



ICAR

Navigation guide

Key issues: UK asylum law and
process

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Introduction

The aim of this guide is to provide the reader with a comprehensive overview of asylum law and process in the UK. It has been designed as an introduction to the topic and highlights the main perspectives on current debates. Readers looking for more detailed literature or advice will find contacts and suggestions on how to locate further information embedded in the document.

Throughout the text every effort has been made to source information and assertions and to provide links to relevant websites. The guide has been broken down into key headings so that the information can be easily navigated. There are also internal links so that it is easy to move between overlapping topics.

Developments in asylum law are rapid and the field is constantly evolving. The guide will be updated on a regular basis but in between updates, current information can be obtained from the sources provided.

Asylum law and process in the UK is the main focus of the guide. However, international and European perspectives are also given on certain key issues where they are central to understanding developments in the domestic context.

Legal aspects

Useful resources

Bibliographic references and links are provided throughout this section. For general reference users should consult:

Gina Clayton (2004) [Textbook on Immigration and Asylum Law](#). Oxford: Oxford University Press.

Benjamin Hawkin and Aryan Steadman (2003) *A Practical Guide to Asylum and Human Rights Claims*. London: Butterworths.

Joint Council for the Welfare of Immigrants (2002) [Immigration Nationality and Refugee Law Handbook \(2002 edition\)](#). London: JCWI.

Ian Macdonald QC and Frances Webber (2001) *Macdonalds Immigration Law and Practice*. London: [Butterworths](#). (New edition due to be published in October 2004.)

Margaret Phelan and James Gillespie (2003) [Immigration Law Handbook, third edition](#), Oxford: Oxford University Press.

Mark Symes & Peter Jorro (2003) *The Law Relating to Asylum in the UK*. London: Butterworths.

[All URLs accessed 23 July 2004]

International refugee law

Asylum law in the UK is based upon the [1951 Convention relating to the Status of Refugees \(the Refugee Convention\) and its subsequent 1967 Protocol](#).¹ The Convention was drafted in the aftermath of the Second World War by member states of the United Nations (UN) who were aware that previous refugee agreements did not address the needs and contemporary realities of refugees in the post-war period.

The drafters of the Refugee Convention envisaged that the agreement would be used as a temporary way of providing for the large numbers of refugees in Europe as a result of the war. However, over time, it was recognised that there was a need for the same provisions to be applied to people who had become refugees after 1951 and who were not European nationals. The 1967 Protocol removed both the time and the geographical limitations written into the Convention.

Definition of a refugee

Article 1A(1) of the Refugee Convention defines a **refugee** as:

- A person who has a well-founded fear of persecution for reasons of *race, religion, nationality, membership of a particular social group or political opinion*.

¹ Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home?page=PROTECT&id=3c0762ea4> [accessed 23 July 2004].

- Someone who is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail himself/herself of the protection of that country; or who, not having a nationality and being outside the country of his/her former habitual residence is unable, or owing to such fear, is unwilling to return to it.

In addition, Article 1 regulates when a person ceases to be a refugee (some of these will not, in practice, be used in the UK), and excludes from refugee status persons who have committed crimes against peace, war crimes, crimes against humanity and serious non-political crimes committed outside the country of refuge.

An **asylum seeker** is someone who has made a claim to be considered for refugee status to a state party to the Refugee Convention.

State obligations and refugee rights

Those persons recognised as refugees are afforded certain rights by the Refugee Convention.

- Refugees should not be expelled or returned to territory where their life or freedom would be threatened (known as *non-refoulement*).
- Refugees should not be penalised for having entered into or being illegally in the country where they seek asylum, so long as they apply promptly for asylum.
- Refugees should not be expelled except in exceptional circumstances to protect national security and public order.
- Refugees are entitled to a Refugee Convention travel document.
- Refugees should not be discriminated against on the basis of race, religion or country of origin in access to, for example, welfare provision.

The Refugee Convention sets out the standards for the economic and social rights of refugees. Some of these rights are required to be at least equivalent to those accorded to other foreign nationals living legally in the country. Other rights must be at the same level as those granted to citizens. Refugees are obliged to conform to the laws and regulations of the host country, including measures taken to maintain public order.

UK asylum law

There are no internationally agreed procedures or standards for deciding who falls within the definition of a refugee cited above. Those states that have signed the Refugee Convention design their own systems and criteria in order to determine which persons will be accorded refugee status. The office of the United Nations High Commissioner for Refugees (UNHCR) has produced a [*Handbook on Procedures and Criteria for Determining Refugee Status*](#),² which is used as a guide by some states. Nevertheless, status determination procedures vary dramatically between different countries of refuge. The UK's asylum policy has also been

² UNHCR (1992, 1979) *Handbook on Procedures and Criteria for Determining Refugee Status*. Geneva: UNHCR. Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opedoc.pdf?tbl=MEDIA&id=3d58e13b4&page=publ> [accessed 23 July 2004].

increasingly influenced by the harmonisation of policy within the European Union and the development of a common European asylum system.

The United Kingdom signed the Refugee Convention in 1954 and the Protocol in 1968 and has for some time applied the terms of both. However, it was not until the coming into force of the [1993 Asylum and Immigration Appeals Act](#)³ that the Convention was directly incorporated into domestic law. Until this point there was no specific asylum legislation and the asylum system had been governed by immigration laws. For example, asylum appeals previously came under the general provisions of the 1971 Immigration Act.

Since the 1990s, the asylum process has been modified by successive governments. In 1996 the Asylum and Immigration Act was passed by the Conservatives and the subsequent Labour government introduced three further pieces of legislation: the [Immigration and Asylum Act 1999](#),⁴ and the [Nationality Immigration and Asylum Act 2002](#).⁵ The most recent, the [Asylum and Immigration \(Treatment of Claimants\) Bill](#),⁶ received royal assent on 22 July 2004. The [Asylum and Immigration \(Treatment of Claimants, etc.\) Act 2004](#)⁷ will come into effect later this year.

The development of a common European asylum system (CEAS) will have a significant impact on future asylum policy in the UK. There are two stages to this process, the first being the harmonisation of asylum policies in the member states and comprises four directives (on minimum standards for reception, establishing which country is responsible for examining an asylum claim, a common refugee definition, and procedures used for determining claims), and the second being the establishment of a single asylum system for the whole of the European Union. In 2002, the member states of the European Union agreed on two of the four directives (on deciding which country is responsible for deciding an asylum application, and minimum standards for reception). On 30 April 2004, they finally agreed the directive on a common refugee definition and a 'general approach' on the directive on procedures for determining claims.

National governments are obliged to ensure that their policy and practice does not conflict with these directives, although the UK government retains the right to opt out of any measures affecting control of its external borders. Throughout the negotiations, the UK government sought to ensure that the directives' provisions did not oblige it to make changes to national policy measures, such as the separate education of children in accommodation centres, the removal of support from asylum seekers who did not apply in good time, the refusal of asylum based on country of origin only, and the reduction of entitlements for people granted subsidiary protection. This approach has been criticised by various refugee agencies, who are concerned that minimum standards reflect the 'lowest common denominator' between member states.⁸

³ Available at http://www.hms.gov.uk/acts/acts1993/Ukpga_19930023_en_1.htm [accessed 23 July 2004].

⁴ Available at <http://www.uk-legislation.hms.gov.uk/acts/acts1999/19990033.htm> [accessed 23 July 2004].

⁵ The NIA Act 2002 came into force on 7 November 2002. Available at <http://www.uk-legislation.hms.gov.uk/acts/acts2002/20020041.htm> [accessed 23 July 2004].

⁶ Available at <http://www.publications.parliament.uk/pa/ld200304/ldbills/093/2004093.htm> [accessed 23 July 2004].

⁷ Available at <http://www.legislation.hms.gov.uk/acts/acts2004/20040019.htm> [accessed 26 July 2004].

⁸ See **Refugee Council** (2004) *Refugee Council briefing on the common European asylum system, March 2004*. London: Refugee Council. Available at http://www.refugeecouncil.org.uk/downloads/briefings/intl/common_euro.pdf and **Refugee Council** (2004) *International Protection Project Update, May 2004*. London: Refugee Council. Available at http://www.refugeecouncil.org.uk/downloads/briefings/intl/ipp_update_may_2004.pdf and European Council on Refugees and Exiles, Amnesty International and Human Rights Watch, 'Refugee and human rights organisations across Europe express their deep concern at the expected agreement on asylum measures in breach of international law', News Release, Wednesday 28 April 2004. Available at http://www.ecre.org/press/asylum_procedures.shtml. [All accessed 23 July 2004].

Summary of UK legislation

Asylum and Immigration Appeals Act 1993⁹

- Refugee Convention was incorporated into UK law.
- Appeal rights for failed asylum seekers were widened. More categories of applicants became eligible for an in-country right of appeal against a negative decision on an asylum application.
- Creation of a 'fast-track' procedure for dealing with applications that were judged to be 'without foundation'.
- Allowed detention of asylum seekers whilst their claim was being decided.
- Introduced fingerprinting of all asylum seekers.

Asylum and Immigration Act 1996¹⁰

- 'White list' of countries was introduced. These countries were deemed to be safe and their nationals at little risk of persecution.
- 'Fast track' appeals process extended to include more groups of people. Cases could be 'certified' for a number of reasons.
- Introduction of the 'safe third country' concept.
- Entitlement to housing and welfare benefits were restricted to those making an application at the port of entry.

Immigration and Asylum Act 1999¹¹

- Existing offences of entering the country by deception were extended. Asylum seekers were able to use the defence that they had good cause for entering the country illegally if they presented themselves to the authorities without delay.
- Penalties for carrying clandestine entrants in to the UK were introduced.
- Introduced a general right of appeal if it was alleged that a public authority had breached the Human Rights Act when making a decision under the immigration acts.
- Applications could be certified as 'manifestly unfounded' and right of appeal to the Tribunal restricted.
- Persons who arrived in the UK via a 'safe third country' and who claimed that removal would breach their human rights could have their claim certified and the right of an in-country appeal removed. (Refer to Third country cases section for more information).

⁹ Available at http://www.legislation.hmso.gov.uk/acts/acts1993/Ukpga_19930023_en_1.htm [accessed 23 July 2004].

¹⁰ Available at <http://www.legislation.hmso.gov.uk/acts/acts1996/1996049.htm> [accessed 23 July 2004].

¹¹ Available at <http://www.legislation.hmso.gov.uk/acts/acts1999/19990033.htm> [accessed 23 July 2004].

- One-stop procedures were introduced. (Refer to The one stop procedure section for more information).
- Introduction of the National Asylum Support Service (NASS) which co-ordinates the arrangements for supporting asylum seekers and dispersing them to different areas of the UK.

Nationality Immigration and Asylum Act 2002¹²

A detailed briefing¹³ on the changes brought by this legislation is provided online by the Refugee Council. Many of the key reforms to the asylum system were laid out in Chapter 4 of the white paper, *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*.¹⁴ (Other chapters dealt with broader issues, for example, citizenship, trafficking and managed migration.)

In the white paper, the government emphasised their intention to ensure that asylum seekers are tracked more effectively throughout the system and to increase the number of asylum applicants that are removed. They also highlighted a commitment to promote the successful integration of those persons recognised as refugees.

The legislation was significantly amended during its passage through parliament, and the act became law in November 2002.

The main changes to asylum law and process can be summarised as follows:

- Introduction of accommodation centres which will have educational and health services for asylum seekers.
- Introduction of a resettlement programme. (Refer to the resettlement navigation guide for more information).
- Introduction of regular reporting for all asylum seekers.
- Introduction of an 'asylum registration card' (ARC) containing the biometric data of the asylum applicant.
- Strengthening of the provisions in the 1999 act preventing multiple appeals
- Ending the right to an in-country appeal if the asylum, or human rights claim, is certified as clearly unfounded. (Refer to the section on Certification as 'clearly unfounded' for more information).
- Introduction of statutory review, which replaces judicial review of the decision to refuse leave to appeal to the Immigration Appeal Tribunal.
- The introduction of a list of 'safe countries' and the presumption that asylum applicants from these countries will have their applications certified as 'clearly unfounded'. Certification means that the

¹² Available at <http://www.uk-legislation.hmso.gov.uk/acts/acts2002/20020041.htm> [accessed 23 July 2004].

¹³ Available at http://www.refugeecouncil.org.uk/infocentre/nia_act2002/intro_ed1.htm [accessed 23 July 2004].

¹⁴ Home Office (February 2002) *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*. Cm 5387. London: Home Office. Available at <http://www.official-documents.co.uk/document/cm53/5387/cm5387.pdf> [accessed 23 July 2004].

asylum applicant is denied an in-country right of appeal (i.e. they can appeal against refusal of their application, but only after having departed from the UK).

- The decision to review the status and granting of 'exceptional leave to remain' (ELR). Prior to this announcement, ELR had been granted on a discretionary basis to those with humanitarian or protection needs, but who did not qualify for refugee status under the limited provisions of the Refugee Convention. A general policy of granting ELR to applicants from certain countries has applied when the situation in a particular country meant that the return of asylum seekers was not possible. Since April 2003, ELR has been replaced by 'humanitarian protection' (HP) and 'discretionary leave' (DL). Humanitarian protection and discretionary leave will be granted for up to three years. Routine granting on a country-by-country basis will also be stopped. More details on these new statuses are outlined in the section on Decisions.

[Asylum and immigration \(Treatment of Claimants, etc\) Act 2004](#)¹⁵

In October 2003, the government revealed its intention to introduce further legislation on asylum. [A letter](#)¹⁶ from the Home Office and the Department for Constitutional Affairs issued on 27 October 2003 outlined the proposed reforms to the asylum process and invited comments from interested parties before 17 November 2003. This short period of consultation and the lack of detail provided in the proposals was heavily criticised by key organisations. Details of the responses received to the initial consultation were published in the government's [consultation report](#)¹⁷ on 17 December 2003.

On 27 November 2003, the government introduced its new bill on asylum and immigration to parliament: the [Asylum and Immigration \(Treatment of Claimants, etc\) Bill](#). The bill received its second reading in the House of Commons on 17 December 2003 and went into Committee on 8 January 2004. The report stage and third reading in the Commons took place on 1 March and the bill was subsequently introduced to the House of Lords on 3 March, where it received its second reading on 15 March 2004. The bill was committed to a committee of the whole House of Lords on 5 April 2004 and the report was debated by the whole House on 18 May and 7 June.

The government introduced amendments to the bill on 9 June and it was recommitted to a Committee of the whole House of Lords on 15 June 2004. On 28 June 2004 the Lords [debated a report](#) resulting from the proceedings on recommitment and amendments to the bill were made. At the beginning of July, the bill was given a third reading at the House of Lords.¹⁸ The Commons then considered the Lords amendments and the bill was sent back to the Lords before finally being passed in the Commons on 20 July 2004. This last debate was made the subject of a 'guillotine motion', which means that it was not able to continue beyond the five hours allotted. The new legislation received royal assent on 22 July 2004.

- For further information on the history of the bill, visit the [Home Office website](#).¹⁹
- For further information on the passage of legislation through parliament, see the [House of Commons 'Factsheet on the Parliamentary Stages of a Government Bill'](#)²⁰ and the [House of Lords 'Briefing on Bills and how they become law'](#).²¹

¹⁵ Available at <http://www.legislation.hmsso.gov.uk/acts/acts2004/20040019.htm> [accessed 26 July 2004].

¹⁶ Available at http://194.203.40.90/filestore/Consultation_Letter.pdf [accessed 23 July 2004].

¹⁷ Available at <http://194.203.40.90/filestore/Consultation%20Report-%2017%20Dec.doc> [accessed 23 July 2004].

¹⁸ Available at <http://www.publications.parliament.uk/pa/ld200304/ldbills/093/2004093.htm> [accessed 23 July 2004].

¹⁹ Available at http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/legislation/parliamentary_progress.html [accessed 23 July 2004].

- The progress of a particular bill in the current session of parliament can be checked on the [Bill Index database](#).²²

One of the most controversial aspects of the original draft of the bill became known as the 'ouster clause'. This clause effectively ousted the right of judicial review by stating that no court would have any supervisory or other jurisdiction (whether statutory or inherent) in relation to the Asylum and Immigration Tribunal and sparked a debate about whether or not such a provision was constitutional. The original proposal was amended before the bill was passed.

Useful resources

The **Refugee Legal Centre** commissioned a legal opinion on this issue:

<http://www.refugee-legal-centre.org.uk/fordhamjan04.htm>

ILPA's response on the issue:

<http://www.ncadc.org.uk/Bill2004/ILPA-briefing-bill.doc>

[All URLs accessed 23 July 2004]

Another controversial aspect of the bill was the requirement that asylum seekers, who had been unsuccessful in their claim and are unable to return to their country of origin immediately, should perform community work in return for support. Refugee agencies criticising the bill argued that this provision would be in contravention of Article 4 of European Convention on Human Rights which states that no one should be required to perform forced or compulsory labour. This provision was passed and is part of the new act.

Useful resources

The **Refugee Women's Resource Project at Asylum Aid** cover this issue in their briefing:

<http://www.asylumaid.org.uk/New%20RWRP/Campaigning%20and%20Lobbying/RWRP%20briefing%20Re%20Asylum%20Bill%202003%20for%20House%20of%20Lords%20committee%2015th%20June%202004.doc>

[URL accessed 23 July 2004]

The most relevant provisions of the new act are featured below:

Assisting unlawful immigration. A new offence of entering the UK without a passport or other valid documentation is created. Unless the person can show s/he has a reasonable excuse, they are liable to be tried and given a prison sentence of up to two years and/or fined.

²⁰ **House of Commons** (2001) 'Parliamentary Stages of a Government Bill', *HC Factsheets – Legislation Series No. 1*, August 2001. Available at <http://www.parliament.uk/documents/upload/l01.pdf> [accessed 23 July 2004].

²¹ **House of Lords** (2003) 'Bills and how they become law', *House of Lords briefing*, April 2003. Available at <http://www.parliament.uk/documents/upload/HofLBpBills.pdf> [accessed 23 July 2004].

²² Available at <http://bills.ais.co.uk/AC.asp> [accessed 23 July 2004].

Trafficking people for exploitation. A new offence of trafficking a person for non-sexual exploitation is created with a maximum penalty of 14 years and/or fined. This is aimed at people who arrange the travel of people in to the UK in order to obtain forced or coerced labour and who arrange the removal of organs.

Claimant's credibility. This provision of the bill states that when a deciding authority (an immigration officer or the immigration courts) is determining whether to believe a statement made by an asylum claimant, they are required to take into account any behaviour by the claimant that they believe is designed to obstruct the handling of the claim, conceal information, or to mislead. The deciding authority is also obliged to take into account any other information which they feel damages the claimant's credibility. The following types of behaviour are identified as likely to conceal or mislead:

- failure without reasonable explanation to produce a passport on request to an immigration officer or to the Secretary of State; the production of a document which is not a valid passport as if it were;
- the destruction, alteration or disposal, in each case without reasonable explanation, of a passport; the destruction, alteration or disposal, in each case without reasonable explanation, of a ticket or other document connected with travel;
- and failure without reasonable explanation to answer a question asked by a deciding authority.

If a claimant does not make their asylum application in the first safe third country that they travel through, or if s/he does not claim asylum before being notified of an immigration decision or before being arrested under an immigration provision, then this will also be treated as behaviour that damages her/his credibility.

Failed asylum seekers: withdrawal of support. If the Home Secretary certifies that in his opinion an unsuccessful asylum seeker with family has failed, without 'reasonable excuse', to leave the UK voluntarily, then their asylum support will be stopped.

Accommodation for asylum seekers: local connection. All asylum seekers who are provided NASS housing automatically establish a connection with their dispersal area for the purposes of housing legislation.

Refugee: backdating of benefits. The right to backdated benefits for refugees is abolished and replaced with 'integration loans'. The Secretary of State has been given the power to make regulations providing for the continuation of the provision of accommodation for an unsuccessful asylum seeker, who cannot return home immediately, to be conditional upon her/his performance of or participation in community activities.

Integration loan for refugees. The right to backdated benefits for refugees is abolished and refugees allowed to apply for integration loans instead.

Information about passengers. Immigration officers are given the power to request copies of travel documents taken by carriers.

