MIGRATION IN MALTA: AN EXAMPLE OF GOOD PRACTICE?

PAUL PACE

Migration has seemingly acquired a permanent place at the top of the list of the Maltese people’s concerns. In more ways than one, it is linked to Malta’s membership to the European Union, and is in turn a clear example of the profound weakness of the current EU migration policies, which seem to be aimed at little else besides stopping people from entering the EU.

1. The Context

Malta has from time immemorial been connected to migration, mostly because of our position at the very centre of the Mediterranean. In more recent times, our tiny size and lack of natural resources proved unable time and again to provide enough employment opportunities to our relatively large population; this has meant that from time to time many Maltese sought to start a new life elsewhere. Few are the Maltese families that do not have a close relative living in Australia, Canada, the UK or the US.

Yet, since 2002, we have been witnessing a radical change in this nexus between Malta and migration: we are no longer witnessing Maltese emigration but rather considerable numbers of immigrants, mostly from sub-Saharan Africa, arriving on our shores in boats, seeking a better future and safety in Europe.

The number of arrivals since 2002 seemed to have stabilised at around 1700 a year, but this number shot up to around 2700 in 2008, and the very unusual arrival of some 800 migrants in the first weeks of 2009 will probably mean another record year.

This is not the first time that Malta has offered hospitality to migrants seeking protection. Asians expelled by Idi Amin in the early 1970s sought refuge here for some months, while in the 1990s, during the first Gulf War and the war in Bosnia, Malta was the haven for hundreds of Iraqi and ex-Yugoslav, mainly Bosnian, refugees.

Yet, the present situation is different on two important counts: firstly, earlier migrant flows were controlled: the Asian refugees came at the invitation of the Maltese government while the Iraqis and Bosnians of the 1990s came here with a regular visa, mostly on scheduled flights. On the other hand, present day migrants arrive in boats, or are picked up by the Maltese armed forces because they are in distress, and most of them arrive without documents and certainly without a visa.

This creates strong feelings in public opinion and in the authorities, which range from fear of being overrun by uncontrollable hordes of migrants, to frustration and anger that even our best efforts at controlling this inflow, often at huge expense, invariably turn out to be ineffective.

The second basic difference is the changed legal framework. In 1971 Malta signed the Geneva Convention relating to the Status of Refugees with a geographical limitation, accepting responsibility for granting protection only to those asylum seekers coming from European countries. In practice this meant that UNHCR, through its Rome office and its local operating partner the Emigrants’ Commission, used to process claims from non-European asylum seekers and resettle most of those granted protection.

This changed with the passage of the Refugees Act in 2000, whereby Malta assumed full responsibility for all arrivals by removing the previous geographical limitation. Now our country is responsible to provide protection to all those who seek it and prove they have a right to it. Through one of those unpredictable

---

1 According to the latest Eurobarometer survey, published in December 2008, ‘immigration is the top concern in Malta (48%), p 29, accessible at http://ec.europa.eu/public_opinion/archives/eb/eb70/eb70_first_en.pdf. (All sites mentioned in this article have been accessed on April 16th, 2009)
twists of fate, the entry into force of this law in 2001, as part of the process of Malta’s accession to EU membership, coincided with a real increase in the influx of people arriving at our shores the following year.

This temporal and legal link between the Refugees Act 2000 and our entry into the European Union developed as our membership brought with it new responsibilities and introduced us into new structures of accountability. Thus migration and membership of the European Union were inextricably linked together in the popular imagination from the very beginning.

**Malta’s Migration Policy**

Malta’s migration policy makes use of a mixture of new and old instruments: the Refugee Act, as amended in 2008 and its supplementary regulations, and the 1970 Immigration Act. The provisions of the latter law provide the legal basis for the government’s policy to detain all those who arrive irregularly, including those who ask for asylum.

The 1970 law does not specify any maximum length to detention, since it assumed that irregular migrants would be returned on the next available flight, and few would be detained for more than a few weeks. When the context changed, the Minister of Justice and Home Affairs took a policy decision that fixed the maximum limit to 18 months, without making any change in the law. Only vulnerable persons - children, pregnant women, migrants with children and people affected by certain medical conditions - are exempt from detention, although their identification as vulnerable persons may take weeks or even months.

