a crucial index of differing assumptions and contradictory political interests surrounding the designation refugee. The process of ‘delinking’ case from story, in order to achieve conformity with institutional and ultimately state interests, represents control and the designation of certain kinds of acceptable political status. Programmes, like rehousing refugees, food provisioning and so on, potentially become both policy means and ends. They conceal more difficult political aspirations and needs, like repatriation or integration. In this way a label is delinked from what, in extreme conditions and large-scale unmet needs, may be potentially revolutionary circumstances. It is reformulated into a status, which helps to remove challenges to the prevailing ideology and structures. Labelling legitimized this kind of action. Precisely, this can occur because labels like refugee appear benevolent, neutral and obvious.

Conclusions
Labelling matters so fundamentally because it is an inescapable part of public policy making and its language: a non-labelled way out cannot exist. A theory of labelling provides some constructs with which to observe the way bureaucratic procedures and practices form a refugee identity. It is the instrumentality of these procedures, in creating an official status and in establishing the asymmetrical relationship between power and powerlessness, which this paper has explored. By reinforcing actions of designation, labelling means conditionality and differentiation, inclusion and exclusion, stereotyping and control. To summarize, there are a number of conclusions relevant to policy-based perspectives on refugee labelling.

First there is the vulnerability of refugees to imposed labels. Refugeehood, contingent on accepting a bureaucratized delivery of basic and familiar needs, may not differ from the experience of non-refugee groups. Nor may it, in every case concerning refugees, be a fundamental change from pre-existing conditions – although it was in Cyprus. Where refugees differ, crucially, from most other client groups, is in two respects. First conditions of extreme scarcity prevailing in refugee situations create new procedures, rules and categories – familiar experiences of designation become substantially changed. Most
significant however, is the fact that the modes of designation occur rapidly, in traumatic and unfamiliar circumstances. It is this that makes refugees extremely vulnerable to institutionalized perceptions, an imposed crisis-based identity and a prescriptive programme of needs. Given this turbulence, ambivalent and non-compliant responses should not be surprising.

Second, designation is not an end in itself. Labels create their own momentum especially where transitory situations become protracted. This momentum is not independent of the label but preconditioned by it. We have seen evidence of this in second generation housing and refusal of title in Cyprus and in cases in the African situation where dependency and non-integration are displayed by refugees. In this way they can sustain an image of a transitory status. In Cyprus this was especially important where permanent housing has been increasingly identified with permanency of settlement in the south. These dynamic characteristics of the label again help to explain how patterns of alienation and politicization emerge.

Third there is an important element of symbolism in labels. Clearly the symbolic, to have credibility, must have some material representation – housing, food distribution and so on. But, these material provisions may also be deployed as a proxy for other more important institutional statuses – refugees wanting repatriation, greater political representation. Again identities become transformed and quite distinct from the initial assumptions, for example that refugees need housing, and the bureaucratic procedures to achieve them.

Fourth concealed within a label are several co-existing but contrasting identities, as the cases in this paper have demonstrated. There are distinctions: between refugee and non-refugee; between different categories of refugee; between agency, government and the refugees’ own perspectives; between manifest and latent components. Rarely are these co-existing identities compatible. There is no normative identity which can be agreed. The conceptual tools of labelling seek to disaggregate these identities. For it is only in this way that a clearer account can be given of why disjunctive and confusing outcomes accompany virtually all refugee assistance. The point is not that one model of identity is necessarily superior to another. ‘Rather, three things are crucial: how identities are defined and adopted; who controls them; and how the different categories complement or conflict with each other’ (Zetter 1988:105–106).

Finally, we have seen how labels have been instrumental in forming a political identity. The debate about labelling in public policy, therefore is ultimately one about empowering the powerless, like refugees. In short, it is about participation in forming an identity and thus in enabling greater access to and control over decisions about their own lives. Arguably, it is the failure to recognise this fundamental issue, which, in the end, inhibits manifestly humanitarian intentions being achieved.

Careful observation of how the label refugee is constructed is essential. The alternative is predetermined stereotypes, inappropriately applied models from other cultures, crisis-imposed identities of powerlessness and dependency
which 'tend to destroy much of what they wish to support and undermine the identities they wish to sustain' (Zetter 1988:106).


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FIELD REPORT

Carrier Sanctions in four European Community States: Incompatibilities Between International Civil Aviation and Human Rights Obligations

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Since 1987 a number of countries in the European Community (EC), namely Belgium, Denmark, the then Federal Republic of Germany and the UK, have introduced legislation to sanction carriers with fines for bringing in passengers without valid entry visas or travel documents or with forged passports.

The purpose of this article is to examine the experiences of carriers, notably airlines, in these four EC States and question not only the compatibility of fining airlines with international treaty obligations, but also the obligation imposed on airline staff to act as international immigration officers. Emphasis is placed on the word 'international' because in order to be able fully to respect the legislation on fines, airline staff are expected to be well informed of immigration requirements of practically every country served at large international airports.

This practice of sanctioning carriers does not, in itself, represent a precedent in legislation governing the rules of entry. Carriers have long been obliged, at their own expense to transport inadmissible passengers back to their countries of departure. The practice of imposing fines for inadmissible passengers, as an immigration control mechanism, originated in countries of traditionally liberal immigration policies - the USA, Canada, Australia and even Thailand and Brazil (ECRE 1988). In these countries, however, carriers have often been provided with grounds, although limited, for defence and immunity. For example, in the USA the carrier's liability ends when the passenger is granted leave to enter the country. In Australia, under the (Australian) Immigration Act 1958 (as amended) Section 11(c)(5)(b) no fine is imposed if the owner or person in charge of a carrier can satisfy the court that he/she had 'reasonable grounds for believing a person to be, when he boarded or last boarded the vessel for travel to Australia, a person exempted, by instruments under the hand of the
Minister, under the requirements of this Division or included in a class of persons so exempted' (Quoted in ECRE 1988).