Appeals. Under the current appeal system, persons who have been refused asylum can appeal first to an adjudicator and then (if leave is granted) to the Immigration Appeal Tribunal (AIT). The act replaces this with a single tier body called the Asylum and Immigration Tribunal (AIT). In limited cases, the Tribunal's decision can be reviewed by the High Court on the grounds that the Tribunal made an error of law.

Electronic monitoring. Persons subject to immigration control can be required to cooperate with electronic monitoring.

Immigration services. These give the Immigration Services Commissioner increased powers to regulate immigration advisors and investigate suspected offences by immigration advisors.

Useful resources

Refer to the following websites for commentaries on the bill. Some of these organisations will also be producing commentaries on the act.

Collated commentaries, responses and briefings on the bill produced by a number of organisations are available on the **JCWI's (Joint Council for the Welfare of Immigrants)** website at <http://www.jcwi.org.uk/campaign/asyimmbill/asylumimmbrief.html>.

Refugee Council has produced a number of summaries and responses relating to the initial proposals and the subsequent bill. These are available at http://www.refugeecouncil.org.uk/infocentre/asylumlaw/proposals_2003/prop2003_index.htm.

The **Refugee Council, Amnesty International and the Refugee Legal Centre** have produced a briefing on the government's amendments to the bill, available at http://www.refugee-legal-centre.org.uk/Lords%203rd%20R%20June%2004_.doc

The House of Commons Library also prepared a detailed [Research Paper](#) on the Asylum and Immigration Bill in December 2003 in preparation for the second reading of the bill in the House of Commons. This is available at <http://www.parliament.uk/commons/lib/research/rp2003/rp03-088.pdf>.

Reports on the bill have also been produced by several parliamentary committees:

The **House of Commons Home Affairs Committee** published its report on 16 December 2003, available at <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmhaff/109/109.pdf>.

The **government** published its response to the Committee's report on 23 February 2004, available at <http://www.official-documents.co.uk/document/cm61/6132/6132.pdf>.

The **Joint Committee on Human Rights** has published a number of reports on the bill, the following are available online:

26 January 2004 <http://www.publications.parliament.uk/pa/jt200304/jtselect/jtrights/23/23.pdf>

10 February 2004 <http://www.publications.parliament.uk/pa/jt200304/jtselect/jtrights/35/35.pdf>

5 July 2004 <http://www.publications.parliament.uk/pa/jt200304/jtselect/jtrights/130/130.pdf>

The **Delegated Powers and Regulatory Reform Committee** published a report on 25 March 2004, available at <http://www.publications.parliament.uk/pa/ld200304/ldselect/lddelreg/62/62.pdf> and a further report on the government amendments for the Committee stage on 5 May 2004, available at <http://www.publications.parliament.uk/pa/ld200304/ldselect/lddelreg/83/83.pdf>.

The **Constitutional Affairs Select Committee** published a report in February 2004, available at <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmconst/211/21102.htm>.

The government published its response to the Constitutional Affairs Select Committee in June 2004, available at <http://www.dca.gov.uk/majrep/asylum/asylum.htm>

[All URLs accessed 23 July 2004]

The decision-making process

In a formal sense, the Home Secretary (or Secretary of State for the Home Department) is responsible for the determination of asylum claims. However, it is the Asylum Directorate (part of the [Immigration and Nationality Directorate](#)²³ at the Home Office), which has the practical task of actually administering the asylum process. Their offices are based at Lunar House in Croydon.

Application for asylum

When a person lodges an application for asylum under the Refugee Convention they are described as an **asylum seeker**. In the UK, a person is not officially described as a refugee until they have been granted asylum (or refugee status) after their claim has been determined. However, technically speaking, the state does not *make* someone a refugee, rather it *recognises* them to be one (by declaring that their circumstances meet the criteria of Article 1(A) of the Refugee Convention). It is not until they are granted asylum (or refugee status), that they can be officially described as a refugee. An application can either be made at the 'port of entry' or 'in country'.

Contacts and advice about making an application for asylum

Refugee Outreach Advice Partnership advice for asylum seekers is available at http://www.asylumaid.org.uk/ROAP/roap%20information_leaflets.htm (translated leaflets also available).

Refugee Council guides on the asylum process in the UK are available in several languages at <http://www.refugeecouncil.org.uk/publications/pub002.htm>.

The **Home Office** guide to asylum procedures in the UK is available at http://www.ind.homeoffice.gov.uk/ind/en/home/applying/asylum_applications/asylum_applications.html

Community Legal Service's website at <http://www.clsdirect.org.uk/index.jsp> provides a searchable directory of approved solicitors, advice agencies and information providers.

[All URLs accessed 23 July 2004]

²³ Website at <http://www.ind.homeoffice.gov.uk>. [Accessed 23 July 2004]

Port application

If a person makes a claim for asylum at an airport, seaport, or trainport (such as the Waterloo International Terminal) then they will usually be given an **asylum screening interview** (which is also known as a pro forma interview), by an immigration officer very shortly after arrival. The purpose of this interview is to establish the identity and nationality of the asylum seeker and to take the fingerprints and photographs of the principal applicant and his/her dependants. All of this information is then sent on to the Home Office. At this stage it is possible that the applicant may be detained. If an asylum seeker is detained then their claim will still be dealt with under the same procedures, except that they will not be given a Statement of Evidence Form (SEF). There are also some differences if their claims are fast tracked through either the Oakington or Harmondsworth processes (see below).

If the asylum application is made either at the port or in-country and the applicant is not being detained, then they will be given an IS96 paper which grants them '**temporary admission**' (TA) into the UK. TA does not mean that a person has been given 'leave to enter' the UK (i.e. they have not been granted permission to stay in the UK, either on a temporary or permanent basis), it simply allows them to remain in the country whilst their asylum application is being determined. Temporary admission is usually subject to certain conditions, such as residing at a particular address and the requirement to report to a designated immigration reporting centre, or a local police station, at specified intervals. Asylum seekers on temporary admission are usually not allowed to work. The Nationality Immigration and Asylum Act 2002 provides for more regular reporting arrangements and many of the IS96s that are being renewed by the Home Office require asylum seekers to report on a weekly basis.

Asylum seekers who are not detained are usually given a '**statement of evidence form**' (SEF) to take away with them. On this form the applicant is required to write down their reasons for claiming asylum. A more detailed account may also be provided on an accompanying statement. The SEF has to be returned within 10 working days (28 days for unaccompanied minors) and is usually used as the basis for a full asylum interview which will be conducted at the immigration office at the port of entry or at the Home Office. If the form is returned after the time limit, then the applicant will not be interviewed but the contents of the form will be considered for a decision. If the form is not returned at all, then the application will be refused on the grounds of **non-compliance**. Sometimes an interview will take place on the same day that a claim is made. In this case the information which would have been provided in the SEF is collected during the interview.

In-country application

If a person enters the country legally (i.e. by being granted leave on another basis, for example as a visitor or a student) or illegally (by evading immigration control on arrival, for example being concealed in the back of a lorry) and then makes an application for asylum then they are making their claim '**in country**'. Applications can be submitted in person at the Asylum Screening Unit (ASU) of the Home Office in Croydon, or in one of their Public Enquiry Offices (PEOs) in Belfast, Glasgow, Liverpool, or Birmingham.

In-country applicants are also usually given a screening interview by the Home Office. They will be photographed and fingerprinted. In most cases, in-depth interviews are conducted by the Home Office in Croydon, or Liverpool, after a SEF has been completed. Applicants can be detained at any point in the asylum process at the Home Office's discretion. There are several possible reasons for detention. A port applicant may be detained by the Immigration Service if they have been identified as an illegal entrant. Detention may also be authorised if the immigration authorities have 'good grounds' for believing that the person will not comply with requirements to keep in contact with them. Applicants may also be detained after

directions have been set to remove them, when their leave has been curtailed, or when applications are made following the commencement of deportation action.²⁴

Unless the immigration authorities doubt the applicant's identity, both in-country and port applicants will be given an identity document – an asylum registration card (ARC), which replaced the Standard Acknowledgement Letter (SAL) in January 2002.

The ARC contains important information about applicants such as their name, date of birth and nationality. The applicant's fingerprints are also stored on the card. Fingerprints are checked against existing Home Office records and EURODAC.

- For more information on EU initiatives, refer to the key issues section on EU asylum policy and procedures.

The one stop procedure

Since October 2000, asylum applicants are required to submit any other grounds for permission to remain in the UK at the same time as submitting their asylum application. This is part of the 'one stop procedure' and ensures that any human rights grounds are considered alongside a claim for asylum.

Applying for asylum from outside the UK

There is no formal channel for applying for asylum from outside the UK, since provision is not made for this in the Immigration Rules. However, the British authorities have the discretion to consider applications made in a third country (i.e. not the applicant's country of origin or the UK) in cases where the person clearly demonstrates that their circumstances meet the Refugee Convention definition, *and* they have close ties with the UK, *and* the UK is the most appropriate country of long term refuge for them. Such cases are referred to the Home Office from overseas diplomatic posts. However there is limited information available about such applications which are processed abroad, as no overseas applications are recorded as having been lodged since 1992.²⁵ There are separate procedures for persons already recognised as refugees outside the UK who apply to transfer their refugee status to, or resettle in, the UK.

Resettlement of refugees in the UK

The UK government outlined its intention to establish a formal refugee resettlement programme in the white paper, *Secure Borders, Safe Haven*,²⁶ in February 2002. Prior to this, some persons recognised as refugees outside the UK, were admitted to the UK as 'mandate refugees', under the 'ten or more programme', or by transferring their refugee status to the UK.

Persons who have been recognised as refugees by, and given the protection of, UNHCR may apply for resettlement in the UK on an exceptional basis. Such people are called 'mandate refugees' and are usually nominated for resettlement by UNHCR and referred to the UK authorities by the British Red Cross, although applications may also be made at a British diplomatic post abroad. The application will be considered in the light of the person's circumstances in their country of refuge, and on the basis of an assessment as to

²⁴ See section 4.1, 'Use of detention' in the Asylum Policy Instruction on Handling Claims, available at http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis/handling_claims.html [accessed 23 July 2004].

²⁵ See note 24 of the 'Explanatory Notes' to the *Asylum Statistics United Kingdom 2002*, available at <http://www.homeoffice.gov.uk/rds/pdfs2/hosb803.pdf> [accessed 23 July 2004].

²⁶ Available at <http://www.official-documents.co.uk/document/cm53/5387/cm5387.pdf> [accessed 23 July 2004].

whether the UK is the most appropriate country for resettlement. Applicants must have close ties with the UK (either close family settled in the country, or history - such as periods of time spent previously in the UK).²⁷

Refugees with serious medical conditions can also apply to come to the UK under the 'ten or more plan', a scheme established by the UNHCR in 1973 to resettle disabled refugees in need of medical attention which is unavailable in their initial country of refuge. The aim of the programme is for a host country to accept ten or more refugees, plus their families, each year. Applications are assessed by UNHCR in Geneva and referred to the UK authorities by the British Red Cross. Caseworkers in the UK assess applications in terms of the severity of the person's disability, their circumstances in the present country of refuge, and an assessment of whether the UK is the most appropriate country for resettlement.²⁸

Refugees who have been granted asylum by another country can apply to have their **refugee status transferred to the UK**. This is a discretionary measure and such applications will usually be considered on a case-by-case basis. Others may be considered in accordance with the UK's obligations under the European Agreement on the Transfer of Responsibility for Refugees (EATRR).²⁹

The UK quota resettlement programme (known as the **Gateway Programme**) was established to allow the UK, through the United Nations High Commissioner for Refugees (UNHCR), to accept an annual quota of refugees from outside the UK for resettlement each year. The limit on the number of people accepted can vary each year and will be set by ministers in advance. The initial target was to resettle 500 people by the end of the 2003-2004 financial year.³⁰ The first groups of refugees arrived in Sheffield, South Yorkshire, in March and April 2004. Around 70 individuals were settled and the groups were mainly made up of Liberians who had been living in refugee camps in Guinea-Conakry. It is anticipated that further groups will include Liberian refugees from Ghana and Sierra Leone; many of whom have spent up to ten years living in refugee camps.

At the start of the programme, the Home Office will only consider referrals of refugees within the West Africa region from the centre operated in Accra by UNHCR. As the programme develops, the Home Office will consider further locations where UNHCR is in operation.

Applications are referred to the Home Office casework team by UNHCR. All applicants referred to the UK are interviewed in their current country of asylum by Home Office staff based. They also undergo health and security screening before a decision is made. Caseworkers must be satisfied that the applicant needs resettlement because their life, liberty, safety, health, or other fundamental human rights are at risk in the country where they have sought refuge, or that resettlement will provide the applicant with a durable solution

²⁷ For further information, see the Asylum Policy Instruction on 'Mandate refugees'. Available at http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis/mandate_refugees.html [accessed 23 July 2004].

For further information, see the Asylum Policy Instruction on 'Transfer of refugee status'. Available at http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis/transfer_of_refugee.html [accessed 23 July 2004].

²⁸ For further information, see the Asylum Policy Instruction on 'The ten or more plan'. Available at http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis/ten_or_more_plan.html [accessed 23 July 2004].

²⁹ For further information, see the Asylum Policy Instruction on 'Transfer of refugee status'. Available at http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis/transfer_of_refugee.html [accessed 23 July 2004].

³⁰ UNHCR (2004) 'Easy Guide on refugee resettlement programmes 2003/04', available at [http://www.unhcr.ch/cgi-bin/texis/vtx/home/+AwwBme1FyDewxwwwwwwwwwwwwwwwFgzvxm_mXmX6hFgA72ZR0gRfZNIqR72ZR0gRzFqmRbZAFqA72ZR0gRfZNDzmxwwwwwwwww1FqmRbZ/.opendoc.pdf](http://www.unhcr.ch/cgi-bin/texis/vtx/home/+AwwBme1FyDewxwwwwwwwwwwwwFgzvxm_mXmX6hFgA72ZR0gRfZNIqR72ZR0gRzFqmRbZAFqA72ZR0gRfZNDzmxwwwwwwwww1FqmRbZ/.opendoc.pdf) [accessed 23 July 2004].

if their situation in the country where they have sought refuge is not secure in the long term, even if they are not at immediate risk (these are UNHCR's criteria).

Caseworkers are also required to take into account whether the scheme is able to meet the resettlement needs of the applicant and will be in their best interests, whether resettlement of the applicant and their dependants in the UK would not be conducive to the public good, and to consider the health of the applicant and what sort of impact refusal may have on any dependants. For example, resettlement will not be offered to applicants, or dependants, with HIV/AIDS, Multi-Drug-Resistant-TB, or established renal failure.

Applicants referred to the UK for resettlement by UNHCR under the quota refugee resettlement programme will already have been accepted as refugees by UNHCR. Successful applicants will normally be granted indefinite leave to enter the UK, and will qualify for refugee status on their arrival in the UK.

- For more information, refer to ICAR's [navigation guide to resettlement](#).³¹

Prior to the 'Gateway programme' there were several governmental programmes in the UK that assisted groups of refugees from particular countries on an *ad hoc* basis. Examples of this include the Chileans in the 1970s, the Vietnamese in the 1980s and the Bosnians in the 1990s. In these cases, the government accepted significant numbers of refugees for resettlement in the UK. The difference between these resettlement programmes and the temporary protection given to Kosovars in 1999 should be noted as the latter group were not awarded refugee status and only offered protection for a limited amount of time.

- For more information on the Kosovar arrivals, refer to the [navigation guide to Kosovar asylum seekers and refugees in the UK](#).³²

Fast-track

Asylum claims from nationals of certain countries have been fast-tracked in Oakington Reception Centre (a short-term detention centre), near Cambridge since its opening in March 2000. Oakington was set up to deal with claims deemed to be 'straightforward' and there were a number of criteria used to determine this, including nationality and other factors, such as the circumstances of the case, or the individual's particular needs.³³ When Oakington was established, the Immigration and Nationality Directorate produced a list detailing the types of cases that were suitable for fast-tracking at Oakington, and this list was modified at regular intervals.

Applicants are usually detained at Oakington for a period of between seven and ten days during which time they are interviewed and given an initial decision on their claim. They also have access to independent legal advice on site. If their claim is refused and the applicant decides to appeal, their appeal hearing will be listed for four/five weeks after the initial decision. Some applicants remain in detention after this, although the majority are granted temporary admission and dispersed to different parts of the UK. They may be required to attend a reporting centre at regular intervals until their claim has been decided.

The Nationality Immigration and Asylum Act 2002 designated the ten EU accession countries as 'safe, democratic countries'. Thus, from 7 November 2002 all new asylum applications from nationals of these countries were dealt with on the presumption that they were clearly unfounded.³⁴ This meant that unless this

³¹ Available at <http://www.icar.org.uk/content/res/nav/ng005/ng005-01.html> [accessed 23 July 2004].

³² Available at <http://www.icar.org.uk/pdf/ng009.pdf> [accessed 23 July 2004].

³³ Home Office (2000) 'New fast-track asylum centre opens', Home Office Press Release 059/2000, 17 March 2000.

³⁴ The ten EU accession countries are Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

presumption was rebutted, the asylum application would be refused and the person returned to their country of origin, and it was only possible to appeal against the refusal from outside the UK. Such cases are known as 'non-suspensive appeals' (or NSA) cases. The initial list of ten countries was later extended on several occasions, to include a total of 24 countries by June 2003.³⁵ (Since their accession to membership of the European Union on 1 May 2004, these provisions no longer apply to the ten new member states.) Many such cases are processed at Oakington. As a result, most of the asylum seekers sent to Oakington are not entitled to stay in the UK after their claims are refused at the first decision stage.

A legal challenge was made to this power to detain asylum seekers for purely administrative reasons, whilst their applications were determined at Oakington. In October 2002, the House of Lords held that such detention was lawful, as it did not contravene the UK's obligations under Article 5 of the European Convention on Human Rights (ECHR).³⁶ As a result, the government was able to launch a new fast-track pilot scheme at Harmondsworth Removal Centre in April 2003. Up to 90 asylum applicants, whose claims are identified as 'straightforward' by the Home Office, are detained at any one time. The Home Office aims to deal with their applications and remove those whose claims are refused within a month.

The [Immigration and Asylum Appeals \(Fast Track Procedure\) Rules 2003](#)³⁷ apply to those asylum seekers who are in detention at Harmondsworth removal centre. These individuals are required to appeal against the decision to refuse them asylum within two days. A date for the initial appeal hearing should be set no later than two days after the appeal is lodged and the adjudicator is then required to issue their determination no later than one day after the appeal is heard. Appellants are also required to apply to leave to appeal to the Tribunal within two days of the adjudicator's determination being served. It is likely that the Secretary of State will apply the same rules to other removal centres in the future.

Decisions

Asylum claims are considered by caseworkers or immigration officers trained in asylum law. A decision is made by assessing the contents of the Statement of Evidence Form (SEF), the interview and any other documents provided by the applicant. This information is assessed in the light of country reports and other documentation compiled by the [Country Information and Policy Unit \(CIPU\)](#)³⁸ of the Home Office Asylum and Appeals Policy Directorate.

Many refugee agencies and others would like to see the establishment of an independent country of origin documentation centre and lobbied for this during the passage of the Nationality, Immigration and Asylum Act 2002. This suggestion was not taken up by the government, but under the terms of the act, an independent Advisory Panel on Country Information (APCI) was established with a remit 'to consider and make recommendations to the Secretary of State about the content of country information'. The APCI is composed of individuals and organisations operating in the country information and/or refugee fields.³⁹

³⁵ Seven countries: Albania, Bulgaria, Jamaica, Macedonia, Moldova, Romania, and Serbia and Montenegro were added to the list of safe countries on 6 February 2003 and a further seven countries were added on 17 June 2003: Brazil, Ecuador, Bolivia, South Africa, Ukraine, Sri Lanka and Bangladesh. See 'Safe Country List Expanded to Cut Asylum Abuse, Home Office Press Release 165/2003, 17 June 2003. Available at http://www.homeoffice.gov.uk/n_story.asp?item_id=506 [accessed 23 July 2004].

³⁶ *R v Secretary of State for the Home Department, ex parte Saadi and Others*, 31 October 2002, [2002] UKHL 41. Available at <http://www.parliament.the-stationery-office.co.uk/pa/ld200102/ldjudgmt/jd021031/regina-1.htm> [accessed 23 July 2004].