Those immigrants who apply for asylum are freed from detention as soon as their application is accepted, a process that usually takes months. Those whose application has not been definitively determined after 12 months are freed. Those, however, whose application has been refused even at appeal stage before the lapse of 12 months are detained for a total of 18 months, and then released to live in the community. At the moment few deportations take place, although small numbers are being attracted by programmes for sponsored voluntary return, and a generous US resettlement programme is now into its second year.

Certainly the most controversial aspect of Malta’s immigration policy is the policy and practice of administrative detention. Local politicians contend that it is an essential part of our response to the immigration problem, yet they do not seem to succeed in convincing their critics, which include both local NGOs and international monitoring agencies such as the Council of Europe Committee for the Prevention of Torture, the Council of Europe Human Rights Commissioner, the European Parliament’s LIBE Committee, and the Catholic Church.

Although around 45% of those who seek asylum are granted some kind of protection, Malta has not yet developed any effective integration policy, besides offering free health and education services to all, and making it possible for those with and without protection to enter the labour market. The official reason usually given is that most of those who are here have no intention to remain. This is in many ways borne out by the numbers of people who move on, legally or not, yet it seems quite risky not to take account of those who do choose to remain.

The provision of education and health services needs to take account of the new situation we are living, and public opinion needs to be made more aware of the complexity of the present situation, and the rights migrants have under our legislation and according to our international obligations. Yet, few if any new policies have been developed that go beyond the appeal to our detention policy. Thus, while the Maltese regularly see pictures and television footage of frequent arrivals of boats on our shores, little seems to have

---

4 The main reports mentioned here, together with other useful information and links can be found at: http://jrsmalta.org/resources.html
5 During a recent parliamentary debate on migration, the Leader of the Opposition stated that just over 12,000 asylum seekers have landed in Malta in the past decade. According to figures given in Parliament referring to the situation at the end of March 2009, 5,262 remain, the rest have either been repatriated, or just moved on. 2,302 live in detention centres, 2,194 in Open Centres and 766 in private residences. Cf. http://www.timesofmalta.com/articles/view/20090317/local/pl-leader-proposes-migration-action-plan
changed in our country’s way of trying to tackle the problem. This has led to rising levels of frustration, and the appearance of far-right groups advocating radical solutions that disregard Malta’s international protection obligations. Up to now, such movements or parties have never had any electoral impact.

2. Maltese Migration and the EU

As has already been said, migration and the EU are inextricably linked in the Maltese imagination, and there is certainly much that is more real than imaginary in our present predicament that can be laid at the Union’s door.

With the advantage of hindsight, it now seems to have been quite short-sighted that during the long accession process, the biggest concerns in the area of migration were shown along the East-West axis. Major efforts, costing hundreds of millions of euros, were made to prepare the countries on the Union’s new Eastern borders to train their personnel and strengthen their border. It is not insignificant that the headquarters of the new border control agency, Frontex, was situated in Warsaw.

The Southern border was disregarded or at least not taken as seriously, and it was only after enlargement, and intense pressure from the southern states - Italy, Spain and Malta - that a similar effort to tackle the South-North axis started to take shape. In practice this meant that both Malta and the EU were unprepared to face the influx of migrants arriving from the southern shore of the Mediterranean that took place shortly after Malta’s accession.

EU Legislation: Dublin II

The Tampere summit in October 1998 started a process aimed at achieving a truly EU-wide harmonization in the area of asylum and migration. By the time of Malta’s accession in 2004, certain parts of this process were already in place, and thus part of the acquis which Malta had to accept.

The most burdensome was certainly the Dublin II Regulation, approved in February 2003, which obliges Member States to assume full responsibility for the whole process of any asylum claim made by an alien on their territory.