What is remarkable in the sanctions measures imposed on carriers in the European countries is their introduction as a response to the inflow of an increasing number of asylum seekers. Many of these asylum seekers have arrived without entry visas or with forged documents, or without any documents of identity at all, perhaps having destroyed them before or upon arrival so as to render a probable deportation order difficult to implement.

Prior to the introduction of fines on carriers, some EC States had been steadily increasing the number of third countries whose nationals required visas. Ironically the more difficult it has become for refugees to gain entry to an EC country and present an asylum request, the more often they have to resort to using invalid or forged travel documents, whether these were provided by unscrupulous international traffickers or by those genuinely seeking to support asylum seekers for political or humanitarian reasons.

The harmonization process in Europe was declared on 15 December 1989, by the Ministers of the 12 EC Member States responsible for immigration matters. The draft convention covered all aspects of investigation of people entering the external frontiers of the EC Member States and was supposed to be signed before the end of 1990. This has been rescheduled to June 1991. It is the second such convention to have been drafted outside the competence of the EC institutions although it has been, like the first, dictated by the needs of the Single European Market (Cruz 1990). The two conventions have been described by ministers as 'an important step towards the construction of a People's Europe and the completion of the internal market'.

The first convention aimed at addressing the problem of 'refugees-in-orbit' by laying down conditions and rules of responsibility of Member States in examining asylum applications. It may well contribute to creating another problem, since the far more difficult and controversial issue of harmonizing procedures on granting asylum has been left aside.

There is a considerable variation from one Member State to another on how an asylum application is processed, and asylum seekers will, in principle, have their applications examined in only one Member State. Accordingly, those Member States which are reputedly, or perceived by themselves to be, more liberal are likely to become 'attractive' for those asylum seekers who are in a position to exercise a choice of preferred country of refuge as well as for those clandestine immigrants seeking entry into the European Community on the pretext of a claim to asylum. In these circumstances, there would be the risk of Member States adapting their policies to the more restrictive ones of their partners.

Comparatively speaking, it is the second convention which is much feared by human rights associations and refugee support groups. It is believed to contain some very strict entry conditions, including visa requirements, and a provision to extend the practice of fining carriers for passengers whose entry documents are not in order.
Belgian Law of 14 July 1987

The law of 14 July 1987, which, *inter alia*, introduced amendments to the law of 15 December 1980 on rules governing entry, visit and residence in the Kingdom of Belgium and the deportation of foreigners, introduced sanctions for carriers bringing in five or more passengers without valid entry documents. This quota of five persons does not include the parents and the spouse, i.e. a married couple with three children would be counted as one.

Prior to this legislation, the Belgian State, acting within the framework of the Benelux ‘Special Committee on the Movement of Persons’ had been gradually introducing transit visas for nationals of certain countries, all of which happened to be countries of departure of asylum seekers. As a result asylum seekers were increasingly making their applications in the country of transit rather than face refusal and deportation from the country of destination. Thus, at a meeting of this Committee on 4–5 December 1985, the decision was taken to impose entry visas on the nationals of the five main countries of origin of asylum seekers at that time: Afghanistan, Iraq, Iran, Sri Lanka and Turkey. At another meeting held on 7–8 October 1987, 15 more countries were added to this list.

Carriers found guilty of breaching the 1987 law are fined a sum of about BF 80,000 per passenger. In accordance with Article 6, paragraph 2 of the European Convention on Human Rights it is up to the authorities to prove that a carrier is guilty of negligence when checking the travel documents of passengers prior to embarkation.

Until now, although a significant number of carriers have been charged with violating this law, no carrier has yet been found guilty. In addition to the difficulties encountered by the authorities in proving that carriers were negligent, the latter always have the possibility of invoking attenuating circumstances – such as responding to the needs of persons in danger.

There was, however, a bill proposing new measures concerning asylum that was to be passed before the end of 1990, although the legislation has not to date been passed. It includes an amendment to the 1987 law with the effect that carriers would be liable to fines as from the first passenger onwards. The bill was approved by the Council of Ministers on 1 June 1990 and approval by the Chamber of Deputies and the Senate is expected.

In order to comply with the law, the Belgian national airline, Sabena, has been providing special training for their staff on how to distinguish between a genuine and false passport (Mignon 1989: 287–8). Even if this hurdle can be overcome, there is nothing airline staff can do to prevent passengers from destroying travel documents before presenting themselves to immigration officers. Moreover, in busy international airports, airline check-in staff often act on behalf of other companies. It is therefore not surprising that Sabena, despite all the precautions it has taken to check the travel documents of its passengers, has been issued with fines in the UK and in Denmark on several occasions for breach of the prevailing legislation on carriers liability.
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Antonio Cruz

Amendments of October 1987 to the Danish Aliens Act of 1983

Among the amendments adopted on 17 December 1987 to the Danish Aliens Act of 8 June 1983 was a provision enabling the Ministry of Justice to use its discretion as to when it would deem fit to impose fines on carriers bringing in people without valid entry documents. This measure was implemented as of 1 January 1989 and consists of imposing fines of up to Dkr 10,000 per passenger.

As in Belgium, the authorities had earlier tried to curb the increase in the number of asylum applications with entry visas. In addition, there was at least one case on record of an airline, Alia, the Jordanian national airline, which was issued with a warning in September 1987 that unless it stopped bringing in 'illegal immigrants', it would lose its landing rights in Denmark. In the two week-period prior to the warning, 137 Palestinians arrived without visas and requested asylum (International Herald Tribune 1987).