³⁷ Available at <http://www.hmso.gov.uk/si/si2003/20030801.htm> [accessed 23 July 2004].

³⁸ Website at http://www.ind.homeoffice.gov.uk/ind/en/home/0/country_information.html [accessed 23 July 2004].

³⁹ Details available at http://www.ind.homeoffice.gov.uk/ind/en/home/0/country_information/advisory_panel_on.html [Accessed 23 July 2004].

Useful resources

More information about the **Advisory Panel on Country Information** is available at http://www.ind.homeoffice.gov.uk/ind/en/home/0/country_information/advisory_panel_on.html.

Several alternative country of origin information databases have been created:

UNHCR country of origin database <http://www.unhcr.ch/cgi-bin/texis/vtx/template/+ywLFqyGn5nwGqreUh5cTPeUzknwBoqeRhInmelybnMc>

Country of origin information databases:

The Immigration Consortium Country Information Database
<http://www.hjt-research.com/home.shtml> (subscription only)

Refugee Legal Centre CD Rom subscription service
<http://www.refugee-legal-centre.org.uk/External%20Information%20Services.htm> (subscription only)

[All URLs accessed 23 July 2004]

There are three possible outcomes of an initial claim for asylum: the applicant will be recognised as a **refugee** and given '**indefinite leave to remain**' (ILR), be granted **limited leave to remain** or their claim will be **refused**. ILR brings with it full rights to live, work and claim benefits in the UK, an entitlement to grants and domestic fees for students, and a right to family reunion.

No reasons are given by the Home Office when refugee status is granted. However, when asylum is refused a 'reasons for refusal letter' is issued. Until 1 April 2003, when the Home Office considered that the applicant's circumstances did not merit a grant of asylum under the Refugee Convention, but that the individual should be given leave to remain in the UK on humanitarian grounds or compassionate grounds, then '**exceptional leave to remain**' (ELR) was granted outside the immigration rules. This applied when a case was accepted under the Human Rights Act 1998 or the UK's obligations under the 1984 UN Convention Against Torture (which the UK ratified in 1988).

The Home Office has now introduced two new forms of limited leave that replace ELR. The new forms of leave to remain are called '**humanitarian protection**' (HP) and '**discretionary leave**' (DL). It has been made clear that these statuses will not be used as liberally as ELR was, but that they will be used with discretion for those in need of international protection for reasons that do not fall within the terms of the Refugee Convention, or those with other compelling compassionate circumstances. According to the Home Office, their introduction 'is in line with the Home Secretary's decision to restrict grants of leave to unsuccessful asylum seekers who are recognised to be in need of international protection or to have other compelling reasons for not being removed.'⁴⁰

⁴⁰ **Asylum Policy Unit** Notice 01/2003, 'Humanitarian protection and discretionary leave', 1 April 2003. Available at http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis/humanitarian_protection0.html [accessed 23 July 2004].

Humanitarian Protection

Humanitarian protection (HP) will be granted for up to three years. It will be granted to people who have been refused refugee status, but cannot be returned to their country of origin as they face a serious risk to life or person for one or more of the following reasons: death penalty, unlawful killing, torture, inhuman or degrading treatment or punishment (returning people to face such treatment is contrary to the UK's obligations under Article 3 of the European Convention on Human Rights).

Serious criminals, including war criminals, terrorists or others who raise a threat to national security and anyone who is considered to be of bad character, conduct or associations are excluded from these provisions.

At the end of the period of HP granted, the case will be reviewed. If the circumstances that led to the grant of HP are found to endure, then either an extension will be granted to bring the period of HP up to three years or, if the applicant has already had three years HP, they can apply for ILR.⁴¹

Discretionary Leave

Discretionary leave (DL) is granted outside the immigration rules in very limited circumstances to people who have been refused refugee status but who do not fulfil the criteria for HP. DL may be granted when the applicant:

- has an Article 8 claim under the European Convention on Human Rights;
- has an Article 3 claim under the European Convention on Human Rights only on medical grounds or severe humanitarian cases;
- is an unaccompanied asylum-seeking child for whom adequate reception arrangements in their country are not available;
- would qualify for asylum or humanitarian protection but has been excluded; or
- is able to demonstrate particularly compelling reasons why removal would not be appropriate.

DL is granted for up to three years (unaccompanied asylum-seeking children are normally granted DL for three years or until their 18th birthday, whichever is earlier) and will be reviewed at the end of that period. At that point it can be extended for a further three years. After six years of DL, an application can be made for ILR.⁴²

Amnesty for families

In October 2003, David Blunkett announced a discretionary one-off exercise to grant indefinite leave to remain to families who had sought asylum in the UK before 2 October 2000, and had at least one dependant child who had been with them in the UK since before that date. Families will be eligible for the concession where the application has not yet been decided, it has been refused and is subject to an appeal hearing, or has been refused and there is no further avenue of appeal but the applicant has not been removed. The Home Office have stated that they will be going through their records and contacting families

⁴¹ For further details, see the Asylum Policy Instruction on Humanitarian Protection. Available at http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis/humanitarian_protection.html [accessed 23 July 2004].

⁴² For further details, see the Asylum Policy Instruction on Discretionary Leave. Available at http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis/discretionary_leave.html [accessed 23 July 2004].

that are eligible for the amnesty. People who have made repeated asylum applications or who have been convicted of a criminal offence are unlikely to qualify.⁴³

Reviewing the asylum system

In February 2003, the House of Commons Home Affairs Committee⁴⁴ launched an enquiry into asylum applications. The committee took oral evidence on nine occasions between May and October 2003 (from the Minister of State for Citizenship, Immigration and Counter-Terrorism, Home Office officials, representatives of legal, human rights and refugee advocacy organisations and from a number of individuals who had personal, professional or research-based knowledge of asylum issues in the UK). The committee also received 84 memoranda from legal, welfare and refugee organisations, government departments and individuals who work with asylum seekers. They also inspected border controls and reception facilities for asylum seekers in Dover, and visited the Immigration and Nationality Directorate Asylum Screening Unit and the National Asylum Support Service in Croydon. The key questions which formed the basis of the committee's enquiry were the following:

- What are the reasons for the rise in asylum applications to the UK over the last ten years?
- How adequately and fairly are asylum applications managed today? How did the backlog of asylum determinations arise? Is it being dealt with satisfactorily?
- How adequately is support provided to asylum seekers by the National Asylum Support Service?
- How appropriately is detention used in respect of asylum applicants?
- What will be the effects on the management of asylum applications of changes made in the Nationality, Immigration and Asylum Act 2002 and the prime minister's pledge to halve the number of asylum seekers by September 2003?
- What is the possible impact of any proposed change to the treaties covering asylum and refugees to which the UK is committed?

The committee's report was published in January 2004.⁴⁵ This outlined findings from the enquiry and presented a total of 76 conclusions and recommendations. The committee:

- noted evidence that conflict, rather than poverty, is the defining characteristic of asylum seekers' home countries and noted an overlap between the categories of economic migrants and refugees;
- acknowledged the difficulty the asylum system had had in coping with the twenty-fold increase in the number of asylum applications lodged in the UK over the past 15 years, whilst recognising the recent progress in the processing of asylum claims;
- recognised that it is increasingly difficult to get into the UK to make an asylum claim and that the asylum seekers who manage to do so are not representative of the world's wider refugee population;

⁴³ For further details, see Asylum Policy Unit Notice 4/2003, 'One-off Exercise to Allow Families Who Have Been in the UK For Three or More Years to Stay.' Available at http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis/one-off_exercise_to.html [accessed 23 July 2004].

⁴⁴ Further details of the Committee's role, work, and membership available at http://www.parliament.uk/parliamentary_committees/home_affairs_committee.cfm [accessed 23 July 2004].

⁴⁵ **House of Commons Home Affairs Committee** (January 2004) *Asylum Applications, second report of session 2003-04, Volumes I and II*. HC218. Available in html at <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmhaff/218/21802.htm> and in pdf at <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmhaff/218/218.pdf> [accessed 23 July 2004].

- found grounds for concern about the poor quality of much initial decision-making on asylum claims; and
- found the National Asylum Support Service (NASS) to be under-resourced, to have too few trained staff, and insufficient local knowledge.

The committee's recommendations included:

- adopting a flexible approach to the siting of induction and accommodation centres, including the use of dispersed accommodation;
- updating the 1951 Convention on the basis of international consensus, whilst emphasising that the UK should not withdraw from either this or the European Convention on Human Rights;
- 'front-loading' more resources to achieve fair and sustainable application decisions at the initial stage;
- creating alternative legitimate means by which refugees can gain access to the UK, as well as assisting refugees closer to their country of origin, and taking action to tackle the causes of forced migration;
- conducting an independent review of the operation of section 55 of the Nationality, Immigration and Asylum Act 2002, which prevents any support being given to asylum seekers unless they have made a claim immediately on arrival in the country;
- taking tougher action against employers who employ illegal immigrants and clarifying the government's policy on economic migration;
- updating the 1951 Convention on the basis of international consensus, although the UK should not withdraw from either this or the European Convention on Human Rights.

Useful resources

A list of the people who gave **oral evidence** to the committee is available at <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmhaff/218/21819.htm> and you can browse the minutes of these oral evidence sessions at <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmhaff/218/21802.htm>.

A list of the **written evidence** submitted and printed by the committee is available at <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmhaff/218/21820.htm> and you can browse the written evidence itself at <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmhaff/218/218we01.htm>. A list of the unprinted written evidence that was submitted is available at <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmhaff/218/21821.htm>.

The **full report** produced by the committee is available at <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmhaff/218/21802.htm> and a pdf version of Volume 1 is available at <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmhaff/218/218.pdf>.

A short **digest** of the report is available at <http://www.icar.org.uk/content/res/drp/drps/drp108.html>.

The **government's response** to the report (published in March 2004) is available at <http://www.official-documents.co.uk/document/cm61/6166/6166.pdf>.

[All URLs accessed 23 July 2004]

The appeal process

The [Immigration Appellate Authority \(IAA\)](#)⁴⁶ hears appeals against decisions made by the Home Office on asylum and immigration matters. The IAA has a two-tier structure. The first is the Immigration Adjudicators and the second is the Immigration Appeal Tribunal. With some exceptions, anyone whose application for asylum is refused has a right of appeal against this decision.

In the appeals process, the person bringing an appeal is known as the 'appellant' and the person challenging the appeal is known as the 'respondent'. Thus in first-tier asylum appeals to the adjudicators, the asylum seeker is always the appellant (appealing against the refusal of their asylum claim), and the Home Office is the respondent. But either party can lodge a second-tier appeal to the Tribunal and above - the asylum seeker could challenge the dismissal of their appeal, or the Home Office could challenge the decision to allow the asylum seeker's appeal.

The one stop procedure

The one stop procedure came into effect on 2 October 2000 under the 1999 Act and was subsequently modified under the 2002 Act. It was intended to ensure that people applying to enter or remain in the UK would be able to make only *one* application detailing all their reasons for seeking permission to enter or remain in the UK, receive *one* decision taking into account everything relevant to their case, and lodge only *one* appeal, if refused.

When an appeal against refusal of an asylum claim is lodged, the appellant is also required to respond to a '**one stop notice**' and complete a 'statement of additional grounds' (SAG) form outlining any additional reasons they have for wanting to stay in the UK, other than those they have already disclosed in their initial application. This includes human rights grounds: reasons why refusal to grant them entry to the UK would contravene the UK's obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (usually referred to as the European Convention on Human Rights or ECHR) and the Human Rights Act 1998, and any other compassionate circumstances. If the person's asylum appeal was heard before 2 October 2000 (when the Human Rights Act came into force) then it is still possible for them to lodge an additional appeal on human rights grounds.

Third country cases

The Asylum and Immigration Act 1996, introduced the concept of '**safe third country**' into British law. Under Section 11 of the Immigration and Asylum Act 1999, a safe country is defined as one:

- where the applicant's life and liberty would not be threatened by reason of any convention ground (race, religion, nationality, political opinion, or membership of a particular social group);
- whose government would not send the applicant to another country in contravention of the 1951 Convention (the concept of 'non-refoulement').

In 1990, EU countries signed the **Dublin Convention**, but it did not come into force until 1997. This Convention provides an agreed framework to determine which member state is responsible for consideration of asylum claims made in the EU by non- EU nationals. It states that asylum seekers should have their applications considered in the first EU country they reach.

⁴⁶ Website at <http://www.iaa.gov.uk>.

In February 2003, a regulation was issued by the EU which establishes the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third-country national. This regulation is known as the **Dublin II Regulation** and determines the state responsible for processing an asylum application where an application is made in more than one member state. Since 1 April 2001, Iceland and Norway have also operated the Dublin Convention mechanism by virtue of a separate agreement between those countries and the member states of the EU.

If the country that the asylum applicant is to be transferred to is a EU member state or a state designated by parliament, then the appeal right to the IAA against the transfer decision on safe third country grounds is exercisable only after the applicant has left the UK. Norway, Switzerland, Canada, and the USA are the countries designated under S 12 (1) (b) of the Immigration and Asylum Act 1999. Despite this, it is possible for applicants to seek permission for judicial review of the transfer decision, although s.11 of the Immigration and Asylum Act 1999 means that it is not possible to challenge transfer to a EU member state on the basis that it is not a safe third country for asylum applicants. In other cases, the applicant is entitled to remain in the UK in order to lodge an appeal to the IAA.

It should be noted that if the Asylum and Immigration (Treatment of Claimants, etc.) Bill that is before parliament is passed in its current form, then the Home Office will be able to extend the list of safe third countries by statutory instrument and certain countries will be deemed safe for Refugee Convention purposes and others safe in terms of the ECHR. If a country is deemed safe for both purposes and a claim is certified as clearly unfounded, no appeal is possible. This clause does not affect claims against removal based on the breach of the claimant's rights in the UK, for example Article 8 of the ECHR, which prohibits interference with family life established here.

- Refer to the section on the Asylum and immigration (Treatment of Claimants, etc) Act 2004 for more information.

Earlier right of appeal

Under Section 96 of the 2002 act, the refusal of an asylum or human rights claim cannot be appealed if the Secretary of State certifies the claim by asserting that:

- (a) the applicant has already been notified of a right to appeal a previous refusal;
- (b) the claim has only been made in order to delay removal;
- (c) there is no other legitimate purpose for making the claim.

A claim can also be certified if it is asserted that the relevant issues could have been raised at the appeal stage or have already been dealt with on appeal.

Certification as 'clearly unfounded'

Under the 2002 Act, the Secretary of State can certify an asylum or human rights application as 'clearly unfounded.' When a case is certified in this way, it means that the applicant does not have an in-country right of appeal. Such cases are known as **'non-suspensive appeals'** (or NSA cases) because lodging an appeal does not suspend the asylum seeker's removal from the UK, as in other asylum cases.

The issue of when a case can be certified is controversial. The recent case of *Regina v Secretary of State for the Home Department ex parte Razgar*,⁴⁷ that went to the House of Lords in June 2004, looked at the circumstances in which Article 8 of the European Convention on Human Rights can be engaged.

Safe country list

The Nationality, Immigration and Asylum Act 2002 created a list of 'safe countries' from which claims will be presumed to be 'clearly unfounded'. Initially, from 7 November 2002, the ten EU accession countries (the Czech Republic, the Slovak Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia and the Republic of Cyprus) were designated as 'safe' (meaning without serious risk of persecution), under Section 94 of the Act. In February 2003, seven more states were added to the list. These countries were Albania, Bulgaria, Jamaica, Macedonia, Moldova, Romania and Serbia and Montenegro (previously the Federal Republic of Yugoslavia). In June 2003, the list was expanded once again and Brazil, Ecuador, Bolivia, South Africa, Ukraine, Sri Lanka and Bangladesh were all added bringing the total number of countries on the list to 24.⁴⁸

Asylum applicants from any of these countries have to rebut the presumption that their asylum or human rights claim is clearly unfounded if they are to win an in-country right of appeal. If they do not manage to do this, then they will be automatically removed from the UK in order to pursue their appeal(s) from outside the country. The Secretary of State has the power to add or remove countries from this list without passing new legislation. He also has the power to certify the claim of any asylum seeker, regardless of which country they are from. Section 94 explicitly states that removal to one of the listed states will not, in general, contravene the UK's obligation under the European Convention on Human Rights. The recent case of *Michael Atkinson vs The Secretary of State for the Home Department*, which was heard by the Court of Appeal in July 2004, demonstrated that the judiciary can rule that the Home Office has come to an erroneous decision with regards to certification. In this situation, the applicant's case was initially certified as clearly unfounded by the Home Office because he was from Jamaica. However, this decision was overturned by the Court of Appeal on the basis that there is a 'real question whether the State of Jamaica provides sufficiency of protection for an informer or supposed informer in the shoes of the appellant'.

Claims from nationals of new EU member states

After 1 May 2004, if nationals of the new EU member states pursue asylum claims in the UK, they have no right of appeal at all if their claim is refused and certified as being 'clearly unfounded'.⁴⁹ However, they cannot be removed from the UK since they are entitled to free movement within the EU states. There are some transitional measures in place for asylum applicants from these countries who claimed asylum prior to their countries' accession to EU membership.

- See ICAR's signpost guide to [EU accession and asylum](#)⁵⁰ for further details.

⁴⁷ Available at <http://www.parliament.the-stationery-office.co.uk/pa/ld200304/ldjudgmt/jd040617/razgar-1.htm> [accessed 23 July 2004].

⁴⁸ See 'Safe Country List Expanded to Cut Asylum Abuse, Home Office Press Release 165/2003, 17 June 2003. Available at http://www.homeoffice.gov.uk/n_story.asp?item_id=506 [accessed 23 July 2004].

⁴⁹ See Home Office Asylum Policy Instruction on 'Claims made by EU nationals'. Available at http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis/claims_from_eu_nationals.html [accessed 23 July 2004].

⁵⁰ Available at <http://www.icar.org.uk/pdf/sign005.pdf> [accessed 23 July 2004].

Security risk

Section 97 of the 2002 Act makes reference to the fact that an appeal against a negative asylum/human rights decision will not be allowed if the person's exclusion from the UK is in the interests of national security and if the decision was made on the basis of information that cannot be disclosed for reasons of national security. In these cases, there will be a limited right of appeal instead to the Special Immigration Appeals Commission (SIAC). At SIAC hearings, the detainees and their lawyers are not entitled to full disclosure of all the evidence against them, nor can they attend the SIAC hearings at which the closed material is discussed.

- Judgments made by the Special Immigration Appeals Commission can be accessed at <http://www.courtservice.gov.uk/judgments/siac/home.htm> [accessed 14 July 2004].

Notification of appeal outcome

In January 2002 a new set of rules, [The Immigration and Asylum Appeals \(Procedure\) \(Amendment\) Rules 2001](#),⁵¹ were introduced. These rules provide that in certain cases, asylum seekers are not directly informed of the outcome of their appeal to an adjudicator (first-tier appeal). This provision will apply when the appeal is refused by an adjudicator and there is no right of appeal to the second-tier Immigration Appeal Tribunal ('certified' appeals), and in cases where there is a right to appeal to the Tribunal, but where the Tribunal has refused to consider the case further by rejecting an application for leave to appeal. Instead of receiving notification of the decision by post from the Immigration Appellate Authority, it will be served on the applicant in person by an immigration officer, who is likely then to detain the appellant immediately in order to arrange for their removal from the UK.

Useful resources

For more information on appeal rights, refer to the **Home Office** guidance on 'Making an appeal: asylum and human rights grounds' at <http://194.203.40.90/default.asp?pageid=1178>.

For details of the procedure for appeals under the 1999 Act, refer to the **Immigration and Asylum Appeals (Procedure) Rules 2000** at <http://www.hmsa.gov.uk/si/si2000/20002333.htm> and the **Immigration and Asylum Appeals (Procedure) (Amendment) Rules 2001** at <http://www.hmsa.gov.uk/si/si2001/20014014.htm>.

Refer to the following rules for procedure under the 2002 Act:

The Immigration and Asylum Appeals (Procedure) Rules 2003
<http://www.hmsa.gov.uk/si/si2003/20030652.htm>

The Immigration and Asylum Appeals (Fast Track Procedure) Rules 2003
<http://www.hmsa.gov.uk/si/si2003/20030801.htm>

A summary of these changes is available in the **ILPA** briefing 'Using the Immigration Courts' at <http://www.jcwi.org.uk/lawpolicy/uklaw/ilpaapril03.PDF>.