This has changed the European asylum scenario significantly, for it means that migrants stop at the border states, making it next to impossible for an asylum seeker to enter another member state legally. Thus, while asylum applications in the Southern border member states have risen dramatically, they have diminished by a corresponding amount in the non-border, mostly Central and Northern European member states, where, over a ten year period, reductions can be in the order of 30% or more.

The effect of Dublin II on Malta, the southernmost border state, a tiny island on one of the most important migration routes into Europe, can only be described as disproportionate. Those arriving on our shores, most of whom claim they did not intend coming here in the first place, discover they are basically stuck here: they cannot move on legally to other EU states because of Dublin II, and they cannot in practice be sent back to their country of origin because of many logistical and administrative reasons.

Thus, the Dublin Regulation, originally intended to stop ‘asylum shopping’, is now seen as totally dysfunctional even by the Commission itself which is in process of presenting its proposals for changes in the current set-up. Meanwhile, however, its practical effects on Malta are crippling, especially in the context of our island’s experience of UNHCR sponsored resettlement of practically all arrivals prior to EU accession.

---


The Directives

The other EU legislation on asylum and migration took the form of four directives, dealing respectively with reception conditions, procedures for determining refugee status, qualification for asylum, and the return of rejected asylum applicants. These directives are all transposed into local legislation except for the returns directive, which will enter into force only in 2011.

Such a harmonisation process is certainly positive for Malta, for it ensures a more complete legal framework as our country grapples with this new situation. It has also meant greater legal safeguards for those applying for asylum, besides some undeniable improvements, the most evident being the lowering of the maximum detention period from 18 to 12 months for those whose asylum claim has not been definitively decided.

Yet, one cannot but harbour doubts regarding the effectiveness of this transposition process. The universal condemnation of the present detention conditions by all the international organisations who visited them, including the LiBE committee of the European Parliament itself, does raise doubts about how real has been the transposition of the minimum conditions contained in the Reception Directive\(^8\).

Moreover, local NGOs were highly critical of the 2008 amendments to the Refugee Act: while these amendments claimed to transpose the Qualification and Procedures Directives, critics said that not all the new law’s provisions are implemented in practice, like those granting welfare benefits to people with subsidiary protection. Furthermore, the law as amended removed some parts of the protection given under the previous law, by transferring them from the principal law to the subsidiary legislation, which is placed under ministerial discretion beyond direct parliamentary oversight\(^9\).

It is also difficult not to ask whether in the case of the Returns Directive, the most controversial of all, the Maltese detention policy in any way influenced the decision to put 18 months as the maximum detention period at European level too.

Other directives which apply in this area are the Employment and Race Directives, which aim to ensure that there are effective structures to combat any discrimination on the basis of a number of grounds, including race. This function is at present being carried out by the National Commission for the Promotion of Equality, which probably can be more proactive in raising awareness among the Maltese and the migrant populations, and in setting up adequate structures of redress as required by the Directives\(^10\).

3. A More Vigorous EU Migration Policy

Malta’s predicament and its efforts to introduce new ideas into the European migration debate illustrate the sad fact that the EU still does not have a coherent migration policy, unlike countries facing similar conditions like the US and Canada. Member States cannot agree on common political objectives because of diverging or even conflicting national interests.

The EU finds itself playing different roles, which sometimes come into conflict. It is a major player in a globalised world, and is seeking ways of enhancing its influence through increased trade and political clout. This in turn makes it a more attractive destination for people seeking a better and safer future. Certain member states, including Malta, have a plummeting birth-rate, and the EU is well aware of the need to tap additional sources to sustain its dwindling workforce. Another real difficulty is that the enlargements of 2004 and 2007 have meant that there are important internal migration movements, which will take some time to settle before a coherent policy on external migration can be formulated.

---

\(^8\) Most of these reports can be accessed at: [http://jrsmalta.org/resources.html](http://jrsmalta.org/resources.html)


Very often the need to formulate clear policies at the Union level comes into conflict with specific internal political situations, where anti-immigrant sentiments seem increasingly capable of holding governments and political parties ransom to their influence.