Since 1 January 1989, a very long list of airlines has now been issued with fines. According to the Ministry of Justice, cases involving Aeroflot, Czechoslovak Air, Interflug, Iraqi Air, KLM, Sabena, SAS, Singapore Airline and Swissair had been dealt with by the Copenhagen Council (Lower) Court by the end of September 1990.

Not all these carriers were fined Dkr 10,000 per passenger. In some cases, the court decided to lower the penalty to Dkr 8,000 or even Dkr 2,000 when it considered that there was a much more 'limited liability' on the part of the airline concerned.

Following the series of rulings on 18 October 1989, proceedings on other cases were suspended pending the outcome of the ruling of the Court of Appeal. Moreover, a decision was taken at the end of 1989 to suspend carrier sanctions and no airline was fined during the ensuing 10 months. However, the Ministry of Justice decided in the summer of 1990 to resume application of the measure.

Among the carriers faced with a sizeable amount of fines is the Scandinavian Airlines System (SAS); the total amount of fines is believed presently to be in excess of Dkr 3 million. Ironically, SAS is collectively owned by Sweden, Denmark and Norway. It has contested the fines, arguing, as have other airlines, in a quote by a SAS spokesperson:

"In the first place it is difficult to see whether a passenger's visa or passport is falsified, even for experienced police officers and in the second place, we cannot control what people do with their documents between the time they leave the plane and when they are finally before immigration officials. Thirdly, we have foreign airline personnel carrying out check-ins in other airports, for example Sabena in Belgium, etc. in good faith. Therefore, there can never be any talk of penalizing us with fines (CCME 1989a)."

None of the afore-mentioned airlines has paid its fines. Instead they have made a collective appeal against the fines to the Court of Appeal (Östre Landsret) which, in its ruling on 29 October 1990 (Det Fri 1990a), overturned...
the rulings of the Copenhagen Council (Lower) Court which had earlier imposed the Dkr 2,000 fine per person for those cases where there had been 'attenuating circumstances'. Such cases included those where asylum seekers had destroyed their travel and/or identity documents before presenting themselves to the immigration desk, or where forged documents were so convincing that it required experts and/or laboratory tests to detect them.

One of the lawyers acting on behalf of an airline pointed out that sanctions were normally issued when there was intent and/or negligence. In the case of these airlines, he argued, they had actually been fined when they had endeavoured to abide by the law. An airline employee gave evidence of an incident involving a passenger from the United Arab Emirates who was suspected of being in possession of false documents. He was allowed to board the plane only after his documents had been verified and approved by the Danish Embassy in UAE. The person, however, presented a Lebanese passport without a visa upon arrival in Copenhagen, and the airline was accordingly issued with a fine (Det Fri 1990).

The three judges of the Østre Landsret ruled that carriers' liability and the imposition of sanctions could only be established in the 'most clear cases' when the airlines 'could and should have avoided transporting passengers to Denmark with forged documents or without any documents at all'. In a circular letter to all airlines, the Public Prosecutor's Office has now, in fact, recommended the use of microscopes and ultra-violet rays to detect forgeries.

The ruling concerns the appeals lodged by Sabena, Singapore Airlines, Iraqi Airways, Swissair, Czechoslovak Air, KLM and Interflug. As the court could not ascertain whether Aeroflot was a government agency or not, the latter's appeal was postponed. The same decision was taken in the case of SAS.

The court, however, upheld certain rulings involving fines of Dkr 8,000 per passenger, but rejected the request by the Deputy State Prosecutor that airlines be fined Dkr 10,000 for every illegal passenger. In all, the fines upheld totalled Dkr 401,000 for 51 passengers without valid or adequate travel documents. Only Czechoslovak Air managed to get all its fines dismissed.

The Ministry of Justice is considering the possibility of appealing against the ruling of the Østre Landsret to the Supreme Court. However the Ministry has given the airlines leave to appeal to the Supreme Court against the ruling of the Østre Landsret.

January 1987 Amendments to the Aliens Law of the Federal Republic of Germany (FRG)

Arguing that there had been a dramatic influx of clandestine migrants and of 'economic refugees', the Federal Ministry of the Interior proposed amendments to Article 8(4) and (5) of the 1965 Aliens Law, approved by the Federal Government in January 1987. This had the effect of making carriers liable to fines of DM 2,000 per passenger transported without valid entry documents,
and a further sum of up to DM 20,000 for expenses incurred for board and lodgings for inadmissible passengers. Under the new Aliens Law, passed on 9 July 1990, the fine of DM 2,000 has been increased (as of 1 January 1991) to amounts ranging from DM 2,000 to DM 5,000 depending on the extent of the carrier's liability.

In addition, under the new law, carriers will remain responsible for transporting a passenger to his/her country of departure if this person applies for asylum upon arrival and, after examination, is refused within a three-year period. For comparison, the time limit for border refusal in Denmark and Finland is three months. In Sweden, although there are no such fines, there is no longer a time limit as to carriers' responsibility in repatriating inadmissible passengers (Dansk Flygtingehjælp nd).

Initially, the Federal Ministry of Interior issued serious warnings to airlines, including Lufthansa that unless it stopped transporting people without valid visas into the FRG, it would be issued with fines (Stuttgarter Zeitung 1987). Between the time the law came into effect and the end of 1989, 582 charges were laid against some 40 carriers, including one shipping company. About 20 of them were issued with fines totalling some DM 4.6 million, of which between a third and half had been paid by the end of September 1990.

Previously, in about 80% of the cases, carriers contested the fines in court. Now, it is the case that almost every carrier issued with fines appeals against the charges. These carriers challenge not only the responsibility placed upon their staff to act as immigration officers, but also the compatibility of this law with the constitutional right of asylum. Their cases are being examined by the Federal Supreme Court whose ruling is expected some time in 1991.