[All URLs accessed 23 July 2004]

⁵¹ Available at <http://www.hmsa.gov.uk/si/si2001/20014014.htm> [accessed 23 July 2004].

The structure of appeal rights

The 1999 act modified the asylum appeals process by creating a 'one-stop' appeal against refusal. Asylum appeals now also cover any human rights issues, thereby removing the need for the appellant to make a separate appeal against removal on human rights grounds, and appellants are issued with a 'one stop notice' asking them to raise all grounds for appeal at the earliest possible stage.

As noted in the previous section, the current appeal process will be modified by the contents of the new act. The two-tier Immigration Appellate Authority will be replaced by a single-tier Asylum and Immigration Tribunal (AIT).

- Refer to the section on the Asylum and immigration (Treatment of Claimants, etc) Act 2004 for more information.

Special adjudicator

The adjudicator is the first level of the IAA's two-tier appeal structure. Applicants must normally lodge initial appeals within ten working days of the refusal if they are not detained and five days if they are. A hearing of the appeal is likely to take place in front of a single adjudicator about four months later.

Immigration Appeals Tribunal (IAT)

In most cases, either the asylum seeker or the Home Office can apply for permission ('leave') to appeal against the adjudicator's decision to the IAT. This must be done within ten working days of the determination by the adjudicator (or five days if the person is detained). The Chairperson of the IAA decides whether or not to grant leave to appeal to the Tribunal. If leave is granted then the case will usually be heard by a three-person panel.

Statutory review

Under Section 101 of the 2002 Act, if an applicant is refused leave to appeal to the Immigration Appeal Tribunal, then they will only have the right to statutory review rather than judicial review of the decision. Applications for statutory review must be made within 14 days of receipt of the Tribunal's decision. Statutory review will be considered by a single High Court judge on the basis of written submissions, without an oral hearing. The court may either affirm or reverse the Tribunal's decision.

Court of Appeal

It is possible for a case dismissed by the IAT to be taken to the Court of Appeal (or the Court of Session in Scotland). The appellant has to apply to the Tribunal or to the Court of Appeal itself for leave to appeal on a point of law.

House of Lords

A further appeal against the decision of the Court of Appeal can be brought, with permission, to the House of Lords, the highest court in the UK. Cases that do not succeed before the House of Lords may be brought before The European Court of Human Rights in Strasbourg (see section below for further details).

Judicial review

As long as they have exhausted all of their statutory rights of appeal, asylum seekers are also entitled to apply to the Administrative Court for permission to move a judicial review of any decision taken during the asylum process. A judicial review looks at whether the decision has been made fairly and properly rather than examining the facts of the claim. The test for a judicial review is whether or not the decision was 'Wednesbury unreasonable'. This means that the decision may be successfully challenged if it is considered so unreasonable that no reasonable public body could have made such a decision. This is a very narrow test of reasonableness and limits the courts' power to supervise the executive.

Legal help

Publicly-funded legal advice and representation (known as legal aid or legal help) is available for asylum cases, as it is for other areas of the law. Legal help is available throughout the asylum process, for asylum seekers who either have no income, or a very low income. This includes the initial application stage, and any subsequent appeal(s). These services are funded by the [Legal Services Commission](#)⁵² and are provided by designated suppliers including immigration solicitors and other specialised advisers. Free representation can also be obtained from the [Refugee Legal Centre](#)⁵³ and the [Immigration Advisory Service](#).⁵⁴ The Immigration and Asylum Act 1999 established an independent public body, the [Office of Immigration Services Commissioner \(OISC\)](#),⁵⁵ to regulate immigration advisers and to promote good practice.

In an attempt to reduce the amount of public money spent on legal aid, the Department for Constitutional Affairs has introduced changes to the funding system for legal help with effect from 1 April 2004. There are prescribed limits to the number of hours of advice and representation that every client is entitled to receive, both for making their initial asylum application (limited to five hours) and pursuing any subsequent appeal(s). Legal representatives can apply to the Legal Services Commission to extend these limits in certain circumstances. Before a representative can begin work on an appeal case, they are obliged to carry out a 'merits test', to assess the strength of the case and thus whether it qualifies for funding through legal help. If a case goes to the High Court or Court of Appeal then there is a separate funding regime, and the representative has to negotiate with the LSC for further funding.

- For more information, refer to the key issues section on Legal help.

Interpretation and application of the Refugee Convention

When processing an asylum claim, the [Home Office](#)⁵⁶ considers whether or not the individual's circumstances meet the definition set out in the Refugee Convention.

The Office of the United Nations High Commissioner for Refugees (UNHCR) has produced a [Handbook on Procedures and Criteria for Determining Refugee Status](#),⁵⁷ which explains the various components of the

⁵² Website at <http://www.legalservices.gov.uk> [accessed 23 July 2004].

⁵³ Website at <http://www.refugee-legal-centre.org.uk> [accessed 23 July 2004].

⁵⁴ Website at <http://www.iasuk.org> [accessed 23 July 2004].

⁵⁵ Website at <http://www.oisc.gov.uk/home.stm> [accessed 23 July 2004].

⁵⁶ Website at <http://www.ind.homeoffice.gov.uk> [accessed 23 July 2004].

⁵⁷ UNHCR (1992, 1979) *Handbook on Procedures and Criteria for Determining Refugee Status*. Geneva: UNHCR. Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/openssl.pdf?tbl=MEDIA&id=3d58e13b4&page=publ>

refugee definition set out in the 1951 Convention and the 1967 Protocol. The interpretation set out in the *Handbook* is not binding but is generally accepted by the UK Home Office. The UK courts have repeatedly affirmed the principles of the *Handbook* and the Home Office gives copies to all its caseworkers. There are also a number of key textbooks that give guidance on interpreting the Convention. The key texts on international refugee law, *The Law of Refugee Status* by James Hathaway (published by Butterworths in 1991) and *The Refugee in International Law* by Guy Goodwin-Gill (second edition published by Oxford University Press in 1996), are accepted to provide authoritative interpretations of the Refugee Convention and have been extensively cited by the higher courts in the UK. The system of judicial precedent means that decisions of the higher courts (House of Lords, Court of Appeal and High Court) are binding on all lower courts in the UK. Thus, the decisions on specific asylum cases that have been brought to appeal contribute to a body of case law which establishes standards by which future cases are assessed. In addition to the decisions of the higher courts, some determinations of the Immigration Appeal Tribunal are 'starred' which means that they are binding on adjudicators on points of law, and whilst decisions on factual issues are not binding on adjudicators, they are of persuasive value. It has also been stated that the IAT itself should follow earlier starred decisions unless it is satisfied that the decision is clearly wrong.⁵⁸

The key factors which must be considered when an asylum claim is being assessed are explained below. Although in practice it is not always possible to separate out all the elements of a claim, this approach provides a useful framework for analysis.

Well-founded fear

It is up to the Immigration and Nationality Directorate (IND) of the Home Office to decide whether or not an asylum seeker has a well-founded fear of persecution. This decision is based upon the combination of subjective and objective evidence. During the asylum interview, evidence is obtained from the applicant about their personal situation and this is assessed (along with information from the Statement of Evidence Form (SEF) and any further materials presented by the applicant) in the light of the country information compiled by the Home Office Country Information Policy Unit (CIPU). Credibility is an extremely important part of the decision-making process and the Home Office will look at the consistency and plausibility of the applicant's account in deciding whether it is believable.

Unlike criminal proceedings where the burden of proof is on the state, asylum cases require the applicant to prove their eligibility for refugee status. However, the standard of proof is not as high as it is in normal civil proceedings. Instead of demonstrating that it is 'more likely than not' that the individual would be persecuted if sent back to their country, it must only be shown that there is a 'reasonable likelihood' of such danger.

'The requirement that an applicant's fear should be well-founded meant that there had to be demonstrated a reasonable likelihood that he would be persecuted for a Convention reason if returned to his own country... "a reasonable chance", "substantial grounds for thinking", "a serious possibility".'

This standard of proof was decided by the House of Lords in the case of *Sivakumaran* [1988] Imm AR 147.⁵⁹ Adjudicators still regularly refer to this case which involved six Tamils returned to Sri Lanka after being refused asylum.

[accessed 23 July 2004].

⁵⁸ As per Laws LJ in *Sepet and Bulbul* [2001] Imm AR 452, CA.

⁵⁹ Available at <http://www.refugeelawreader.org/files/pdf/112.pdf> [accessed 23 July 2004].

It is also important to note that the applicant needs to demonstrate a well-founded fear that is current. As Lord Slynn stated in [*Adan v Secretary of State for the Home Department*](#)⁶⁰

'That well-founded fear must, as I read it, exist at the time his claim for refugee status is to be determined; it is not sufficient as a matter of ordinary meaning of the words of the article that he had such a fear when he left his country but no longer has it'. [1998] 2 All ER 453 at 454.

Nevertheless, this precedent does not rule out the possibility of an historic fear being used as evidence which points towards a present fear of persecution.

A *refugee sur place* is someone who has entered the country for reasons other than claiming asylum but who subsequently claims asylum because of a change in the situation in their country of origin and/or their personal circumstances which cause them to fear persecution on return to their home country. The term can also include someone who, by virtue of having claimed asylum in another country, would be subject to persecution in their own country upon return.

Persecution and sufficiency of protection

There is no internationally accepted definition of persecution beyond that provided by Article 33(1) of the Convention that gives the very general definition of a threat to life or freedom. The Convention has been interpreted to mean that there must be a threat to the person individually for one of the five reasons laid out in Article 1: race, religion, nationality, membership of a particular social group, or political opinion. People who fear return to a generally unstable or dangerous situation, such as a civil war (where the danger is a generalised one, rather than due to their individual circumstances), do not generally qualify for protection under the terms of the Convention.

The applicant must demonstrate the severity of the threat they face to show that it meets the threshold for treatment amounting to persecution, and they must show that there is not sufficient protection available to them. Professor Guy S. Goodwin-Gill⁶¹ observes that '[w]here the state is either unable or unwilling to satisfy the standard of due diligence in the provision of protection, the circumstances may equally found an international claim.'⁶² In the case of *Gashi and Nikshiqi v Secretary of State for the Home Department* (HX 75677-95 and HX/75478/95 [13695]) the IAT approved a definition of persecution as the sustained or systematic violation of human rights demonstrative of a failure of state protection (unreported, 13 February 1997).

The definition in *Gashi* has been supplemented by the case of [*Horvath v Secretary of State for the Home Department*](#) (2000 INLR 15)⁶³ where the House of Lords ruled that state protection was sufficient if a criminal law that made attacks punishable by a sentence commensurate with the crime was in force in the state. The *Horvath* case demonstrated that it is theoretically possible to argue that an accumulation of discriminatory acts can amount to persecution but that the British courts require adequate proof that the state in question is completely unwilling to enforce the domestic laws that would protect the individual.

⁶⁰ Full text available at <http://www.parliament.the-stationery-office.co.uk/pa/ld199798/ldjudgmt/jd980402/adan01.htm> [accessed 23 July 2004].

⁶¹ *The Refugee in International Law*, second edition (1996:73).

⁶² For more information, refer to page 12 of the navigation guide to [lesbian, gay, bisexual and transgender refugees and asylum seekers](#) [accessed 23 July 2004].

⁶³ Full text available at <http://www.publications.parliament.uk/pa/ld199900/ldjudgmt/jd000706/horv-1.htm> [accessed 23 July 2004].

Agents of persecution

The UK (along with a majority of the signatory states), subscribes to the 'protection theory' when interpreting the Convention. This approach recognises persecution by non-state agents such as the LTTE (Tamil Tigers), in Sri Lanka. (This is by way of contrast to state agents who are people acting in an official capacity on behalf of the state such as civil servants or members of the security services, police or armed forces.) Of key importance is the ability, or willingness, of the state to protect individuals against persecution. This approach has important implications for refugees living in countries such as Somalia, where the state has completely broken down and can offer no protection against persecution to its nationals. The protection theory lies in contrast to the 'accountability theory' (used by countries such as France and Germany), which limits the classes of case in which a claimant could obtain refugee status to situations where the persecution alleged could be attributed to the state.

The distinction between the two approaches was borne out in the case *Adan v Secretary of State for the Home Department* (1998 2 WLR 702).⁶⁴ In this case a Somali national made an application for asylum in the UK after being refused refugee status by the German government. The Home Office refused the application because the individual had passed through a safe country prior to making their claim in the UK and could therefore be returned to Germany. The House of Lords ruled against the Home Office decision on the grounds that the German interpretation of the Convention (which only recognises the state as an agent of persecution), would probably result in the applicant being returned from Germany to Somalia where there was a 'reasonable likelihood' that they would face persecution. The Home Office was prevented from returning the applicant to Germany. (Under the recent EU Qualification Directive Germany will be obliged to recognise non-state agents). (Refer to the section on a Common European asylum system for more information).

Reasons for fear of persecution

Refugees must show that the persecution that they fear is for one of the five reasons listed in the Refugee Convention definition: race, religion, nationality, political opinion, or membership of a particular social group. Both internationally and nationally the least well defined is 'membership of a particular social group'. In the UK, the category has been extended to include women as a social group for the purposes of the Convention. The case of *Shah & Islam* [1999] INLR 144,⁶⁵ which reached the House of Lords, demonstrated that the courts were willing to accept Pakistani women as a social group. Crucial to this decision was the identification of the women being subject to persecution in a gender-based discriminatory way.

In November 2000, the Immigration Appellate Authority produced asylum gender guidelines⁶⁶ to assist adjudicators in the assessment of asylum cases. These guidelines were largely based on the Refugee Women's Legal Group (RWLG) gender guidelines for the determination of asylum claims in the UK which were published in 1998 and approved by the House of Lords in the case of *Shah and Islam* [1999] INLR 144.⁶⁷

⁶⁴ Full text available at <http://www.parliament.the-stationery-office.co.uk/pa/ld199798/ldjudgmt/jd980402/adan01.htm> [accessed 23 July 2004].

⁶⁵ Full text available at <http://www.publications.parliament.uk/pa/ld199899/ldjudgmt/jd990325/islam01.htm> [accessed 23 July 2004].

⁶⁶ Immigration Appellate Authority (November 2000) *Asylum Gender Guidelines*. Crown Copyright. Available at <http://www.iaa.gov.uk/32.htm> [accessed 23 July 2004].

⁶⁷ Available at: <http://www.publications.parliament.uk/pa/ld199899/ldjudgmt/jd990325/islam01.htm> [accessed 23 July 2004].

- For more information, refer to the key issues section on Social group.
- Refer to the section on gender guidelines in the navigation guide on [Women refugees and asylum seekers in the UK](#) for more information on the development of gender guidelines.

Prosecution versus persecution

A clear distinction is made between prosecution and persecution, (although the two may be related). It is not enough for an asylum seeker to demonstrate that they fear prosecution upon return to their country. This was shown in the case *O v IAT and Secretary of State for the Home Department* (1995 Imm AR 494).

- Refer to the navigation guide on [lesbian, gay, bisexual and transgender refugees and asylum seekers](#) for more information.

Internal flight alternative

When assessing an asylum claim, the Home Office may refuse the claim on the basis that although the applicant may face persecution in a particular part of their country of origin, it is however possible for them to live in safety in another part of the country. However, this provision is not included in the Refugee Convention.

Exclusion clauses

Certain categories of people are excluded from the protection that is offered by the Refugee Convention. The exclusion clauses are contained within Article 1F of the Convention and exclude an individual if there are serious reasons for believing that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

The operation of exclusion clauses is the most serious sanction of international refugee law as it overrides the basic right of *non-refoulement* to a country of persecution. UNHCR has frequently cautioned against the hasty use of exclusion clauses. In the Global Consultations process, a holistic approach to the application of exclusion clauses was emphasised and experts highlighted the need to consider the inclusion aspects of the Convention before a claimant is excluded under Article 1F. One of the reasons for this approach is that Article 1 F cases are notoriously complex and it is only after a full examination of the facts that all of the relevant issues may emerge.

An internationally agreed definition of terrorism is still under debate. However, acts commonly considered to be terrorist in nature are likely to fall within the exclusion clauses even though Article 1F should not be interpreted as simply an anti-terrorism provision. It is also possible that in some cases, Article 1F may not need to be considered, as the fear of legitimate prosecution (rather than persecution) automatically excludes

an applicant from the Convention. Article 1F (b) is the exclusion clause which has traditionally been of most relevance in exclusion cases on the basis of terrorism. Issues surrounding the operation of the exclusion clauses were first brought to international attention as a result of the Great Lakes Crisis in 1994. This crisis prompted the fear that individuals who were guilty of genocide were being offered refuge under the Convention by the international community.

Refer to the section on

- Asylum and terrorism for more information.

Useful resources

UNHCR (30 May 2001) 'Lisbon Expert Roundtable, Global Consultations on International Protection: Summary Conclusions - Exclusion from Refugee Status 3 – 4 May 2001' (EC/GC/01/2Track/1).

Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3b38938a4>.

UNHCR (4 September 2003) 'Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees' (HCR/GIP/03/05).

Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/+iwwBmeG1-CwwwnwwwwwwhFqhT0yfEtFqnp1xcAFqhT0yfEcFqGnLqc15odDaqcw15n5Dzmxwwwwww/opendoc.pdf>.

[All URLs accessed 23 July 2004]

Under Article 33 of the Convention it is possible for states to expel a refugee when 'there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country'.

This provision means that refugees can be exceptionally returned to their country of origin when there is an established threat to the national security of the host country and/or when the proven criminal nature and record of the individual constitute a danger to the community. UNHCR advises that the standard of proof in these cases is high and that the provision should be applied in exceptional circumstances.

Cessation

The cessation clauses are contained in the six sub-clauses of Article 1C and determine the circumstances under which refugee status may be lawfully withdrawn or 'ceased'. Refugee status is meant to cease when there is clearly no longer any need for international protection. An example of this is when the refugee obtains a new nationality and enjoys the protection of his or her new state of citizenship, or when the situation in country of origin has stabilised.

The first four clauses of Article 1C refer to situations where the refugee himself or herself has personally taken action that suggests that they are no longer in need of the special protection extended to a refugee under the Convention:

- he has voluntarily re-availed himself of the protection of the country of his nationality; or
- having lost his nationality, he has voluntarily re-acquired it; or
- he has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
- he has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution.

The last two clauses cover situations where there is no longer any danger that the refugee will be returned to persecution because the situation in the refugee's country of origin has stabilised. The cessation clauses are very infrequently invoked and are mainly used by UNHCR or by a host state when they declare that a country is safe to return to. They are applied to large groups of refugees, such as the Eritreans in Sudan. Cessation may also be applied on an individual case basis. However, this is extremely rare and only usually done when a refugee acquires citizenship of another state with full rights of residence and appropriate protection.

Useful resources

UNHCR (10 February 2003) 'Guidelines on International Protection: Cessation of Refugee Status Under Article 1C(5) and (6) of the 1951 Convention Relating to the Status of Refugees (the "ceased circumstances" clauses)'. HCR/GIP/03/03. Available at

<http://www.unhcr.ch/cgi-bin/taxis/vtx/home/%2BuwwBmHe9DTpwwwqwwwwwwwhFqhT0yfEtFqnp1xcAFqhT0yfEcFq1gn55wBodDaH1omncoDn5Dzmxwwwwww/pendoc.pdf>.

Joan Fitzpatrick, and Jeffrey and Susan Brotman (undated) 'Current Issues in Cessation of Protection Under Article 1C of the 1951 Refugee Convention and Article 1.4 of the 1969 OAU Convention' Background paper prepared for the UNHCR Global Consultations on International Protection, 2001. Available at

http://www.unhcr.ch/cgi-bin/taxis/vtx/home/%2BxwwBmeqNod_wwwowwwwwwwwhFqA72ZR0gRfZNTFqrpGdBnqBAFqA72ZR0gRfZNcFq1gn55wBodDaH1omncoDn5Dzmxwwwwww/pendoc.pdf.