Some of the member states carry a long legacy of colonial adventures in Africa, a legacy which is often blamed for much of the instability and corruption in the continent. European countries still have significant geo-political interests in Africa, and often practice policies that foster dependence. As a result, they sometimes end up embroiled in those very conflicts that impel citizens of sub-Saharan countries to flee for their lives, often towards these same European countries.

In this wider context, Malta, the smallest EU member state itself at the receiving end of colonialism, and on one of the main migration routes from Africa to Europe, feels annoyed to see its initiatives and proposals continually blocked by this complex political and diplomatic context, over which she has little control.

Malta’s objectives in this area seem to be three-pronged. The first and most concrete is accessing financial aid from related EU programmes (European Refugee Fund, EQUAL, AGRO...) to help her finance her obligations in this area. EU money has been used by Government and NGOs to improve reception conditions, to provide services to asylum seekers, for staff training and for integration initiatives. Lately, the very substantial sum of €112 million from the External Borders Fund has been voted for Malta to improve her armed forces’ capacity to deal with irregular migration.

The second objective, which has become more and more the focus of Malta’s policy in this area, is to achieve greater solidarity among EU member states in sharing the ‘burden’ of irregular migration. This is proving to be no easy task, for hostile public opinion within the other Member States seems to provide them with very little space to show any solidarity that is not merely affective or financial.

The inclusion of the principle of voluntary burden sharing in the European Migration Pact in September 2008 was hailed by the Maltese government as an important step forward, though its voluntary character was labelled as a major failure by the Labour Opposition. The two EU Commission Vice Presidents who visited Malta during March 2009 both expressed an unusual openness to Malta’s predicament, and promised further steps by the Commission for the achievement of this aim.

The third objective is Malta’s insistence to link overseas development aid to African countries to a commitment by these countries to accept returned migrants. This is perhaps more an indication of the intensity of our problem than of anything else. The EU needs a much more proactive and robust African policy to make inroads into the intricate situations that push millions to flee war, violence or grinding poverty.

Unfortunately, the only EU policy for which there seems to be universal support seems to be a repressive one, the construction of what is sometimes derogatively referred to as Fortress Europe. The EU seems willing to go to ever greater lengths and spend greater amounts of money, to keep people from arriving at its borders. However, the only result of such repressive policies, besides momentarily appeasing public opinion, is to push people to take even greater risks in their determination to seek protection and a better future. New routes appear, people try more daring and dangerous means, seem willing to pay more money…and more people end up by losing their lives at our borders. The perils of crossing the desert and then the Mediterranean Sea are now well documented, and the tragedy of more and more young people and even children being pushed to an early death must knock on Europe’s conscience more insistently than ever before.\footnote{Some harrowing statistics can be found at: \url{http://fortresseurope.blogspot.com/2006/02/immigrants-dead-at-frontiers-of-europe_16.html}}

Frontex missions, in which Malta often plays a prominent part, are regarded much less optimistically than at their beginning: they cost too much money, they always seem to start later than promised, and, worst of all, they seem to prove largely ineffective in their claim to be able to stem migration flows and decrease the number of arrivals on European shores. Questions are often raised at the lack of transparency of Frontex’s
rules of engagement and on its commitment to consistently respect European obligations to provide protection to those seeking it.

**What if?**

How different would things have been had Malta not joined the EU in 2004? There is very little to support the claim that is sometimes made that migrants chose the Malta route because of our entry into the EU. The temporal proximity of the two events seems to have been wholly fortuitous.

So if irregular migrants would have come even if we had not joined, what difference has our membership made? We are certainly moving in a clearer and surer legal framework which makes some more demands on us but which provides us with more - though still insufficient - safeguards that we are operating within a framework that respects human rights. We have also had access to considerable funding and training possibilities.

We are expected to be more accountable and transparent, things we can in turn ask of others who make declarations of concern for our situation. We have a voice at the decision table, a small voice that can make itself heard in a forum that would have been much less accessible had we not joined.

Only time will tell whether this tiny voice can convince other bigger players to take our situation into greater account. An even bigger challenge is to use that voice to advocate beyond our immediate needs, for a new relationship between Europe and Africa based on greater equity, solidarity and respect for human rights.