According to an official of the Federal Ministry of the Interior, there have been upturns and downturns. When the law first came into effect in 1987, an increasing number of carriers was issued with what could be termed 'coercive fines'. The number decreased in 1988; but the tendency was reversed the following year with an upturn. The situation in 1990 followed the norm and it would appear that these 'coercive fines' have obliged carriers to ensure that the travel documents of the passengers are valid. Enforcing airlines to 'know the rules of the game' seems to be the objective. Thus, for example, Lufthansa which had been fined in the past had not been charged at all in 1990.

There are airlines which have paid out sums for transporting inadmissible passengers, but these sums do not necessarily correspond with the fines actually levied. This is the case of British Airways which is believed to have paid out DM 30,000. These sums could be attributed to surety payments for inadmissible passengers, their board and lodgings during the period between their refusal of entry until their effective deportation, costs of transporting such passengers out by another company, if necessary, or costs involved in engaging immigration officers or staff from private firms to accompany inadmissible passengers on board their aircraft to ensure that there is no threat to security.

In addition to fines, there was an attempt on the part of Frankfurt Airport to request airlines for reimbursement of expenses incurred for accommodating
asylum seekers in the airport until their requests were decided upon by the immigration authorities. Lufthansa and Bulgarian Airlines were issued with bills to this effect (Süddeutsche Zeitung 1989). The airlines refused to pay and the State Court of Frankfurt (Landesarbeitsgericht) ruled in February 1990 in their favour. It found that airlines are only responsible for their passengers up to the point when an aircraft has landed, and not – as stated by the airport company – up to when their passengers have passed border controls and have been admitted into the country. The appeal by Frankfurt Airport against this ruling is still pending (Frankfurter Rundschau 1990).

Court rulings related to the Aliens' Law have been contradictory. Whereas the Administrative Court in Cologne decided in July 1988 that the Law infringes neither the principle of a constitutional State, nor the constitutional right of asylum (Verwaltungsgericht Köln 1987; Frankfurter Allgemeine Zeitung 1988), the Higher Administrative Court of Hessen expressed serious doubts, in a ruling in January 1989, about the compatibility of this law with the Constitution and considered that it might violate the Constitutional right of asylum (Die Welt 1989; Frankfurter Rundschau 1989). According to this court, the compatibility of the 1987 law with the Constitution needed to be examined in the light of the question as to whether it prevents genuinely persecuted persons from making use of the constitutional right of asylum. It therefore ruled that the airlines involved were not, for the time being, obliged to pay the fines imposed on them.

Two other almost identical rulings on 15 March 1989 of the Oberverwaltungsgericht Nordrhein-Westfalen (Higher Administrative Court of Nordrhein Westfalen) concurred with the position of the Administrative Court of Cologne (Frankfurter Allgemeine Zeitung 1990; Frankfurter Rundschau 1990a). In the cases concerning Air France and Air India, respectively, the court rejected the arguments of these two airlines that the controls demanded by the 1987 law would weaken the right of asylum, impose German law on non-German territory (i.e., airports abroad) and place an excessive burden of work on airlines. The court ruled that the right of asylum was not restricted by such controls as this right did not guarantee that a persecuted person should be able to be transported to a German border. In the court's opinion, the right of asylum only protected a person seeking asylum against expulsion upon his/her arrival at this border. Persons requiring entry visas and able to present them were not restricted in exercising this right of asylum.

This ruling followed the official position of the authorities with regard to the transporting of genuinely persecuted persons travelling with false or invalid documents. Even if such persons were to be subsequently granted asylum by the authorities, the fines against the carrier that transported them to the FRG would still be maintained. The argument is that there is no connexion between the fact that the person is a genuine asylum seeker and the transporting of a passenger without valid papers. The latter act violates the law and the airline must therefore be fined. It has been argued that carriers operate on business lines, since they do not accept passengers without valid travel tickets,
neither should they be allowed to accept passengers without valid entry
documents.

As in the other countries where airlines have been liable to such fines, car-
riers issued with fines in the FRG have contested the responsibility placed upon
them to ensure not only that passengers are in possession of the necessary entry
documents upon presentation at the immigration desk, but also that such
documents are genuine.

Whether or not carriers will be fined for passengers with forged documents
depends on the 'quality of the forgery'. Ministry officials suggest that up to
90% of all forgeries are poor and airline staff should, if the documents are
carefully checked, be able to detect forgeries.

In its ruling of 13 October 1987, the Administrative Court in Frankfurt
recognized that airlines could not be expected fully to carry out such a respon-
sibility since they do not exercise full control over their passengers from the
time they check-in until they present themselves at an immigration desk on
arrival. While admitting the possibility that an airline could withhold the travel
documents of passengers during the entire duration of the flight, it would have
to return these documents to the passengers at the end of the flight upon
leaving the aircraft. The Court ruled that

At this moment the passenger is still quite free to get rid of his entry documents in
the international zone, which in an airport like that of Frankfurt has an area of
several thousands of square metres, before arriving at the entry control desk
where passports and visas are usually examined . . . Consequently, in such a situ-
tion, the fact that a passenger is not in possession of his documents at the moment
of border control does not sufficiently constitute a breach of the prohibition to
transport [passengers without valid documents] (Verwaltungsgericht Frankfurt
1987).

In addition, the Court ruled that by virtue of the constitutional right of
asylum, the State is bound by certain duties of behaviour and abstention. The
Court took the view that

there is no difference between whether the State implements measures against
asylum seekers at the moment when they enter the territory of the FRG or
previously. In both cases, the measures hinder the exercise of the right [of asylum]
or render it practically impossible (Verwaltungsgericht Frankfurt 1987).