Rafael Bonoan (24 April 2001) 'When Is International Protection No Longer Necessary? The 'Ceased Circumstances' Provisions of the Cessation Clauses: Principles and UNHCR Practice, 1973-1999'. Background paper prepared for the UNHCR Global Consultations on International Protection, 2001. Available at

<http://www.unhcr.ch/cgi-bin/taxis/vtx/home/pendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3bfe1cd84>

[All URLs accessed 23 July 2004]

The implications of human rights law

In 1998 the [Human Rights Act](#)⁶⁸ was passed in the UK. This piece of legislation, which came into force in October 2000, incorporates the European Convention on Human Rights (ECHR) into UK law. Although the ECHR does not specifically address the rights of asylum seekers or refugees, the basic human rights enshrined in the law, as a result of the 1998 Act, do have an important impact upon asylum seekers. Immigration rules require immigration officers and all of the staff at the IND to ensure that their decisions comply with the Human Rights Act.

Of particular relevance are Articles 3 and 8 of the ECHR. Article 3 prohibits an individual from being returned to a country where they will be subjected to torture or inhuman or degrading treatment or punishment. As has already been stated, asylum seekers have to demonstrate that they risk harm as a result of one of the five Convention reasons. However, the purpose of Article 3 is to protect people from harm, regardless of why it is they are being harmed. Article 3 is an absolute right and cannot be derogated from.

Article 8 prevents unjustifiable interference in an individual's right to respect for private and family life. It is therefore possible for asylum seekers who have established a family in the UK or have developed significant social networks to argue that removing them from the UK would be a breach of their rights under Article 8. The UK courts have interpreted the concept of 'private life' to include the applicant's mental health and a consideration of any decline likely to be caused by the difference between the treatment they receive in the UK and that available in their country of origin. However, in contrast to Article 3, Article 8 is not absolute, but is subject to a proportionate approach. For example, the state can argue that the need for firm immigration control outweighs the needs of a family to stay together.

Asylum seekers may also seek protection in the UK on the grounds that their rights under other articles of the ECHR would be breached by their removal. This includes: the right to life (Article 2); the right to liberty and security (Article 5); the right to a fair trial (Article 6) and the right to marry and found a family (Article 12). Article 14 provides a right not to be discriminated against in the enjoyment of other ECHR rights.

An important development in the field of human rights and asylum law is the case of [Ullah](#)⁶⁹ that was initially heard by the Court of Appeal in 2002. The main focus of the judgement is whether or not an alleged breach of Article 9 of the ECHR – the right to a fair trial – inhibits the removal of asylum seekers from the UK. Lord Phillips determined that the drafters of the ECHR did not intend to restrict the right of governments to maintain immigration controls, except where a breach of Article 3 would occur.

Ullah was [heard again in the House of Lords](#) in June 2004 and although unanimously upholding the Court of Appeal's decision that, on the facts presented, in these cases removing the applicants to their home countries of Pakistan and Vietnam would not be in breach of the Human Rights Act 1998, the Lords were not convinced that the European Court of Human Rights (ECtHR) had ruled out the possibility of an asylum seeker relying on Article 9 and were consequently not prepared to take this course of action themselves.⁷⁰

Lord Steyn ruled that 'the ruling of the Court of Appeal that an English court is entitled to proceed on the basis that, except for Article 3, articles of the ECHR can never be engaged in respect of immigration decisions to expel an alien was wrong. It will be apparent from the review of Strasbourg jurisprudence that, where other articles may become engaged, a high threshold test will always have to be satisfied. It will be necessary to establish at least a real risk of a flagrant violation of the very essence of the right before other articles could become engaged'.

⁶⁸ Available at <http://www.hmso.gov.uk/acts/acts1998/19980042.htm> [accessed 23 July 2004].

⁶⁹ Available at <http://www.lawreports.co.uk/civdecc0.6.htm> [accessed 23 July 2004].

⁷⁰ Available at <http://www.parliament.the-stationery-office.co.uk/pa/ld200304/ldjudgmt/jd040617/ullah-1.htm> [accessed 23 July 2004].

The European Commission has stated in a working document on 'the relationship between safeguarding internal security and complying with international protection obligations and instruments' that the European Court of Human Rights should reconsider the decisions in which Article 3 of the ECHR has been underlined as an absolute right. This drive for a reconsideration of the scope of Article 3 has been prompted by the international community's focus on terrorism and the desire of governments to expel individuals that are perceived to be a threat to security even if they would be at risk of treatment contrary to Article 3 if returned to their country of origin.

Useful resources

European Convention on Human Rights

<http://www.echr.coe.int/Eng/BasicTexts.htm>

UK Terrorism Act 2000

<http://www.hms0.gov.uk/acts/acts2000/20000011.htm>

The Department of Constitutional Affairs Human Rights Unit

The role of this unit is to ensure the successful implementation of the Human Rights Act 1998.

<http://www.dca.gov.uk/hract/hramenu.htm>

Human Rights Act Research Project (HRARP) at Doughty Street Chambers

Judgments made under the Human Rights Act are being monitored by this project.

<http://www.doughtystreet.co.uk>

Home Office guidance for caseworkers on using the ECHR in decision-making

http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis/echr_-_european_convention.html

[All URLs accessed 23 July 2004]

The European Court of Human Rights

The European Court of Human Rights (ECtHR) was set up in 1959, subsequent to the ratification of the European Convention on Human Rights, and is based in Strasbourg. Judges sit on the court in an individual capacity and do not represent any particular state. Either contracting states, or individual applicants are able to bring complaints to the court. Individuals are only able to bring a complaint if they have personally and directly been the victim of a breach of one or more of the Convention rights by one of the contracting states. Also, it is only when domestic remedies have been exhausted that an individual can approach the court. If the findings are against a state, then that state is obliged to change its law in accordance with the rights of the Convention.

Some of the court's earlier jurisprudence provided states with important interpretations of Article 3 of the Convention. In the case of *Soering vs United Kingdom* (1989)⁷¹ it was found that it would be a breach of Article 3 to extradite the applicant to the United States where he faced the death penalty. This is because of the long wait on death row and the age and mental state of the applicant.

⁷¹ Available at <http://www.refugeelawreader.org/files/pdf/229.pdf> [accessed 23 July 2004].

Another example of where the UK courts have been overruled by Strasbourg is in the case of [T.I. vs the United Kingdom](#) (2000). This case involved the expulsion of an asylum seeker from the UK to Germany. The ECHR ruled that the provisions of the Dublin Convention did not mean that the UK was free from the responsibility of ensuring that an individual would not be exposed to degrading treatment as a result of their expulsion from the country.

- Refer to the section on Third country cases for more information on this issue.

Although the application of Article 3 may prevent an applicant from being removed from the UK, protection under the European Convention on Human Rights does not bring with it an automatic right to a particular legal status and does not impose particular duties on the state, as is the case for those persons granted protection under the Refugee Convention. As a result, a person granted protection under the ECHR may find themselves in something of a legal limbo where they are not removed but are not able to secure status on a long term basis. However, under UK law, persons granted protection under the ECHR are usually granted either humanitarian protection or discretionary leave.

- Refer to the section on Humanitarian Protection for more information on this issue.

Useful resources

European Court of Human Rights

<http://www.echr.coe.int/Eng/General.htm>

ECHR caselaw

http://www.justis.com/database/human_rights.html

[All URLs accessed 23 July 2004]

Key issues

Useful resources

Selected bibliographic references and links are provided within and at the end of each section. There is a very large academic bibliography on this subject and this guide does not attempt to reproduce it. For further references users should start by consulting:

European Journal of Migration and Law

<http://www.kluweronline.com/issn/1388-364X/current>

Forced Migration Review

<http://www.fmreview.org>

International Journal of Refugee Law

<http://www3.oup.co.uk/jnls/list/reflaw>

Journal for International Migration and Integration

<http://jimi.metropolis.net/main.html>

Journal of Ethnic and Migration Studies

<http://www.cemes.org/jems.htm>

Journal of Refugee Studies

<http://www.rsc.ox.ac.uk>

Refugee Survey Quarterly

<http://www3.oup.co.uk/refqtl/contents>

[All URLs accessed 23 July 2004]

The relevance of the Refugee Convention today

The Refugee Convention was originally drafted as a temporary way of dealing with the large number of displaced persons in Europe after the Second World War. Contemporary academics and lawyers have argued that the Convention is very much a product of its time and that it was written with the figure of the single, dissident male from Eastern Europe in mind. In contrast to other regional agreements, such as the [Organisation of African Unity Convention](#)⁷² and the [Cartagena Declaration on Refugees](#),⁷³ it was not created to offer protection to large groups of people fleeing civil war and regional conflict from all parts of the world.

⁷² *Convention Governing the Specific Aspects of Refugee Problems in Africa*. Available at http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Refugee_Convention.pdf [accessed 23 July 2004].

⁷³ Available at <http://www.refugeelawreader.org/files/pdf/46.pdf> [accessed 23 July 2004].

Although there have been some attempts by the UK and other countries to offer protection to people fleeing civil war, the determination systems in Western Europe, North America and Australasia are designed to scrutinise the eligibility of each individual application for asylum.

Many Western governments have expressed concerns that their determination processes cannot cope with the large increase in the number of applications for asylum over the last decade and that the right to seek asylum is being abused by 'economic migrants'. The overwhelming response has been to try and deter asylum seekers from reaching their borders.

In June 2000 the then Home Secretary, Jack Straw, delivered a speech in Lisbon expressing his concerns on this issue.⁷⁴ David Blunkett, the current Home Secretary, has maintained a similar line.

UNHCR's Global Consultations

UNHCR (The Office of the United Nations High Commissioner for Refugees) responded to calls for a rethinking of the 1951 Convention and the right to seek asylum by launching the '**Global Consultations on International Protection**' in March 2001. There were three different stages, or tracks, to the consultation process.

The first track was designed to give states party to the Refugee Convention a chance to reaffirm their commitment to its underlying principles. A ministerial meeting involving 156 states took place in December 2001 in Geneva and resulted in a [unanimous declaration](#)⁷⁵ to this effect (also available in [French](#)⁷⁶ and in [Spanish](#)⁷⁷).

The second track involved expert consultations on 'contentious areas' such as 'membership of a particular social group', state obligations under Article 31 of the Refugee Convention (concerning non-penalisation of illegal entry) and the role of UNHCR to supervise the implementation of the Convention (Article 35). These subjects were discussed by governmental and non-governmental experts in a series of roundtables hosted by research institutions. UNHCR has published the [background papers](#)⁷⁸ for these roundtables and details of the conclusions that they came to.

The discussions that took place were used to update and revise the original background papers and the results were published by Cambridge University Press in June 2003 in a book entitled *Refugee Protection in International Law*. This book examines the key issues that challenge the Convention today such as *non-*

⁷⁴ See for an example of media reporting of this, A. Travis 'Straw aims to rewrite treaty on refugees' *The Guardian*, 8.6.00. Available at http://www.guardian.co.uk/Refugees_in_Britain/Story/0,2763,329543,00.html [accessed 23 July 2004].

⁷⁵ Available at <http://www.unhcr.ch/cgibin/texis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3c2306cc4> [accessed 23 July 2004].

⁷⁶ Available at <http://www.unhcr.ch/cgibin/texis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3c2307fe4> [accessed 23 July 2004].

⁷⁷ Available at <http://www.unhcr.ch/cgibin/texis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3c5a76374> [accessed 23 July 2004].

⁷⁸ Available at http://www.unhcr.ch/cgibin/texis/vtx/home/+FwwBmef0dP_wwwAwwwwwwwFgzvxsqmwWx6mFqA72ZR0gRfZNhfqA72ZR0gRfZNIffrpGdBnqBzFqmRbZAFqA72ZR0gRfZNDzmxwwwwww1FqmRbZ/opendoc.htm [accessed 23 July 2004].

refoulement; illegal entry; membership of a particular social group; gender-related persecution; internal protection/relocation/flight alternative; exclusion; cessation; family unity and supervisory responsibility.

Subjects under discussion in the third track were protection policy issues that are not covered by the Refugee Convention. Examples include protection in cases of mass influx, fair and efficient status determination procedures and the protection of refugee women and children. These discussions took place within the framework of the [Executive Committee of UNHCR](#).⁷⁹

The final Global Consultations meeting was held in May 2002. UNHCR have now completed a document entitled [Agenda for Protection](#),⁸⁰ which is the first comprehensive framework for refugee policy since the Geneva Convention of 1951.

The framework sets out clear objectives grouped according to six main goals:

- strengthening the implementation of the 1951 Convention and 1967 Protocol;
- protecting refugees within broader migration movements;
- sharing of burdens and responsibilities more equitably and building of capacities to receive and protect refugees;
- addressing security-related concerns more effectively;
- achieving durable solutions to refugee flows; and
- meeting the protection needs of refugee women and refugee children.

A number of activities designed to support the goals outlined above are detailed in the document and include measures for preventing sexual and gender-based violence, improving the protection of women and children, maintaining the civilian character of refugee camps, clarifying responsibility for refugee protection during rescue at sea operations, and strengthening asylum systems and procedures.

Delegates from the 61 governments that make up the UNHCR Executive Committee endorsed the Agenda for Protection in October 2002. UNHCR has circulated a memorandum to their field offices asking them to prioritise the actions that are of most importance to their situation, and are now asking both governments and NGOs to do the same.

Convention Plus

In October 2002 the United Nations High Commissioner for Refugees, Rudd Lubbers, called for the development of new 'tools' to manage global refugee flows and coined the term 'Convention Plus'.

'Convention Plus' is a reference to UNHCR's current position on the Geneva Convention. They feel it needs to be built upon and developed in order to deal with contemporary refugee flows. UNHCR advocates the creation of multilateral arrangements between countries that will encourage 'responsibility-sharing'.

Refugee rights groups have responded to the idea of 'Convention Plus' with ambivalence. They welcome the emphasis on durable solutions to the increase in refugee flows, but remain concerned that the governments of refugee-receiving countries may be tempted to use the consultations on 'Convention Plus' as a forum for reducing the direct responsibility of nation states for maintaining the right of asylum.

⁷⁹ More information at <http://www.unhcr.ch/cgi-bin/texis/vtx/home?page=exec> [accessed 23 July 2004].

⁸⁰ Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=EXCOM&id=3d3e61b84> [accessed 23 July 2004].

Useful resources

Matthew J. Gibney (2001) *The state of asylum: democratization, judicialization and evolution of refugee policy in Europe*. New Issues in Refugee Research, Working Paper No. 50. Oxford: Refugee Studies Centre. Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opedoc.pdf?tbl=RESEARCH&id=3bf102204&page=publ>.

Frances Nicholson and Patrick Twomey (eds.) (1999) *Refugee Rights and Realities: Evolving International Concepts and Regimes*. Cambridge: Cambridge University Press.

UNHCR (20 January 2003) *'Convention Plus': questions and answers*. Geneva: UNHCR. Available at <http://www.unhcr.ch/prexcom/standocs/english/finalconve.pdf>.

A full list of the subjects in each track and a schedule of when they were discussed are available at UNHCR's Global Consultations website at <http://www.unhcr.ch/cgi-bin/texis/vtx/global-consultations>.

Amnesty International (7 March 2003) 'Amnesty International's observations to UNHCR's Consultations on Convention Plus'. Available at <http://www.web.amnesty.org/library/Index/ENGIOR420012003?open&of=ENG-393>.

The **Refugee Council** also monitored the Global Consultations and its International Protection Project updates can be obtained from Richard Williams, International Protection Policy Officer, email richard.williams@refugeecouncil.org.uk.

[All URLs accessed 23 July 2004]

EU asylum policy and procedures

Important developments have taken place at a European level with regard to the development of asylum (and immigration) law and policy. Since the mid-1980s, there have been attempts to create a unified immigration and asylum policy in the EU but progress has been slow. The **Maastricht Treaty 1992** was the first attempt to structure developments in this area cohesively. However, prior to the **Treaty of Amsterdam**, joint action on the issue of asylum was facilitated mainly through inter-governmental agreements. The **Schengen Agreement** and Convention, and the **Dublin Convention**, were the main instruments to be implemented during this period. The harmonisation of policy has progressed most when the focus has been on measures that are aimed at restricting the access of asylum seekers to the EU.

Useful resources

All relevant legislation, proposals, acts, and press releases relating to EU harmonisation of asylum policy can be accessed at **Europa**, the portal site of the **European Union**, at http://europa.eu.int/comm/justice_home/doc_centre/asylum/wai/doc_asylum_intro_en.htm.

ECRE documents on EU asylum developments are available at http://www.ecre.org/policy/eu_developments.shtml.

Refugee Council documents and commentary relating to European issues can be accessed at http://www.refugeecouncil.org.uk/infocentre/int_eur/euro001.htm. International Protection Project updates can also be obtained from Richard Williams, International Protection Policy Officer, email richard.williams@refugeecouncil.org.uk.

The UNHCR Regional Office in Brussels has recently launched 'UNHCR Toolboxes' on EU asylum matters. This two-volume publication gathers together the main EU asylum instruments, with commentaries, and sets out the fundamental principles and structures involved in the process of EU asylum policy development to date.

The fundamentals are available at

<http://www.unhcr.ch/cgi-bin/texis/vtx/home/+FwwBmeIJEewxwwwxwwwwwwwhFqhT0yfEtFqnp1xcAFqhT0yfEcFg3uNlg2aBddcaxdLn5Dzmxwwwwww1FqmRbZ/opendoc.pdf>.

The instruments are available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/+jwwBmemkZEewxwwwqwwwwwwwwhFqhT0yfEtFqnp1xcAFqhT0yfEcFg3uNlg2aBddcaxdLn5Dzmxwwwwww1FqmRbZ/opendoc.pdf>.

[All URLs accessed 23 July 2004]

Treaty of Amsterdam

In 1997 the **Treaty of Amsterdam** (TOA) was agreed upon by the EU. The treaty states that the purpose of the EU is to 'maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration, and the prevention and combating of crime'. Asylum and immigration policy was moved from the third pillar of the EU, (inter-governmental cooperation) to the first pillar, the European Community (EC). This allows for the use of binding EC instruments, such as directives or regulations, in the area of asylum. EU member states were required by the treaty to reach an agreement on a number of minimum standards within five years of the entry into force of the TOA (which meant before 1 May 2004). The council was required to adopt measures that addressed the following issues:

- the responsibility of states for assessing asylum claims;
- minimum standards on the reception of asylum seekers;
- minimum standards on the qualification of third country nationals as refugees and beneficiaries of subsidiary protection;
- minimum standards on procedures for granting and withdrawing refugee status;
- minimum standards for giving temporary protection.

Useful resources

Jan Niessen and Susan Rowlands (eds.) (April 2000) *The Amsterdam Proposals. Or How to Influence Policy Debates on Asylum and Immigration*. European Network against Racism, Immigration Law Practitioners' Association, Migration Policy Group. (Further copies available from the [Immigration Law Practitioners' Association](#)).

[URL accessed 23 July 2004]

Tampere

After the Amsterdam Treaty came into force in May 1999, a Special Council meeting was convened in Tampere, Finland, in October of the same year. The [presidency conclusions](#)⁸¹ of this meeting reaffirmed the commitment of EU member states to the Treaty and also committed states to the following:

- a 'full and inclusive' approach to the interpretation of the 1951 Convention which would ensure that the right to seek asylum would be respected and that nobody would be returned to persecution;
- partnerships with refugees' countries of origin which address human rights and development issues in these countries;
- a more vigorous approach to integration which would grant refugees rights and obligations comparable to EU citizens;
- the development of a common asylum procedure.

Once these parameters had been agreed upon, the EU then began to negotiate a number of legislative instruments that set out minimum standards on asylum policies and procedures. In Seville in June 2002, it was observed that the programme agreed upon in Tampere needed to be speeded up. The [presidency conclusions](#)⁸² of the Seville meeting are available on the ECRE website as are a [comprehensive listing of links to web pages](#) that deal with various aspects of the Seville meeting and its conclusions.

Common European asylum system

The first stage of a Common European Asylum System (CEAS) is to harmonise all of the different asylum policies of the member states. The deadline of May 2004 was given to agree four pieces of EU law on:

- minimum standards for the reception of asylum seekers ([Reception Directive](#))⁸³

The Reception Directive was adopted in January 2003 and member states have been given until February 2005 to ensure that their domestic legislation is compliant. The directive sets out minimum standards for the reception of asylum seekers while their claim is being decided in the host country. Areas covered by the directive include access to work, housing, education, healthcare, freedom of movement and the reception of unaccompanied children. Some states, including the UK, were keen to ensure that standards of reception were uniform throughout the EU so that asylum applicants would be discouraged from moving on to countries where standards were perceived to be higher.