It must also be pointed out, of course, that there are no international legal
provisions that allow carriers to withhold the travel documents of passengers.
Since late 1986, Norwegian officials have, however, collected passports and
other travel documents from foreigners before entry into Norway to prevent
them from destroying or disposing of them before arrival at the immigration
desk. This procedure has become institutionalized since its inclusion in the
1988 Aliens Act (Dansk Flyttingehjælp). Similarly in Belgium, the Govern-
ment there may request its national airline, Sabena, to collect and withhold the
passports of passengers during the entire duration of a flight.
Passports are the property of the issuing States and although there may be situations where the agents of other States can withhold passports (eg upon imprisonment or custody), strictly speaking, immigration officials of other countries or carrier staff are not entitled to withhold them from passengers. As pointed out by the International Air Transport Association (IATA), the practice of withholding passports from passengers could give rise to embarrassing situations in which such passports get lost (Bollag and Crisp 1987). A less likely but more disastrous situation could be one in which a plane is hijacked by terrorists who then oblige a crew member to identify passengers of a certain nationality. This has of course already happened in hijacks, even without a withholding process.

**UK Carriers’ Liability Act of 1987**

In March 1987, in emergency legislation, a fine of £1,000 per inadmissible passenger was introduced against carriers found to be in breach of the Carriers’ Liability Act (Guardian 1987; Times 1987). There is no fine if the carrier can show that the passenger in question had valid documents when s/he boarded the plane or that the forgery of the travel document(s) was not reasonably apparent. Contrary to the fundamental principle of British law that the accused is innocent unless proven guilty, this Act puts the burden of proof on the accused carrier.

In addition, the Immigration Department of the Home Office may exercise its discretion and waive liability in accordance with the Guidance Notes issued in November 1987. However, the Home Office was not prepared to include additional specific safeguards or defence for carriers in the actual legislation (Ruff 1989). An attempt by Labour and Alliance members of the House of Lords to waive the £1,000 fines for carriers which judged that passengers faced 'grave and imminent danger' was defeated by the Conservatives. A Home Office Minister (Independent 1987) said that the amendment would provide enormous scope for abuse... [and would also] create an expectation that carriers could make judgements or assumptions which they are clearly not in a position to make.

In reply to a question by an MP in May 1990 as to how many passengers whose arrival, without valid entry documents but who claimed refugee status, resulted in fines under the 1987 Act, the Home Secretary replied that it was not easy to have such information available as it 'could be obtained only at disproportionate cost (Hansard 1990a).

In dismissing and rejecting claims by human rights group that the new law prevents persecuted persons from seeking asylum in the UK, the Home Office argued that those suffering from persecution should go to the nearest safe country to seek asylum, instead of travelling three-quarters of the way round the world; if they did not possess valid documents, they were likely to be either ‘bogus’ asylum seekers or ‘economic refugees’. As Ruff (1989) points out
the concern with false documents reflects an approach to asylum seekers that concentrates on the procedural rather than the substantive aspects of their claim to refugee status.

The introduction of fines resulted in a 50% reduction in the weekly rate of about 60 people claiming asylum at air and sea ports (Guardian 1987a; 1988). Virtually every main air and sea carrier has been found to be in breach of the Act with fines totalling £18.9 million from the date when the Act came into force in March 1987 up to 9 August 1990 (Home Office 1990) (see also Hansard 1990b). Of this amount, £7.3 million had been paid as of that same date.

British Airways is understood to be facing total fines of over £3 million, more than the fines faced by Lufthansa, Swissair, Iberia and Alitalia all together. All four airlines refused to pay these fines (Evening Standard 1990), challenging the Government’s position that they were effectively obliged to act as immigration officers trying to detect forgeries which even experienced professionals could not do. These carriers were preparing to take the legal battle to the European Court of Human Rights.

The Home Office responded with the threat that unless the airlines paid the fines, they might lose their landing rights (Daily Telegraph 1990a), and on 20 June 1990, the Treasury Solicitor was instructed to start action against these four carriers (Evening Standard 1990).

The number of demands for payment of fines (each demand corresponds to a fine of £1,000) has been increasing steadily. In 1987, there were 3,921 demands, 4,211 in 1988, 6,337 in 1989 and for 1990 there were 4,431 up to 9 August.

There is no evidence to suggest that the amount of fine handed out is related to the efficiency (or inefficiency) of carrier check-in staff or the stringency of the rules adopted by particular carriers. Indeed, the Carriers Liability Act is an example of a law under which persons or companies run the risk of being sanctioned even though they have made efforts to ensure compliance with the legislation. Ruff (1989) has given examples of airlines which have introduced special measures and control checks to comply with the 1987 Act and yet they have still been fined. Ironically, in a list given by the Home Secretary of 42 airports from where 50 or more ‘illegal’ passengers departed for the UK, at least 10 airports are those which adopt extra security and check-in staff to control passengers’ travel documents (to prevent terrorist attacks, for example) (Hansard 1990a). These include New York, Los Angeles, Toronto, Frankfurt, Geneva, Copenhagen, Stockholm, Paris.

Although the British Government claims that handing out fines is discretionary and not mandatory, the measure has apparently been implemented with considerable zeal. According to British Airways, ‘hundreds’ of the cases resulting in fines have involved business travellers without visas who were trapped in London because of missed connexions (Daily Telegraph 1990a).

Faced with such huge fines, carriers are becoming increasingly reluctant to carry passengers whenever there is the slightest doubt about their admissibility.
British Airways came under rather embarrassing criticism when it was disclosed that on 9 April 1990, its staff at Heathrow Airport allegedly 'kidnapped' three Tamils, holding them against their will and deporting them without informing the immigration authorities in order to avoid £3,000 in fines (Daily Telegraph 1990).

In June 1990, in reply to a letter by the British Refugee Council requesting an explanation of this incident, the Chairman of British Airways, the (Conservative Peer) Lord King, while declining to comment on the incident as legal procedures were under way, described the Carriers' Liability Act as 'unjust and unreasonable legislation' since airlines were obliged to act as 'unpaid immigration officers'.

Another recent example of how apparently innocent operators can inadvertently fall foul of the Act concerns the arrival of 156 Iraqi nationals or Iraqi Kurds on a charter flight from Damascus on 3 October 1990. The plane was chartered from a private airline (ZAS of Egypt) and its representatives were told that all the passengers were Europeans leaving various parts of the Middle East because of the impending Gulf Crisis and did not need entry visas (Independent 1990a; Times 1990). Repeated promises were made from Damascus to send a full passenger list, but this never arrived. ZAS has been fined £156,000, but all 156 passengers have applied for asylum.

The Carriers Liability Act came under strong attack early in 1990 in a ruling of the High Court in London (QBD 1990) in a case concerning four Lebanese men and two women who travelled to London at the end of December 1989 on stopover tickets and false visas for Brazil. The Home Secretary rejected their asylum applications and ordered their deportation, arguing that it was reasonable to expect the applicants to apply for asylum in Brazil and that there was no risk that the latter country would send them back to Lebanon. The asylum seekers claimed that since their entry visas for Brazil were obtained by fraud, the authorities there would send them back to the UK.

The court quashed the Home Secretary's decision, calling it unlawful and adding that there was no evidence to show that the asylum seekers would, as opposed to should, be admitted to Brazil. The court found that it was impossible for intending refugees to get visas on the basis of being refugees in the countries where they were being persecuted, because at that stage they were not outside their country of nationality and so did not fall within the definition. The judge added (Independent 1990)

He who wishes to obtain asylum in this country short of a prior contact with the Home Secretary offering him asylum, has the option of lying to the UK authorities in their country in order to obtain a tourist or some other sort of visa; obtaining an airline ticket; or obtaining an airline ticket to a third with a stopover in the UK. The international community has many examples of similar obstacle courses placed in the way of would-be refugees and yet has reaffirmed in Article 14(1) of the Universal Declaration of Human Rights: 'Everyone has the right to seek and to enjoy in other countries, asylum from persecution'.
Annex 9 to the 1944 Chicago Convention on International Civil Aviation sets out a number of international standards and recommended practices. Whereas Contracting States need only 'endeavour to conform' to recommended practices, a standard is recognized by Contracting States (ICAO 1990) to be practicable and as necessary to facilitate and improve some aspect of international air navigation . . . and in respect of which non-compliance must be notified by States to the Council [of the International Civil Aviation Organization] in accordance with Article 38.

Refugee experts have pointed out on many occasions that a law designed to sanction carriers with fines is in breach of Standard 3.36 of Annex 9 to the Chicago Convention (ICAO 1990) which stipulates that carriers shall not be fined in the event that any control documents in possession of a passenger are found by a Contracting State to be inadequate or if, for any other reason, the passenger is found to be inadmissible to the State. Operators shall take precautions to the end that passengers hold any control documents required by Contracting States.

Moreover, the legislation does not make any distinction between asylum seekers and other foreigners.

Of the four EC States with carrier sanctions, only the Federal Republic of Germany made reservation to Standard 3.36 when it was adopted. The reservation made (ICAO 1985) was as follows

On account of considerable difficulties encountered in connection with the presentation of control documents [visas] by passengers entering the Federal Republic of Germany, the authorities reserve the right to punish operators by a fine if the German regulations are violated.

As for the other three EC States, only Denmark abided by Article 38 of the Convention and duly notified ICAO of its intention to introduce fines against carriers transporting passengers without valid documents. The UK considers that the second sentence of Standard 3.36 requiring operators to take precautions to ensure that passengers hold any control documents required by Contracting States, justifies its 1987 Act.

This issue, and in particular Standard 3.36, was on the agenda at the 10th Session of the Facilitation Division of ICAO, held in Montreal on 7–23 September 1988. Amendments were passed with the effect of rendering carriers more responsible for ensuring that their passengers be in possession of the necessary travel documents and for their repatriation if they are declared inadmissible. Amendments also provided for the possibility of imposing fines on carriers. These amendments, effective on 30 July 1990, became applicable on 15 November 1990.

The outcome, however, is not all negative. The former Standard 3.36 has been replaced by Standard 3.37.1, stipulating that parties to the Convention
Carrier Sanctions

shall not fine operators in the event that passengers are found inadmissible unless there is evidence to suggest that the carrier was negligent in taking precautions to the end that the passengers complied with the documentary requirements for entry into the receiving State.

The burden of proof is therefore placed on the Contracting State, and not the other way round as is often the case at present.

Moreover, in the new Standard 3.36 providing for the repatriation of inadmissible passengers, a note is attached (ICAO 1990), specifying that the contents of this provision are not to be construed so as to allow the return of a person seeking asylum in the territory of a Contracting State, to a country where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

It stemmed from concerns that Article 33 on the principle of non-refoulement of the 1951 UN Convention Relating to the Status of Refugees be respected. This article is among the provisions of the Convention 'so fundamental that no reservations may be made to them' (UNHCR 1983).

Two legal cases are worth mentioning here. One concerns the more than two-year long battle by some members of the flight personnel of Lufthansa in Frankfurt who want the right to refuse to work when asylum seekers are deported against their will. They have cited the moral conflict based on the experience of deported persons who often have to face danger in their home countries. In their opinion, the resulting moral dilemma is incompatible with the principles of the Constitution and the employer's obligation to provide for the welfare of employees (Frankfurter Rundschau 1988; Die Tageszeitung 1988).