- the establishment of which country is responsible for examining an asylum claim ([Dublin II Regulation](#))⁸⁴

⁸¹ Available at http://europa.eu.int/council/off/conclu/oct99/oct99_en.htm [accessed 23 July 2004].

⁸² Available at <http://www.ecre.org/seville/sevconc.pdf> [accessed 23 July 2004].

⁸³ Available at http://www.ecre.org/eu_developments/reception/recdirfinal.pdf [accessed 23 July 2004].

⁸⁴ Available at http://www.ecre.org/eu_developments/responsibility/dublinreg.pdf [accessed 23 July 2004].

The Dublin II Regulation came into force in September 2003 and replaces the original Dublin Convention that was not EU law. The main principle of the regulation is that whichever country allows an asylum seeker to enter the EU (whether legally or illegally) is responsible for deciding their claim.

- a common definition of who is a refugee or otherwise requires international protection and the rights and benefits which attach to each status (Qualification Directive/Definition Directive)

The Qualification Directive was adopted on 30 April 2004 and contains a clear set of criteria for qualifying either for refugee or subsidiary protection status, and sets out what rights are attached to each status. The directive also recognises persecution by non-state agents and allows for the recognition of refugees on the basis that they fear persecution due to their gender or sexual orientation.

- minimum standards on the procedures for making decisions on asylum claims ([Procedures Directive](#))

The Procedures Directive was not adopted by the 1 May 2004 deadline, but a 'general approach' was agreed politically on 29 April 2004. The agreed approach sets minimum standards on issues such as the interviewing procedure, access to legal representation and the use of detention. The directive also seeks to harmonise as much as possible national measures to speed up the examination of asylum applications and ensure that all negative decisions on asylum applications have the possibility of judicial scrutiny. The European Court of Justice will ultimately rule on the interpretation of these provisions by member states.

A second phase of harmonisation is due to take place and this will be moving beyond the minimum standards already agreed and focussing on the long-term goal of a CEAS.

Useful resources

Various NGOs have commented on these draft documents, including those listed below.

Amnesty International (February 2003) 'Amnesty International's Comments on the Amended Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status'. COM (2002) 326 final. Brussels: Amnesty International.

ECRE (June 2004) Broken promises, forgotten principles. An ECRE evaluation of EU minimum standards for refugee protection Tampere 1999 – Brussels 2004. London and Brussels: ECRE. Available at http://www.ecre.org/positions/Tampere_June_04.shtml.

Other **ECRE** documents on common standards on asylum procedures are available at http://www.ecre.org/eu_developments/procedures/index.shtml.

Refugee Council (20 June 2004) 'New asylum laws dangerous for refugees'. London: Refugee Council. Available at <http://www.refugeecouncil.org.uk/news/june04/relea169.htm>.

Refugee Council (May 2004) 'International Protection Project Update'. London: Refugee Council. Available at http://www.refugeecouncil.org.uk/downloads/briefings/intl/ipp_update_may_2004.pdf.

The Refugee Council's International Protection Project updates can be obtained from Richard Williams, International Protection Policy Officer, email richard.williams@refugeecouncil.org.uk.

Refugee Council 'Refugee Council briefing on the common European asylum system'. London: Refugee Council. Available at http://www.refugeecouncil.org.uk/downloads/briefings/intl/common_euro.pdf

[All URLs accessed 23 July 2004]

EURODAC

The harmonisation of security-oriented control measures has also seen progress; an example of this being the regulation in 2000 establishing **EURODAC**, which is the first European Automated Fingerprint Identification System (AFIS). Under the new system, which was launched on 15 January 2003, all asylum seekers aged 14 or older are fingerprinted. The system registers and compares the fingerprints of asylum seekers and certain categories of illegal immigrants arriving in 14 member states of the European Union (Denmark is excluded for the time being) and in third countries bound by the EURODAC regulation (Norway and Iceland). The aim of the database is to prevent multiple asylum applications, and to assist in determining which country is responsible for considering an application for asylum according to the mechanism and criteria established by the Dublin Convention II (see below).

- For more information, refer to the section on Third country cases.

If EURODAC reveals that a set of fingerprints have already been recorded by a participating country, then the asylum seeker will be sent back to the country where his or her fingerprints were originally recorded.

EU officials have emphasised that the procedure for taking fingerprints is in accordance with the safeguards laid down in the European Convention on Human Rights and in the United Nations Convention on the Rights of the Child. Fingerprints will be stored in EURODAC for up to ten years and the data should be erased as soon as an individual obtains settled status in one of the member states. Access to this system is restricted to the sole purposes stated in the EURODAC regulation.

Useful resources

European Council regulation concerning the establishment of Eurodac (11 December 2000)
http://www.europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=32000R2725&model=quichett

[URL accessed 23 July 2004]

UK perspective

The UK government has sought to influence the direction of EU policy on asylum and immigration matters. In his 'Lisbon speech' to the European Conference on Asylum in 2000 Jack Straw, the then Home Secretary, called for a common asylum procedure.

David Blunkett, his successor as Home Secretary echoed this commitment in the white paper [Secure Borders, Safe Haven: Integration with Diversity in Modern Britain](#) (February 2002),⁸⁵ speaking of the need 'to work internationally for a global system that delivers protection to those who need it' (section 4.3). In sections 4.4-4.6, he provided more detail about how the UK wishes to work with European partners to agree on common standards and procedures and especially to prevent secondary movements of asylum seekers throughout the EU – what he terms 'asylum shopping'.

In June 2002, David Blunkett published the UK proposals for a common asylum and migration policy. This document was released a short time before the European Council meeting in Seville when EU policy towards asylum and migration was discussed. The Home Secretary observed that progress towards a unified EU policy had been slow and that he was keen to help set the agenda. Some of the key issues he identified were the fight against illegal migration, the need to strengthen EU borders and the need to develop a common EU definition of a refugee. A more detailed breakdown of the [UK proposals](#)⁸⁶ can be found on the Immigration and Nationality Directorate website.

In March 2003, David Blunkett announced a proposal to manage asylum flows by creating zones of protection and processing centres. This proposal was discussed at the Thessaloniki summit in June 2003 but Germany, Sweden, France and Greece all objected to the idea of processing centres on humanitarian or legal grounds. The UK proposal of providing potential asylum seekers with a safe haven near to their country of origin was not given official EU backing and it was left up to individual countries to offer their support to UNHCR.

Defining refugees and forced migration

For the purposes of UK asylum law and process, a person is recognised to be a refugee through the determination process (including the initial administrative decision and any subsequent appeal(s)). However, the definition of a refugee evolves over time, through policy and caselaw. Aside from this, within both the international policy field and the academic area of refugee studies, there has been a growing recognition that other types of forced migrants who do not fall within the terms of the various refugee definitions, are also in need of assistance and protection.

Social group

There is a wide-ranging debate within academia over the concept of a refugee and several academics have argued that governments need to adopt a more inclusive definition. There is particular interest in expanding the notion of a 'social group' to cover people who would not be afforded protection under a more restrictive interpretation of the Convention. Examples include people suffering persecution because of their gender or sexuality. Some NGOs are campaigning for the recognition of forms of persecution that are gender-specific

⁸⁵ Available at <http://www.official-documents.co.uk/document/cm53/5387/cm5387.pdf> [accessed 23 July 2004].

⁸⁶ Available at http://www.homeoffice.gov.uk/n_story.asp?item_id=95 [accessed 23 July 2004].

including, for example, sexual violence, female genital mutilation, forced abortion and sterilisation, and denial of access to contraception.

- For more information, refer to section on Reasons for fear of persecution.
- For more information on gender and sexuality, refer to the [navigation guide on lesbian, gay, bisexual and transgender refugees](#).
- For more information on gender, refer to the [navigation guide on women refugees and asylum seekers](#) (pages 9 –16).

Useful resources

Asylum Aid (February 2003) *Women Asylum Seekers in the UK: A Gender Perspective - Some Facts and Figures*. London: Asylum Aid. Available at <http://www.asylumaid.org.uk/New%20RWRP/RWRP%20Publications/RWRP%20Women%20asylum%20seekers%20Feb%2003.doc>.

Immigration Appellate Authority (November 2000) *Asylum Gender Guidelines*. Available at <http://www.iaa.gov.uk/32.htm>.

D. McGhee (2001) 'Persecution and social group status: homosexual refugees in the 1990s' *Journal of Refugee Studies*, March 2001, Vol. 14, No.1, pp.20-42.

J. Ramirez (1994) 'The Canadian guidelines on women refugee claimants fearing gender-related persecution' *Refuge*, 1994, Vol. 14, No. 77, pp. 3-7.

Refugee Women's Legal Group (RWLG) (1998) *Gender Guidelines for the Determination of Asylum Claims in the UK*. Available at <http://www.rwlg.org.uk>.

P. Tuitt (1996) *False Images, The Law's Construction of the Refugee*. London: Pluto Press.

UNHCR (undated) *UNHCR Policy on Refugee Women*. Available at http://www.unhcr.ch/cgi-bin/texis/vtx/home/+JwwBmeZll7_www3wwwwwwwwwmFqA72ZR0gRfZNhfqA72ZR0gRfZNFqrpGdBngBzFqmRbZAFqA72ZR0gRfZNDzmxwwwwww5Fqw1FqmRbZ/.opendoc.pdf.

UNHCR (1997) *UNHCR policy on harmful traditional practices*. Inter-Office Memorandum No. 83/97. Field Office Memorandum No. 90/97.

UNHCR (February 1999) *Position paper. Relocating internally as a reasonable alternative to seeking asylum*. Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3b83c6e64>.

The San Remo expert roundtable (6-8 September 2001) at **UNHCR's Global Consultations** addressed a number of gender-related issues. Useful online materials include:

Summary conclusions – gender-related persecution

<http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3baf2ef5d>

Summary conclusions - membership of a particular social group

<http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3baf2fb88>

Rodger Haines (10 August 2001) 'Gender related persecution'. Background paper for roundtable.

<http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3b93912e4>

James C. Hathaway and Michelle Foster (2001) 'Internal Protection/Relocation/Flight Alternative as an Aspect of Refugee Status Determination'. Background paper for roundtable.

<http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3b83c1374>

Alex Aleinikoff (2001) 'Membership in a Particular Social Group: Analysis and Proposed Conclusions'. Background paper for roundtable discussion.

<http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=PROTECTION&page=PROTECT&id=3b83b1c54>

[All URLs accessed 23 July 2004]

Environmental refugees

Some academics have also challenged the notion that a refugee must be fleeing individualised persecution. They argue that those fleeing environmental degradation, the impacts of climate change and natural or man-made disasters can also be defined as refugees. This concept of the 'environmental refugee' is controversial, and much has been written about the use of the term. Those who argue that the refugee regime should encompass persons who are displaced by damage to the environment have identified a responsibility that is incurred by the international community when people are forced to flee the negative fallout of human intervention in the environment.

Useful resources

Richard Black (March 2001) 'Environmental refugees: myth or reality?'. UNHCR Working Paper No. 34. Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RESEARCH&id=3ae6a0d00&page=publ>.

Richard Black (1998) *Refugees, environment and development*. London: Longman.

Dawn Chatty and Marcus Colchester (eds.) (2002) *Conservation and Mobile Indigenous Peoples: Displacement, Forced Settlement, and Conservation*. Oxford: Berghahn.

Essam El-Hinnawi (1985) *Environmental Refugees*. Geneva: United Nations Environment Programme.

Gaim Kibreab (1997) 'Environmental causes and impact of refugee movements: a critique of the

current debate'. *Disasters*, March 1997, Vol.21, No.1, pp.20-38.

P. Kourula (1997) *Broadening the edges: refugee definition and international protection revisited*. Leiden: Martinus Nijhoff Publishers.

Joann McGregor (1993) 'Refugees and the Environment'. In Richard Black and Vaughan Robinson (eds.) *Geography and Refugees: Patterns of Process and Change*. London: Belhaven Press.

Living Space for Environmental Refugees website

http://www.liser.org/Liser_english.htm

[All URLs accessed 23 July 2004]

Internally displaced persons

In order to qualify as a refugee under the Refugee Convention, a person must be outside the country of his/her nationality. However, UNHCR estimates that there are between 20-25 million internally displaced persons (IDPs)⁸⁷ in the world (this is in contrast to 17 million refugees).⁸⁸ These individuals do not qualify for refugee status because they have not crossed an international border. Despite the fact that UNHCR's mandate is officially restricted to providing protection for refugees who are outside their country of origin, the UN agency has expanded its activities over the last thirty years to include the provision of humanitarian assistance to IDPs and 'returnees' (refugees who have returned to their country of origin). These activities can be controversial as the agency can only operate with the consent of the states that may be responsible for causing displacement and which have a duty to provide protection to their own citizens. As a result there is an on-going debate within UNHCR (and its governmental and non-governmental observers), about the role of the agency in this field. Some observers have suggested that by becoming involved in activities which are primarily assistance-oriented, the UNHCR is in danger of undermining its primary protection role. At the crux of is debate is the tension between the protection of displaced persons and the sovereignty of the state.

Useful resources

L. T. Lee Internally displaced persons and refugees: toward a legal synthesis?' *Journal of Refugee Studies*, 1996, Vol.9, No.1, pp.27-42.

C. Phoung (2000) 'Internally displaced persons and refugees: conceptual differences and similarities'. *Netherlands Quarterly of Human Rights*, June 2000, Vol.18, No.2, pp.215-288.

UNHCR (2000) "A predisposition to act" HCR and International Displaced Persons' *Refuge*, No. 5, 2000, no. 13. Available at <http://www.una.org/ge/refuge/052000/3.html>.

Global IDP Project, Norwegian Refugee Council

<http://www.idpproject.org>

⁸⁷ UNHCR 'Who is an IDP?', website. Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home?page=PROTECT&id=3b84c7e23> [accessed 23 July 2004].

⁸⁸ UNHCR 'Basic facts', website. Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/basics> [accessed 23 July 2004].

Training module on definition of internally displaced persons
http://www.idpproject.org/training/nrc_modules/new/module_1.pdf

Human Rights Watch web pages on IDPs
<http://www.hrw.org/campaigns/refugees/section-3-3.htm>

UNHCR web pages on IDPs
<http://www.unhcr.ch/cgi-bin/texis/vtx/home?page=PROTECT&id=3b84c7e23>

[All URLs accessed 23 July 2004]

Forced migration

Refugee studies was established as a separate academic discipline to critically assess the activities of state and international and non-governmental activities in providing protection and assistance to refugees, and improve the understanding of the experience of displaced people. However, it became clear that the term 'refugee' was primarily a legal one and was limited in its analytical scope. Thus, the broader term of 'forced migration' came into use to cover both refugees and other people in refugee-like situations – both those who had left their country of origin, and those (like IDPs) who remained within its boundaries.

In 1983, the Refugee Studies Programme (RSP) at the University of Oxford (since renamed the Refugee Studies Centre) was set up by Barbara Harrell-Bond, whose seminal text, *Imposing Aid*,⁸⁹ provided a critique of the humanitarian assistance regime for refugees. Subsequently, a number of academic centres and programmes for the study of refugees and forced migration have been set up around the world. In the UK context, the focus has been both on the international dimension of refugee flight and the interface between the themes of asylum, immigration, integration and cultural diversity.

The [International Association for the Study of Forced Migration](#) is a forum for academics, practitioners and decision-makers to discuss the meaning and implications of forced migration. The association has agreed upon the following definition of forced migration:

'a general term that refers to the movements of refugees and internally displaced people (those displaced by conflicts) as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects.'

It is possible to identify three major types of forced migration: conflict-induced displacement; development-induced displacement; and disaster-induced displacement.

However, academics have pointed out that the distinction between forced and voluntary migration is never a clear one. An individual's decision to leave their home country is usually prompted by a mixture of compulsion and choice. It is difficult for the observer to identify a point at which the element of choice in the individual's decision is so reduced that their actions can be described as 'forced'. Individuals may decide to leave their country of origin for a number of different reasons, such as war, famine, environmental damage, lack of economic prospects and persecution. It is possible for one of these factors to be the single cause for

⁸⁹ B. Harrell-Bond (1986) *Imposing Aid: Emergency Assistance to Refugees*. Oxford: Oxford University Press. Available at <http://www.sussex.ac.uk/migration/publications/imposingaid.html> [accessed 23 July 2004].

migration, but is also possible that a person migrates for a mixture of reasons that are of differing importance and urgency.

Useful resources

C. Brettell and James Frank Hollifield (2000) *Migration Theory: Talking Across the Disciplines*. London: Routledge.

S. Castles (2003) 'Towards a sociology of forced migration and social transformation' *Sociology*, Vol. 37, No. 1, pp. 13-34.

Richmond, A. (1994) *Global Apartheid*. Oxford: Oxford University Press.

V. Robinson and J. Seagrott (July 2002) *Understanding the Decision Making of Asylum Seekers*. Home Office Research Study 243. London: Home Office. Available at <http://www.homeoffice.gov.uk/rds/pdfs2/hors243.pdf>.

B. Stein (1981) 'The Refugee Experience: Defining the Parameters of a Field of Study'. *International Migration Review*, Vol. 15, No. 1, pp. 320-30.

N. Van Hear (1998) *New Diasporas*. London UCL Press.

Forced Migration Online

<http://www.forcedmigration.org>

[All URLs accessed 23 July 2004]

Quality and consistency of decision-making

There has been much criticism of the initial decision-making process in the UK by both refugee agencies, legal practitioners, academics and politicians. Some of the key factors are discussed in the following sections.

Training and practice

Concerns have been raised by various refugee agencies that the training given to IND caseworkers making the initial decisions on cases is not thorough enough to ensure quality decision-making and that some of the practices of the Home Office prevent a proper assessment of cases before them. An investigation by the Medical Foundation for the Care of Victims of Torture into the decision-making process by the Home Office came to the following conclusions:⁹⁰

- there were often inconsistencies between the country of origin reports and the reasons for refusal given on a case;
- caseworkers lacked an understanding of the Refugee Convention;

⁹⁰ E. Smith (2004) *Right first time?* London: The Medical Foundation for the Care of Victims of Torture.

- standard paragraphs are used in the refusal letters and individual cases were rarely assessed;
- there was a selective application of law and policy;
- there was a failure to use expert medical reports to corroborate testimony;
- caseworkers lacked good interviewing skills.

The report by the Medical Foundation also criticises the way in which credibility is determined. Inferences drawn from the course and conduct of the applicant's journey to the UK and application for asylum were deemed to be inconsistent and speculative, to have assumed knowledge that the applicant may not possess, and to be inconsistent with the guidelines that caseworkers are meant to follow. The report also identified a failure to seek further information and use minor or irrelevant inconsistencies to justify the rejection of whole claims.

Refugee agencies have highlighted the barriers that individuals face when trying to communicate their reasons for applying for asylum. They have argued that if linguistic and cultural differences are not approached with sensitivity then vital information about an individual's case can be overlooked or misunderstood. There is also concern that people who are fleeing persecution may be suffering from trauma, confusion, exhaustion or stress and that when faced with an interview upon arrival, they are not able to present the facts of their case in a coherent manner. Concerns have been raised that the training given to immigration officers and caseworkers is not sufficient to enable them to effectively overcome these barriers.

A recent [report](#) issued by the National Audit Office (June 2004)⁹¹ made the following recommendations to the Home Office with regard to decision-making:

- the Home Office should provide more training to caseworkers at the induction stage; provide more specialist training once they have experience; and update their knowledge and skills. Particular issues to cover in more depth could include: the preparation of refusal letters; understanding of human rights issues; the handling of certain types of cases, for example involving minors or victims of rape; and recent developments in the law on asylum.
- the Home Office should build up the expertise of caseworkers by encouraging some to specialise more in dealing with applications from particular countries, regions of the world or types of cases – particularly categories involving a significant number of cases.
- the Home Office should strengthen its quality assurance arrangements by analysing the reasons why decisions are overturned by caseworkers; investigating the reasons for any differences between the appeals allowed rates for applicants from different countries; and introducing supervisory review prior to initial decisions being dispatched for those types of application most frequently overturned at appeal.