In its ruling on 21 September 1988 (Arbeitsgericht, Frankfurt am Main 1988), the industrial tribunal in Frankfurt decided that conscientious reasons can only be of legal relevance if a crew member has concrete evidence that the life of a rejected asylum seeker is in danger in his home country. As a rule, decided the court, it has to be assumed that the authorities and courts act in accordance with the law concerning deportations. An appeal against this ruling was made and in February 1990, the State Employment Tribunal (Landesarbeitsgericht) of Frankfurt supported the earlier ruling (Suddeutsche Zeitung 1990). An appeal to a higher court is pending.

Another case concerns the UK system of appeal under which inadmissible persons issued with deportation orders can make an appeal only from outside the UK. At the time when the contents of the Carriers Liability Bill was being debated, the Home Secretary rejected a recommendation from the Commons Select Committee on Race Relations and Immigration that there be an independent right of appeal for those whose asylum applications were turned down and were subsequently deported. He argued that because 28,000 people were refused entry at British ports the previous year, it would only take a small proportion to overburden any appeals system (Times 1987).
As argued by Ruff (1989) the present UK system of appeal is useless for persecuted persons who are declared inadmissible and consequently deported. If the person is persecuted on return to his/her country, s/he will be unable to appeal. If s/he is not persecuted, then the Home Secretary can always argue that s/he has no grounds for appeal. If the person is deported to a third country and accepted there, then it could be argued that his/her asylum application should be submitted there.

One of the rare cases in which the appeal system has worked concerns five Tamils who were declared inadmissible in 1987, deported to Sri Lanka and subsequently suffered persecution: even so, this is to be examined by the European Court of Human Rights. Thanks to lawyers in the UK, the High Court quashed the deportation order against them in July 1989 and allowed their return to have their asylum applications examined.

In their case to the European Court, they are alleging violation of both Article 3 of the 1950 European Human Rights Convention which prohibits torture and inhuman and degrading treatment or punishment and of Article 13 which provides for 'an effective remedy before a national authority'. Early in 1990, the Commission of Human Rights ruled by 8 votes to 7 that Article 3 had not been violated by the UK Government; but by 13 votes to one, it found the UK Government had violated Article 13 in not providing the Tamils with any effective means of appeal (Daily Telegraph 1990b).

**UN Convention Relating to the Status of Refugees**

Other than constituting a possible violation of Article 33 on non-refoulement, sanctions against carriers may also be in breach of Article 31 of the UN Convention relating to the Status of Refugees, according to which

> Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened . . .

With legislation designed to impose penalties on carriers which bring in refugees whose travel documents are subsequently proven to be forgeries, sanctions are imposed indirectly on refugees who are thus prevented from fleeing from their country of persecution.

Sanctions are also inconsistent with paragraph 2 of this same Article which prohibits Contracting States from applying

> to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country.

**Vienna Convention on the Law of Treaties**

Last but not least, States parties to a convention are obliged, as Feller (1989) points out, not only to carry out the clearly stipulated provisions, but also, by

to ensure that any action it takes which bears on its treaty responsibilities is not inconsistent with the object and purposes of the convention.

The relevant principles of \textit{pacta sunt servanda} and 'good faith' are clearly developed in Articles 26 and 31, respectively. According to Article 26, 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith'. Article 31 stipulates the following:

A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and interpretation.

\textbf{Future policies}

Is an extension of the practice of sanctions on carriers to other European States inevitable? Given the present circumstances, the four States discussed can hardly be expected to repeal their legislation on carriers' liability. Indeed a harmonization and extension of this practice to all EC Member States is provided for in Article 26 of the Schengen Supplementary Agreement.

However, the term 'sanctions', as used in the Supplementary Agreement, is open to various interpretations: there is no mention of imposing fines in Article 26. The obligation placed on carriers to pay the temporary costs of accommodation and the return journey of an inadmissible passenger has long been considered by many countries to constitute a (sufficient) form of sanction. The imposition of fines, as can be interpreted in (the new) Standard 3.37.1 of Annex 9 to the Chicago Convention, may be justifiable only if carriers are guilty of a criminal act of wilful negligence or collusion to transport inadmissible passengers.

In addition, Article 26 only holds carriers responsible for passengers being in possession of the necessary travel documents, but not their authenticity. The way sanctions have been applied in the countries reviewed in this article, with the exception of Belgium, serves to 'criminalize' carriers and renders them to a great extent responsible for the authenticity of travel documents.

There is some hope in Denmark, at least for a revision of the existing practices following the latest ruling on 29 October 1990 on this issue. The outcome of the collective appeal to the Supreme Court made by the airlines concerned will be the decisive factor on whether or not sanctions may include fines. The same applies to the outcome of the Supreme Court ruling on this issue in the FRG, expected some time in 1991.

The 'sub-group' of countries that are parties to the Schengen Agreement is expanding. Italy adhered to the Schengen Agreement at the Schengen ministerial meeting on 27 November 1990 in Paris. As of January 1991, Spain and Portugal participated as observers at the meetings of the Schengen States and they are anticipated to become full members in June 1991.
It therefore seems to be the feeling, among the negotiating parties of the next convention on rules of entry at external borders of the European Community, that an Article similar in content to that of Article 26 of the Schengen Supplementary Agreement can hardly be avoided. As this is very likely to be the outcome, those opposed to growing restrictionism are seeking to pressurise and influence the negotiating parties to ensure that the final text of any new Article contains the maximum possible safeguards against limitations to the right of asylum.

The best way of securing such guarantees might be to have the ad hoc Group Immigration and its activities absorbed into the EC structure to enable its participation in and some control of the Community institutions, namely, the European Parliament via its relevant committees. The European Parliament has, in fact, on at least two occasions approved by a large majority resolutions calling for the right of involvement in these matters, in particular with regard to the conventions drafted by the ad hoc Group Immigration. The first occasion was a motion for a resolution put forward by the Socialist Group on the signing of the Supplementary Schengen Agreement, 29 November 1989 (Doc. B3-583/89). The second was a joint resolution on the Schengen Agreement, the Convention on the Right of Asylum and the Status of Refugees, as defined by the ad hoc Group Immigration, replacing Docs. B3-1208, 1209, 1227, 1232 and 1248/90 of June 1990.

Exclusion of EC competence in these matters also means exclusion of the competence of the European Court of Justice as guardian over the implementation of these Conventions. As a result, not only have these Conventions been elaborated without democratic, parliamentary control and supervision, but also the application of the measures provided therein does not come under supranational judiciary control. There is little more than moral constraint to oblige the States parties to these conventions to adhere in good faith to their international obligations.

If the supranational, EC approach continues to be ignored, then the Article on carrier sanctions should contain at least the following:

- an explicit reference to the precedence of the obligations undertaken by virtue of the 1951 Geneva Convention relating to the Status of Refugees and the 1967 Protocol, in particular Articles 31 and 33;
- the wording of the application of sanctions on carriers should be fully consistent with the new Standard 3.37.1 of Annex 9 of the 1944 Chicago Convention, as well as with Note 2 of Standard 3.36.1 (see above), with the result that the onus of proof of negligence is solely upon the State authorities and not upon the accused carrier;
- a list of circumstances under which carriers may not be sanctioned including cases where persons seeking admission are at first considered to be inadmissible, but who are eventually given leave to enter; and likewise where the owner or captain of the carrier is able to satisfy a court of his humanitarian motives in transporting passengers without adequate or valid entry documents;
- a reference to the distinction between people fleeing persecution (refugees/asylum seekers) and those seeking unauthorised entry as irregular migrants;
- a mechanism of supervision of the application of carrier sanctions with the participation of the UNHCR.

Conclusion
There is an urgent need to initiate consultation between government officials and human rights groups to analyse and study the three years or so experience of countries which have already implemented carrier sanctions before the signing of a new Convention.

Sovereign States have, of course, the legitimate right to take measures against illegal or clandestine immigration, the extent of which will only increase as long as the economic gap between the industrialized nations and the developing ones continues to widen. What is questionable is the growing tendency of States which, under the pretext of emergency measures to deal with the problems which have got out of control, are instituting new legislation which may be incompatible with the spirit and the letter of international obligations (to which they have, in good faith, subscribed) and which imposes or rather transfers burdens and obligations on others, namely carriers. Consequently, carriers, in order to remain on good terms with a State and to avoid paying fines, resign themselves to carrying out duties which they are manifestly not competent to carry out. Thus, as an example, in reply to a question in the British House of Commons, the Secretary of State of Transport made known that his Department had begun discussions with British Airways on a review of individual cases in which it had incurred liability. Although considerations will be given to some of the issues raised by British Airways, 'there are no plans to review the workings of the Immigration (Carriers' Liability) Act', (Hansard 1990b).

Due to concerns expressed by the UN High Commissioner for Refugees prior to the signing of the Schengen Supplementary Agreement, the carrier sanctions must comply with obligations under the 1951 UN Convention Relating to the Status of Refugees. However, this in itself does not constitute a sufficient guarantee that carriers will not be fined for passengers without valid documents whose claims of persecution are later substantiated.

The introduction of such fines was unofficially considered in the Netherlands early in 1987. In July 1989, the French Government was reported to be considering such legislation and the Minister of the Interior was, at that time, favourable to the idea and was assured of support from the opposition.

Carrier personnel are not and will never become competent immigration officers nor, even, refugee sympathisers. When faced with someone who alleges persecution, but whose entry into the country of destination may be in some doubt, operators will prefer not to transport the passenger to avoid the risk of being sanctioned. Moreover, as pointed out by a senior official of IATA...
(quoted in Feller 1989), the Swiss Government has estimated that it would require a voluminous document of about 1,200 pages to put together all the visa and passport requirements of the various countries around the world.

Fining carriers when there is neither intent of negligence nor misconduct on the part of their staff is arguably the same, if not worse, than applying sanctions against immigration entry officers for authorizing entry to visitors who remain in the country after their visas expire.

Other than fines, there is a range of unorthodox methods (of which we know little) used in airports to prevent asylum seekers from making applications. Early in September 1990, it was revealed that officials of the Interior Ministry of the Federal Republic of Germany, disguised as airline staff, had been posted for some time in airports abroad to ensure that 'inadmissible' passengers did not try to seek entry by, for example, applying for asylum (Frankfurter Rundschau 1990b).

For some time, Belgian immigration officials have been posted at international airports abroad to inspect the travel documents of certain categories of passengers who may be denied entry upon arrival in Brussels. Moreover, at Brussels International Airport, gendarmes are sometimes posted adjacent to exit gates for landing aircraft allegedly to prevent potential asylum seekers from making their applications. A similar situation took place in June 1989 in the UK (acknowledged by the government) when immigration officers boarded aircraft coming from Turkey in order to send Kurdish Turks back without allowing them on to the airport tarmac (CCME 1989).

Posting immigration officials disguised as airline staff cannot be achieved without the collaboration of airlines. Worse, some airlines are suspected of having negotiated with governments on the settlement of fines. As Ruff (1989) warned, there is 'thus the potential danger of an unholy alliance between governments and airlines'.

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