The [Race Monitor](#)⁹² provides independent oversight of the use of powers immigration staff hold to discriminate on grounds of nationality, ethnic or national origin. Mary Coussey is required to report her findings to parliament on an annual basis. The [most recent report](#)⁹³ was published in July 2004 and makes the following points:

⁹¹ **National Audit Office** (June 2004) *Improving the speed and quality of asylum decisions*. London: Audit Office. Available at http://www.nao.org.uk/publications/nao_reports/03-04/0304535.pdf [accessed 23 July 2004].

⁹² Available at http://www.ind.homeoffice.gov.uk/ind/en/home/0/reports/second_annual_report.html [accessed 23 July 2004].

⁹³ **Mary Coussey** (July 2004) *Annual Report 2003/4 of the Independent Race Monitor* Available at [http://www.ind.homeoffice.gov.uk/ind/en/home/0/reports/second_annual_report.Maincontent.0002.file.tmp/JP543%20\(Annual%20Report%202003%20final\).pdf](http://www.ind.homeoffice.gov.uk/ind/en/home/0/reports/second_annual_report.Maincontent.0002.file.tmp/JP543%20(Annual%20Report%202003%20final).pdf) [accessed 23 July 2004].

- caseworkers may become cynical and 'case-hardened' from over-familiarity with applicants from certain nationalities. This may be reflected in the higher rates of success amongst nationals from Somalia, Eritrea and Zimbabwe at the appeal stage;
- there is a need for an independent element in moderating decisions; monitoring for disparities in initial decision rates; and examination of the reasons for high allowed appeals for certain nationalities;
- training in decision-making is on too narrow a basis, creating a risk that caseworkers' decisions could become standardised and simplistic;
- training would benefit from a much greater input on evidence, its nature, how to distinguish observed facts from opinion and hearsay, and the evaluation of evidence; what weight to give to different sources, to inconsistencies and to the country information and other material.

Political considerations

It has been argued that the asylum determination process can be affected by political factors such as the diplomatic relationship between the United Kingdom and the asylum seeker's country of origin. One example of this is the case of Dr Muhammed Al-Massari who fled Saudi Arabia and claimed asylum in the UK. In 1996, the government attempted to remove Dr Al-Massari to Dominica after the Saudi government threatened economic retaliation should the UK grant Dr Al-Massari's request for political asylum. The appeal courts ruled against the government in this case.

- For examples of this, refer to the [navigation guide to Colombian refugees and asylum seekers](#) (page 21).
- For examples of this, refer to the [navigation guide to lesbian, gay, bisexual and transgender refugees and asylum seekers](#).

Country information

The quality of country information held by the government is also of concern to many NGOs. The government was asked to consider the creation of an independent country of origin documentation centre during debates on the Nationality, Immigration and Asylum Bill 2002. [Its opinion](#)⁹⁴ on this was most clearly expressed by Lord Filkin, the minister responsible for the bill in the House of Lords on 10 July 2002. The act did not set up an independent country of origin documentation centre, but provided for an [advisory panel](#)⁹⁵ of 10-20 people to revise and make recommendations to the Home Secretary on the content of Home Office produced country of origin information.

There is still an ongoing debate about establishment of an independent documentation centre for the provision of country of origin information. Many NGO observers feel that such a centre would increase the actual (and perceived) objectivity of the country information made available to decision-makers. They have also argued that there would be fewer disputes at the appeal stage about the reliability and accuracy of information between the appellant and the respondent.

⁹⁴ Hansard Columns 798 – 800. Available at <http://www.parliament.the-stationery-office.co.uk/pa/ld199697/ldhansrd/pdvn/lds02/text/20710-30.htm> [accessed 23 July 2004].

⁹⁵ Website at http://www.ind.homeoffice.gov.uk/ind/en/home/0/country_information/advisory_panel_on.html. [accessed 23 July 2004].

Advocates and academics have suggested that the UK should learn from the Canadian model of using an independent board to determine asylum applications. The mission of [the Immigration and Refugee Board of Canada](#) (IRB),⁹⁶ an independent tribunal established by the Parliament of Canada is 'on behalf of Canadians, to make well-reasoned decisions on immigration and refugee matters, efficiently, fairly, and in accordance with the law.' A paper detailing how this would work has been put to the UK government by Guy Goodwin-Gill, professor of international refugee law.

Despite criticisms of the current provisions for obtaining country information, observers have also acknowledged that the establishment of an independent documentation centre would be challenging because the centre would need sufficient resources to produce good quality products. If the government was to provide this funding, then the centre would be open to criticisms of bias.

The Research, Development and Statistics Directorate (a section of the Home Office) has produced a major piece of research on the use of Country Information Policy Unit (CIPU) products. The report suggests ways in which better quality information can be obtained and highlights the main ways in which the CIPU reports can be more effectively used by immigration officers and caseworkers in the decision-making process.⁹⁷ The Immigration Advisory Service has also produced a report that questions the reliability and accuracy of the country information produced by the Home Office.⁹⁸ A recent [report](#) issued by the National Audit Office (June 2004)⁹⁹ recommends that the Home Office should update its country information more regularly.

- For an example of the limits of country information, refer to the [navigation guide on lesbian, gay, bisexual and transgender refugees and asylum seekers](#).

Non-compliance

There has been a rise in the number of rejections on non-compliance grounds in recent years. This is a technicality which includes failure to attend an asylum interview, to report to be fingerprinted, to complete an asylum questionnaire, or to comply with a requirement to report to an Immigration Officer. This usually means that although there is a right to appeal against the refusal, the substance of the claim is not considered in depth at the initial decision stage. Refusal on non-compliance grounds reached its height in 2000 with 24,290 asylum applications (25%) refused on this basis, compared to just 1,085 in 1999 (5%). Non-compliance refusals constituted 18% of all decisions made in 2001, and 15% of decisions made in both 2002 and 2003.

⁹⁶ Website at <http://www.irb-cisr.gc.ca/index.htm> [accessed 23 July 2004].

⁹⁷ Beverley Morgan, Verity Gelsthorpe, Heaven Crawley, and Gareth A. Jones (September 2003) *Country of Origin Information: A User and Content Evaluation*. Home Office Research Study 271. London: Home Office. Available at <http://www.homeoffice.gov.uk/rds/pdfs2/hors271.pdf> [accessed 23 July 2004].

⁹⁸ Immigration Advisory Service Research and Information Unit (February 2004) *Home Office Country Assessments: An Analysis*. London: IAS. A press release and extract of the report are available at http://www.iasuk.org/C2B/document_tree/ViewADocument.asp?ID=86&CatID=6 [accessed 23 July 2004]

⁹⁹ National Audit Office (June 2004) *Improving the speed and quality of asylum decisions*. London: Audit Office. Available at http://www.nao.org.uk/publications/nao_reports/03-04/0304535.pdf [accessed 23 July 2004].

Useful resources

Asylum Aid (1995) *'No Reason at All': Home Office Decisions on Asylum Claims*. London: Asylum Aid.

Asylum Aid (1999) *'Still No Reason at All': Home Office Decisions on Asylum Claims*. London: Asylum Aid. Available at <http://www.asylumaid.org.uk/Publications/Still%20No%20Reason%20At%20All.PDF>.

Asylum Rights Campaign (1996) *The Risks of Getting it Wrong: the Asylum and Immigration Bill Session 1995/6 and the Determination of Special Adjudicators*.

Alice Bloch (2000) 'A New Era or More of the Same? Asylum Policy in the UK'. *Journal of Refugee Studies* 13 (1), pp. 29-42

Heaven Crawley (1999) *Breaking Down the Barriers: A report on the conduct of asylum interviews at ports*. London: Immigration Law Practitioners' Association.

Guy Goodwin-Gill (2002) *An Independent Refugee Board for the United Kingdom*. (Contact the [Immigration Advisory Service](#) for copies).

IRSS, Home Office (March 2001) *Bridging the Information Gaps: A Conference of Research on Asylum and Immigration in the UK*. London: Home Office. Especially chapter entitled 'Workshop 2: Asylum and Appeals in the UK'. Available at <http://www.homeoffice.gov.uk/rds/pdfs/irssconf21301.pdf>.

Law Society (June 2000) *Report on results from Law Society questionnaire to CLS contracted suppliers on asylum seekers and completion of SEFs*. London: Law Society.

Trine Lester (September 2000) 'Access to legal services for asylum-seekers in Britain: an exploratory study of recent developments'. Sussex Migration Working Paper No. 1. Available at http://www.sussex.ac.uk/migration/publications/working_papers/mwp1.pdf.

Medical Foundation (2000) *Caught in the Middle: A Study of Tamil Torture Survivors Coming to the UK from Sri Lanka*. London: Medical Foundation.

National Audit Office (June 2004) *Improving the speed and quality of asylum decisions*. London: Audit Office. Available at http://www.nao.org.uk/publications/nao_reports/03-04/0304535.pdf.

Louise Pirouet (2001) *Whatever Happened to Asylum in Britain? A Tale of Two Walls*. Oxford Berghahn.

Refugee Council (1995) *Beyond Belief: The Home Office and Nigeria*. London: Refugee Council.

Harriet Sergeant (2001) *Welcome to the Asylum*. The Centre for Policy Studies with The Chameleon Press.

Prakash Shah (1998) 'Immigration and Judicial Review'. In Trevor Buck (ed.) *Judicial Review and Social Welfare*. Pinter.

Ellie Smith (2004) 'Right First Time?'. *Medical Foundation for the Care of Victims of Torture*. London: The Medical Foundation for the Care of Victims of Torture.

Max Travers (1998) 'Recognising the Refugee: An Analysis of Judicial Decision-Making in the British Immigration Courts'. Paper presented at Socio-Legal Studies Association Conference, 1998.

Immigration and Refugee Board, Canada

<http://www.cisr-irb.gc.ca/index.htm>

[All URLs accessed 23 July 2004]

Legal representation

Concern has also been raised about asylum seekers' lack of access to good quality legal advice and representation. This is partly due to the recent policy of dispersing asylum seekers to various parts of the UK, and due to the lack of specialist immigration advisers in these areas. Asylum seekers may also have difficulties determining which firms are reliable and have the expertise to help prepare a good case. Poor, or no, representation will obviously place an applicant at a disadvantage and can result in a case being refused.

Regulation

The proliferation of unscrupulous asylum solicitors in the UK has been somewhat remedied by the 1999 Immigration and Asylum Act which required legal advisers to be registered with the Office of the Immigration Services Commissioner ([OISC](#)).¹⁰⁰ Giving immigration advice without being registered is a criminal offence, punishable on indictment with imprisonment for up to two years. Nevertheless, some observers have argued that good quality legal advice and representation is still limited due to a lack of resources and qualified professionals in the field.

Publicly funded work

The legal aid costs of providing advice and representation in immigration and asylum work (including judicial reviews) have risen from £81.3m in 2000-2001 to £129.7m in 2001-2002 and £174.2m in 2002-2003.¹⁰¹ In June 2003, the Department for Constitutional Affairs (DCA) published [proposals](#)¹⁰² to limit the amount of time that will be funded by the [Legal Services Commission](#) (LSC)¹⁰³ in asylum and immigration cases and began consultation on this issue. Observers, such as the Law Society, the Refugee Council and Refugee Legal Centre have commented that the government's desire to limit expenditure on legal aid should be

¹⁰⁰ Website at <http://www.oisc.org.uk/home.stm> [accessed 23 July 2004].

¹⁰¹ **Department of Constitutional Affairs** (June 2003) Proposed changes to publicly funded immigration work. Available at <http://www.dca.gov.uk/consult/leg-aid/asylum.htm> [accessed 23 July 2004].

¹⁰² Available at <http://www.dca.gov.uk/consult/leg-aid/asylum.htm> [accessed 23 July 2004].

¹⁰³ Website at <http://www.legalservices.gov.uk>.

replaced with an emphasis on 'front-loading' of resources: ensuring good initial quality decision-making and thereby reducing the need for costly appeals and reviews.

The House of Commons Constitutional Affairs Committee launched an enquiry into these proposals and produced a critical [report](#) in October 2003.¹⁰⁴ The report highlights concerns that the measures may have a negative impact on the quality of representation offered to asylum seekers. Similar concerns were raised by legal professionals and NGOs. They highlighted the fact that the Home Office and courts look unfavourably upon an applicant's claim or appeal if they do not raise all of the information that is relevant to their case at the earliest opportunity, and expressed concern that if representatives were constrained by the pressures of funding limitations, it would be difficult for them to ensure that all of the relevant facts are outlined in the initial application. This is especially true if clients are traumatised or if there are linguistic and cultural barriers that make it difficult to obtain information. Law firms also expressed concern about the amount of their time that is taken up with negotiations with the LSC over funding issues and observed that this pressure detracted from the amount of time that they have available to dedicate to their clients.

On 27 November 2003, a [ministerial statement](#) was made which presented the new proposals.¹⁰⁵ (No primary legislation is needed to implement the changes). The statement proposed the following:

- A new five-hour *threshold* for preparing asylum cases up to the initial Home Office decision. Solicitors will only be able to exceed the threshold with prior permission of the LSC on a case-by-case basis. This was implemented in May 2004.
- Legal advisers have to obtain permission from the LSC to carry out any appeal work. Decisions will be made on an individual basis, and a financial threshold will be awarded if the LSC approves funding.
- All lawyers and caseworkers doing legally aided asylum work now have to be accredited. This was introduced in April 2004 and will be compulsory by April 2005.
- A unique client number will be introduced with the intention of reducing duplication of work. This was introduced in April 2004.

On 1 April 2004, the [Community Legal Service \(Scope\) Regulations 2004](#) came into force.¹⁰⁶ These regulations remove legal aid provision for representation at Home Office interviews of:

- of unaccompanied minors;
- of those going through fast-track initial decision-making processes;
- of those with a verifiable mental incapacity;
- at a police station or conducted under PACE 1984;
- of those alleged to pose a threat to national security.

¹⁰⁴ House of Commons Constitutional Affairs Committee (October 2003) *Immigration and Asylum: the Government's proposed changes to publicly funded immigration and asylum work. Volume 1. Fourth Report of Session 2002 - 2003*. HC 1171 – I.

Available at <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmconst/1171/1171.pdf> [accessed 23 July 2004].

¹⁰⁵ Available at http://www.publications.parliament.uk/pa/cm200304/cmhansrd/cm031127/wmstext/31127m09.htm#31127m09.html_sb_hd3 [accessed 23 July 2004].

¹⁰⁶ Available at <http://www.legislation.hmso.gov.uk/si/si2004/draft/20048947.htm> [accessed 23 July 2004].

The Refugee Legal Centre produced a [briefing](#) on these regulations,¹⁰⁷ which includes examples of formal complaints and/or further representations made by the RLC following an Home Office asylum interview, which 'could not have been made but for representation at the interview'.

The Legal Services Commission (LSC) has the power to vary the financial threshold up or down for individual firms whose track record justifies this. The LSC also continues to allow a limited number of firms with a good track record on appeal cases to exceed the limited number of hours' advice that they can provide without seeking prior authority. Nonetheless, many law firms indicated that it would become incredibly difficult, if not impossible, to provide a quality service or even to continue to operate in the asylum field once the proposals were implemented, and several firms have withdrawn from publicly-funded immigration work as a result.

The LSC currently decides whether or not a High Court or Court of Appeal case is meritorious, and this determines whether or not funding will be granted. Without public funding, most asylum seekers are unable to obtain legal representation. Because of this, legal advisers have observed that, in effect, LSC representatives have the power to decide how far a case can be pursued.

Useful resources

House of Commons Library (December 2003) Immigration and asylum: proposed changes to publicly funded immigration work. Research paper 03/89. London: House of Commons. Available at <http://www.parliament.uk/commons/lib/research/rp2003/rp03-089.pdf>.

Trine Lester (September 2000) 'Access to legal services for asylum-seekers in Britain: an exploratory study of recent developments'. Sussex Migration Working Paper No. 1. Available at http://www.sussex.ac.uk/migration/publications/working_papers/mwp1.pdf.

Louise Pirouet (2001) *Whatever Happened to Asylum in Britain? A Tale of Two Walls*. Oxford: Berghahn.

Prakash Shah (1998) 'Access to legal assistance for asylum seekers'. *Immigration and Nationality Law and Practice*, Vol. 9 No.2.

Nicola Smith (May 2001) *Safe in Scotland? Has the dispersal of asylum seekers to Glasgow influenced their chances of having their applications upheld? Report for the Cross Party Group on Refugees and Asylum Seekers*. Edinburgh: Amnesty International. Available at <http://www.amnesty.org.uk/images/ul/s/safeinscotland.pdf>.

Responses from interested parties on the consultation on publicly-funded asylum work:

ILPA's response

<http://www.ilpa.org.uk/submissions/ILPAsummarypubliclyfunded.html>

Refugee Council's response

http://www.refugeecouncil.org.uk/downloads/policy_briefings/legaid_response.pdf

Refugee Legal Centre's response

¹⁰⁷ Available at <http://www.refugee-legal-centre.org.uk/representation250304.doc> [accessed 23 July 2004].

<http://www.refugee-legal-centre.org.uk/DCA%20Consultation%20Paper%201208031.doc>

[All URLs accessed 23 July 2004]

Alternatives to the process of asylum determination

As the number of people claiming asylum has risen, various governments have questioned the capacity of their asylum determination procedures to cope with the large number of decisions that need to be made on a case-by-case basis. In Britain, a backlog of initial decisions and appeal decisions has built up over the last decade and one of the aims of the Immigration and Asylum Act 1999 was to try and reduce the waiting time by speeding up the decision-making process. However, the sheer volume of cases waiting to be dealt with is still of concern to the Home Office, and alternative forms of protection are under consideration both domestically and internationally.

Resettlement proposals

In his 'Lisbon Speech' Jack Straw, the then Home Secretary, called for an international debate about the possibility of alternative forms of protection for people fleeing persecution. He argued that Europe should consider a system of quotas. The idea is that each member state would agree to offer resettlement to a yearly quota of refugees identified by UNHCR.

The themes raised by Jack Straw were taken up by David Blunkett in the white paper *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*.¹⁰⁸ He proposed a UK resettlement programme as part of a global system providing solutions to refugee protection, which would operate in addition to the asylum determination process with the assistance of organisations like UNHCR, the Red Cross and the International Organisation for Migration (IOM). Subsequent legislation has activated this proposal.

- For more information on the resettlement programme, refer to the Applying for asylum from outside the UK section of this guide and the [navigation guide to refugee resettlement programmes in the UK](#).

Useful resources

For more information on what resettlement means and how UNHCR is involved, refer to the '[Protecting Refugees](#)' area of the UNHCR website at <http://www.unhcr.ch/cgi-bin/taxis/vtx/home?page=PROTECT&id=3b8366bc4>.

Details of the countries that currently operate resettlement quotas are provided by UNHCR in their 'Easy Guide on Refugee Resettlement Programmes', available at <http://www.unhcr.ch/cgi->

¹⁰⁸ Home Office (February 2002) *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*. Cm 5387. London: Home Office. Available at <http://www.official-documents.co.uk/document/cm53/5387/cm5387.pdf> [accessed 23 July 2004].

[bin/texis/vtx/home/+AwwBme1FyDewxwwwwwwwwwwwwFqzvxm_mXmX6hFqA72ZR0gRfZnTFqr72ZR0gRzFqmRbZAFqA72ZR0gRfZNDzmxwwwwwwwww1FqmRbZ/opendoc.pdf](http://www.fmrreview.org/FMRpdfs/FMR05/fmr5full.pdf).

Alice Bloch (1999) 'Kosovan Refugees in the UK: the Rolls Royce or Rickshaw Reception?' *Forced Migration Review* 5, August 1999. Available at <http://www.fmrreview.org/FMRpdfs/FMR05/fmr5full.pdf>.

ECRE (2000) *Reflection on the changing nature of resettlement and the impact upon the operational environment*. Speech at annual tripartite consultations on resettlement, Geneva, 3 –4 July 2000. Available at <http://www.ecre.org/speeches/resettle.shtml>.

Refugee Council (March 2002) *Principles for a UK Resettlement Programme*. Available at http://www.refugeecouncil.org.uk/downloads/policy_briefings/resettlement.pdf.

[All URLs accessed 23 July 2004]

Criticism of proposals

Advocates of refugee rights have responded cautiously to the idea of introducing a EU-wide quota system for the resettlement of refugees. The idea has been welcomed because it means that the demand for illegal forms of migration would be reduced, as would the risk incurred by individuals using these methods to make it into Europe. It has also been argued that proactively facilitating the arrival of refugees means that the opportunity to enjoy asylum in another country is opened up to those who would not otherwise have the means to travel to Europe and apply independently.

There is however some concern that the introduction of a quota system in Europe would encourage governments to restrict the right to spontaneously claim asylum. The European Council on Refugees and Exiles (ECRE) has written in depth on this issue, and also on the discussions and debates that are taking place within the EU on the resettlement of refugees.

Temporary Protection

The idea of resettlement is not entirely untested in the UK. To date, most people who have been awarded refugee status, exceptional leave to remain in the UK, humanitarian protection or discretionary leave, will have had to make an asylum or human rights application once they arrived in the country. There have however, been exceptions to this procedure in the past, and the UK has resettled ad-hoc quotas of refugees from Uganda, Chile, and Vietnam. The government has also provided temporary protection to refugees from Bosnia and, more recently, Kosovo.

- For more information, refer to the [navigation guide on resettlement programmes](#).

In his Lisbon speech, Straw indicated his desire for the international community to learn from the way in which the Kosovan refugees were assisted in 1999 by providing them with a temporary form of protection instead of long-term resettlement. The protection offered to them by the UK and other European governments fitted into a broader approach of humanitarian intervention and assistance. Again, refugee rights organisations have expressed ambivalence towards the desire of Western governments to promote

the use of temporary protection, which is increasingly becoming their preferred response for coping with large-scale refugee situations. On the one hand, it expands the protection for those individuals who cannot satisfy the criteria under the Refugee Convention; however, on the other hand, there is the fear that protection which is informal and discretionary means that it cannot be monitored and enforced in the same way that a refugee rights regime can.

Zones of protection

In March 2003, the Home Secretary, David Blunkett, announced a proposal for 'zones of protection'. There are two parts to this proposal. The first is the concept of '**Regional Protection Areas**' (RPA). This involves the development of protection zones near areas where there have been natural disasters or regional conflicts. These zones will provide accommodation and protection for fleeing populations until an appropriate time when the refugees, or internally displaced people, will be resettled back to their places of origin.

The second part is the creation of '**Transit Processing Centres**', (TPC). These zones would be located in countries outside of the EU, and the examples have included Albania and Russia. Asylum seekers arriving in the UK, or any other EU country, would be sent to these processing centres and detained while their claim was decided. It is also possible that asylum seekers intercepted en route would be sent to the centres. Successful applicants would be resettled within the EU on a 'burden-sharing basis'. Unsuccessful claimants would be either returned to their country of origin or given temporary protection until repatriation is possible. The proposal excludes the right to move judicial review of rejected asylum applications.

UNHCR proposal

Blunkett's scheme has been met with resistance and criticism. Rudd Lubbers, the High Commissioner for Refugees, responded to the British proposal by launching a 'counter proposal' closely associated with the ethos of both the 'Agenda for Protection' and 'Convention Plus'.

- For more information, refer to the section on The relevance of the Refugee Convention today.

The alternative UNHCR scheme is laid out in a working paper and is entitled 'UNHCR's three-pronged proposal'. The first prong to the proposal advocates regional solutions and the support of refugees in their original host states where this is accompanied by strengthened protection capacity. UNHCR observes that effective regional hosting would require increased support, in the form of finance and materials, from donor states. The agency also supports the promotion of voluntary repatriation, sustainable reintegration, the promotion of self reliance, and the expansion of resettlement programmes based on the principle of burden-sharing.

The second prong of the proposal suggests the establishment of closed reception centres, within the EU, where all asylum seekers making a claim in the EU will be transferred. 'Processing' would be conducted in accordance with commonly agreed procedures respecting international standards. First instance decisions would be taken promptly, and appeals could be handled in the form of simplified reviews. All persons found to be in need of international protection would be distributed fairly amongst member states, according to a pre-determined key that would take into account effective links, including family, educational, or cultural ties.

The last prong of the proposal advocates the introduction of a single asylum procedure in the EU. UNHCR also feels that there should be more investment in good quality legal advice and decision-making, a swift

return of asylum seekers who are rejected, and short time lines for first instance decisions. The agency has said that it would support the processing of asylum claims outside the EU for a limited number of applicants whose basis of claim was deemed to be 'manifestly unfounded', and these applicants would be given a chance to rebut this assumption.

- For more information, refer to the **UNHCR** working paper available at http://www.ecre.org/eu_developments/debates/unhcr3prong.DOC [accessed 23 July 2004].

UNHCR is concerned that the British scheme will be seen as a desire to off-load their responsibilities towards asylum seekers onto non-EU countries. Refugee rights groups have also been critical of the scheme.

EU response

At the EU summit in June 2003, the UK government discussed the proposals with other EU governments. The idea of transit processing centres was rejected and the concept of protection zones was not given official EU backing, but left to the individual countries to support if they wished.

The European Commission produced a document in June 2003 entitled '[Towards more accessible, equitable and managed asylum systems](#)'.¹⁰⁹ This document is a communication from the Commission to the European Council and Parliament and analyses the UK proposals. The Commission endorses the UK's analysis of the deficiencies in the present system, but urges caution in pursuing the proposed solutions. The House of Lords Select Committee on European Union Affairs has begun taking submissions from interested parties on the Commission document and the UK proposals and the Home Office has produced a [response](#) to the Commission's report.¹¹⁰

- For more information, refer to the section on the EU asylum policy and procedures.

Useful resources

B.S. Chimni (February 2000) [Globalisation, Humanitarianism and the Erosion of Refugee Protection](#). Refugee Studies Centre Working Paper No.3. Available at <http://www.rsc.ox.ac.uk/PDFs/workingpaper3.pdf>.

ECRE (March 1997) 'Position on temporary protection in the context of the need for a supplementary refugee definition'. Available at <http://www.ecre.org/positions/tp.shtml>.

ECRE (18 June 2003) 'Comments of the European Council on Refugees and Exiles on the Communication from the Commission to the Council and the European Parliament. Towards a more accessible, equitable and managed international protection regime'. (COM [2003] 315 final). Available at <http://www.ecre.org/statements/thessalstate.doc>.

ECRE (December 2003) *Complementary/Subsidiary Forms of Protection in the EU states: an overview*. Available at <http://www.ecre.org/research/ECRE%20Survey%20CFP%20-%20Dec.%202003.doc>.

¹⁰⁹ Available at http://europa.eu.int/eur-lex/pri/en/dpi/cnc/doc/2003/com2003_0315en01.doc [accessed 23 July 2004].

¹¹⁰ Available at http://www.homeoffice.gov.uk/n_story.asp?item_id=492 [accessed 23 July 2004].

Joan Fitzpatrick (April 2000) 'Temporary Protection of Refugees: Elements of a Formalized Regime' *American Journal of International Law* Vol.94 No.2.

James Milner (2000) *Sharing the Security Burden: Towards the Convergence of Refugee Protection and State Securities*. Refugee Studies Centre Working Paper No.4. Available at <http://www.rsc.ox.ac.uk/PDFs/workingpaper4.pdf>.

UNHCR (February 2001) *Global Consultations on International Protection - Protection of Refugees in Mass Influx Situations: Overall Protection Framework*. Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/+qwwBmsepEudwwwwwwOwwwwwwwhFqA72ZR0gRfZnTFqrpGdBngBAFqA72ZR0gRfZnCFq1RnMpdGwGOa7GdBngBodDMzmAwwwwwwDzmxwwwwww1FqmRbZ/opendoc.pdf>.

Jens Vedsted-Hansen (February 2002) *Complementary or Subsidiary Protection? Offering an appropriate status without undermining refugee protection*. New Issues in Refugee Research, UNHCR Working Paper No. 52. Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RESEARCH&id=3c7528894&page=publ>

Responses to proposed 'zones of protection':

Immigration Advisory Service's response
<http://www.icwi.org.uk/lawpolicy/uklaw/processasylumclaims.PDF>

Asylum Aid's response
http://www.asylumaid.org.uk/Press%20statements/zones_of_protection_0503.htm

Refugee Council's response
<http://www.refugeecouncil.org.uk/news/mar2003/relea109.htm>

Submissions to the House of Lords Select Committee:

Human Rights Watch (September 2003) 'New Approaches to the Asylum Process. Submission to the House of Lords, Select Committee on the European Union, Sub-Committee F (Social Affairs, Education and Home Affairs)'. Available at <http://hrw.org/backgrounder/eca/asylum-process.htm>.

Refugee Council (September 2003) 'Refugee Council's response to the House of Lords Select Committee on the European Union's enquiry into New Approaches to Asylum Process'. Available at http://www.refugeecouncil.org.uk/downloads/policy_briefings/lords_newapproaches.pdf.

Several academics have made proposals for a comprehensive restructuring of the European/international refugee protection regime:

Academic Group on Immigration – Tampere (AGIT) (1999) 'Efficient, effective and encompassing approaches to a European Immigration and Asylum Policy' *International Journal of Refugee Law*, 11.

Deborah Anker, Joan Fitzpatrick and Andrew Shacknove (1998) 'Crisis and Cure: A Reply to Hathaway/Neve and Schuck'. *Harvard Human Rights Law Journal* 11, pp.295-309.

James C. Hathaway and R. Alexander Neve (1997) 'Making International Refugee Law Relevant

Again: A Proposal for Collectivised and Solution-Oriented Protection'. *Harvard Human Rights Law Journal* 10, pp. 115-211

[All URLs accessed 23 July 2004]

Asylum and terrorism

The right to claim asylum in the UK is tempered by the state's concern with national security issues. The Refugee Convention does not explicitly mention terrorism, but does exclude people who have committed a crime against peace, a war crime, a crime against humanity, a serious non-political crime, or who have been guilty of acts contrary to the purposes and principles of the United Nations.

- For more information, refer to the section on Exclusion clauses.

International debates

In 2001, the Security Council adopted [resolution 1377](#),¹¹¹ which states that acts of international terrorism are contrary to the purposes and principles of the UN Charter. This resolution is likely to lead to increased use of exclusion clauses in domestic refugee determination procedures. NGOs have expressed concern that the lack of an internationally agreed definition may pave the way for asylum seekers to be automatically excluded if they are labelled as terrorists, despite the fact that the Convention gives specific circumstances under which someone may be lawfully excluded.

The events of 11 September 2001 re-ignited the international debate on how to deal with terrorism. The UN has a number of different conventions that addresses different forms of terrorism, such as airline threat and the taking of hostages, but an internationally recognised definition of terrorism has never been agreed upon and is an incredibly contentious issue.

A comprehensive convention on international terrorism has been under negotiation for more than ten years. Most articles of the drafts are completed, but there is still disagreement over how broadly the label 'terrorist' can be applied to self-determination movements and national armed forces. This draft convention requires governments to take appropriate measures, before granting asylum, to ensure that the asylum seeker has not engaged in terrorist activities. Negotiations over the comprehensive convention continue; and remain controversial. For an update on the process refer to a UN [press release](#) from 1 July 2004.¹¹²

Useful resources

Amnesty International (October 2001) 'United Nations General Assembly, 56th Session 2001, Draft Comprehensive Convention on International Terrorism: A Threat to Human Rights Standards'. Available at <http://web.amnesty.org/library/Index/ENGIOR510092001?open&of=ENG-369>.

¹¹¹ Available at <http://www.un.org/Docs/scres/2001/sc2001.htm> [accessed 23 July 2004]

¹¹² Available at <http://www.un.org/News/Press/docs/2004/I3073.doc.htm> [accessed 23 July 2004].

Human Rights Watch (October 2001) 'Human Rights Watch Commentary on the Draft Comprehensive Convention on Terrorism'. Available at <http://www.hrw.org/press/2001/10/terrorcom1017.htm>.

[All URLs accessed 23 July 2004]

European debates

In 2001, the EU Commission responded to the events of September 11 by producing a [working document](#)¹¹³ on the issue of 'the relationship between safeguarding internal security and complying with international protection obligations and instruments'.¹¹⁴ The purpose of this document is to facilitate discussion of this issue with the view to potential legislation in the medium to long term. An overview of the current international legal provisions that govern the exclusion of those not entitled to international protection is given. The working paper also looks at the actions that can be taken by national governments and the EU on this issue, and assesses the adequacy of the internal security-related provisions in EC legislation.

One of the issues prompting concern amongst commentators is that the Commission states that where there is prima facie evidence that a case falls within the scope of the exclusion clauses, then states should be entitled to channel such claims through an accelerated procedure. The concern is that the Commission does not provide any indication what the test for establishing whether someone falls prima facie under the scope of the exclusion clauses comprises of.

- For more information, refer to the section on Exclusion clauses.

Domestic legislation and debates

The current lacuna in international law has meant that national governments have implemented a plethora of domestic legislation that often offers a vague or generalised definition of terrorism. The UK's [Terrorism Act 2000](#)¹¹⁵ has important implications for asylum seekers and refugees. This piece of legislation introduced a new definition of terrorism, replacing that found in the 1973 Prevention of Terrorism Act. Previously terrorism was generally defined as violence with a political motivation but now it includes anyone serving a political, religious or ideological cause. Under the 2000 Act, terrorist activities not only include actions involving serious violence against a person or serious damage to property, but also the threat of such actions.

The act contains a power to issue a 'proscribed organisations order', which makes it illegal to become a member of, or support, 21 different groups in the UK. Two examples of these organisations are the PKK (Kurdish Workers Party) and the LTTE (The Liberation Tigers of Tamil Eelam), which have support in some parts of the Kurdish and Tamil asylum seeker/ refugee community in the UK.

The introduction of these pieces of legislation has sparked concern amongst those advocating for the rights of refugees and asylum seekers in the UK. There is concern, particularly since the Rehman ruling (see below), that these increasing powers to refuse asylum applications could be exercised in an arbitrary manner, based upon a subjective interpretation of the concept of terrorism (to serve political interests) and

¹¹³ Available at http://www.ecre.org/eu_developments/terrorism/safeguard.pdf [accessed 23 July 2004].

¹¹⁴ Available at http://www.ecre.org/eu_developments/terrorism/safeguard.pdf [accessed 23 July 2004].

¹¹⁵ Available at <http://www.hmso.gov.uk/acts/acts2000/20000011.htm> [accessed 23 July 2004].

that there will not be enough scrutiny of those decisions resulting in the exclusion of individuals deemed to be terrorists.

Some organisations have argued that a catch-22 situation may develop whereby an asylum seeker from a country such as Sri Lanka, is fleeing persecution because of their association or membership in a group that is deemed to be illegal in the UK. Thus, the very basis of their asylum claim may result in their exclusion from the asylum process. It is because terrorism can be interpreted in an extremely selective manner that some refugee advocates argue that the government will be swayed by diplomatic and political concerns when judging which groups are terrorist organisations, and that the interests of 'friendly countries' will be put before the interests of the individual in question. It is interesting to note that the governments of both Turkey and Sri Lanka have put pressure on the British state to prevent their respective diasporic communities from carrying out anti-state activities.

In the landmark case of [*Rehman v Secretary of State for the Home Department*](#) (1999) INLR 517,¹¹⁶ it was decided by the House of Lords that the Home Secretary was best placed to judge a threat to national security. Thus, in cases where the Home Secretary certifies that the disclosure of material would be contrary to the interests of national security, it is not possible to appeal a decision to refuse leave to enter the country.

The UK government has passed specific legislation to strengthen and expand the exclusion provisions within the Refugee Convention. Under the [Immigration and Asylum Act 1999](#),¹¹⁷ persons who are convicted terrorists are denied the opportunity of having their application for asylum heard. Also, an appeal against a negative asylum/human rights decision will not be allowed if the person's exclusion from the UK is in the interests of national security and if the decision was made on the basis of information that cannot be disclosed for reasons of national security. In these cases, there will be a limited right of appeal instead to the Special Immigration Appeals Commission (SIAC).

- For more information, refer to the section on Security risk.

The [Anti-terrorism, Crime and Security Act 2001](#),¹¹⁸ which was passed in the wake of the terrorist attacks on the US on 11 September 2001, widens the government's powers even further by broadening the definition of terrorism, and can prevent individuals who are suspected of terrorism from pursuing an asylum claim.

Part 4 of the 2001 Act also gives power to the immigration authorities to detain non-UK nationals suspected of international terrorism even if they have not been charged with any offence. The detention period is indefinite even if it has been found that the person cannot be removed because they are protected by Article 3 of the ECHR. Detention of an individual who cannot be removed is potentially in breach of the UK's obligations under Article 5 of the ECHR but the government announced that it was derogating from this article because there was a 'public emergency'. Part 4 of the Act has a sunset clause, which means that it automatically ceases to have effect in November 2006. In the meantime, Sections 21-23 of Part 4 Act have been renewed twice by parliament and currently continue until March 2005.

A number of men have been detained under the 2001 Act. Initially the Special Immigration Appeals Commission (SIAC) ruled that it was not lawful to detain only non-nationals as it was discriminatory, but the ruling was overturned by the Court of Appeal on 25 October 2002. This decision has now been appealed to

¹¹⁶ Available at <http://www.parliament.the-stationery-office.co.uk/pa/ld200102/ldjudgmt/jd011011/rehman-1.htm> [accessed 23 July 2004].

¹¹⁷ Available at <http://www.hmso.gov.uk/acts/acts1999/19990033.htm> [accessed 23 July 2004].

¹¹⁸ Available at <http://www.hmso.gov.uk/acts/acts2001/20010024.htm> [accessed 23 July 2004].

the House of Lords. At the end of December 2003, the Privy Council Review Committee, made up of members of both the House of Commons and the House of Lords, said the law should be replaced.

Various NGOs have criticised the press for drawing an association between asylum seekers, refugees and terrorism. NGOs and UNHCR have argued that terrorists are unlikely to use the 'asylum channel' in order to gain entry to the UK. This point has been reiterated in the European Commission's 2001 working document.

- For more information, refer to the navigation guide on [Algerian asylum seekers and refugees](#) (pages 21 and 35).

Useful resources

Joan Fitzpatrick (2002) 'Terrorism and migration'. The American Society of International Law Task Force on International Terrorism. Available at <http://www.asil.org/taskforce/fitzpatr.pdf>.

Monette Zard (2002) 'Exclusion, terrorism and the refugee convention'. *Forced Migration Review* 13 June 2002. Available at http://www.migrationpolicy.org/files/FMR_13_zard.pdf.

Several organisations have made commentaries on a number of the issues raised above.

ECRE (May 2002) 'ECRE comments on the Commission Working Document on the relationship between safeguarding internal security and complying with international protection obligations and instruments'. Available at <http://www.ecre.org/statements/security.shtml>.

Human Rights Watch (November 2001) 'Commentary on the Anti-Terrorism, Crime and Security Bill 2001'. Available at <http://www.hrw.org/background/eca/UKleg1106.htm>.

Refugee Council (January 2003) 'Briefing: asylum and terrorism – the facts'. Available at <http://www.refugeecouncil.org.uk/downloads/briefings/terrorism.pdf>.

Amnesty International and **Human Rights Watch's** commentaries on the UN's draft Convention on Terrorism are available at <http://www.ecre.org/terrorism/AI%20statement%20on%20UN%20draft%20Convention%20on%20International%20Terrorism.doc> and <http://www.hrw.org/press/2001/10/terrorcom1017.htm> respectively.

Lord Woolfe, the Lord Chief Justice, in a speech to the British Academy 'Human rights: have the public benefited?' on 15 October 2002 underlined the importance of the Human Rights Act and the safeguards it offers against provisions in the Anti-Terrorism Act. Available at <http://www.britac.ac.uk/pubs/src/tob02/index.html>.

The **Home Office's** advice and overview on terrorism issues is available at <http://www.homeoffice.gov.uk/terrorism>.

Liberty's overview of terrorism issues is available at <http://www.liberty-human-rights.org.uk/issues/terrorism.shtml>.

UN Action Against Terrorism website

<http://www.un.org/terrorism>

[All URLs accessed 23 July 2004]