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Navigation guide

Regional protection zones and transit processing centres

Kim Ward

Based on an original report by Miriam Anderson Cowen

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About the authors

This report, researched and written by Kim Ward, is based on an original report by Miriam Anderson Cowen drafted for ICAR in March 2004.

Kim has worked as a caseworker at a law firm in west London that specialises in immigration and asylum law. She has an MA in Political Science and Refugee Studies from York University, Toronto. She is currently working for ICAR as an Information Officer. Kim can be contacted at kim.ward@kcl.ac.uk.

Miriam Anderson Cowen has a BA in International Relations and Development Studies and a Masters in International Peace and Security from King's College London, specialising in the subjects of refugee law, migration and globalisation. Her interests remain focused on international politics, specifically asylum and immigration.

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Introduction

The aim of this guide is to provide the reader with a comprehensive overview of the **regional protection zones** and **transit processing centres** that have been proposed by the UK government as well as an exploration of the responses to these initiatives. Where appropriate, information on similar plans that have been suggested or implemented by different countries and organisations will be provided. 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.

About regional protection zones and transit processing centres

Regional protection zones (RPZs)¹ and **transit processing centres** (TPCs) were the two strands to the UK plans for extra-territorial protection.² They were gradually leaked by the British press from the beginning of 2003.³ The initial Home Office plans indicated that RPZs would be located in regions where there has been a natural disaster or regional conflict and would provide accommodation and protection for fleeing populations until an appropriate time when the refugees, or internally displaced people, would be resettled back to their places of origin.⁴

It was intended for TPCs to be located in countries close to the external borders of the European Union (EU). 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 was 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 was possible.⁵

Responses to the proposals

The announcement of these proposed initiatives prompted concern amongst refugee advocates and NGOs working in the refugee sector. They were also debated at the EU level. Some observers felt that the proposals should be understood against the backdrop of increasingly restrictive asylum legislation in the UK

¹ The terms 'regional processing zones' and 'regional processing areas' have been used interchangeably by the press, academics and the government.

² Extra-territorial protection shall be used as a reference to policies that have emanated from OECD countries that de-territorialise the processing of asylum claims and/or the provision of protection to refugees beyond the borders of the given nation-state or the EU. From **Betts, A.** (2003) 'The international relations of the "new" extra-territorial approaches to refugee protection: explaining the policy initiatives of the UK government and UNHCR' *Refuge*, 22 (1).

³ **Noll, G.** (2003) 'Visions of the exceptional: Legal and theoretical issues raised by transit processing centres and protection zones', working paper. Available at http://www.ecre.org/eu_developments/debates/noll_response_rev.pdf [accessed 29 October 2004]. A revised version is available in *European Journal of Migration and Law* 5 (3).

⁴ **Home Office** (March 2003) 'Home Secretary statement on Zones of Protection'. Press release, 27 March 2003. Home Office: London. Available at http://index.homeoffice.gov.UK/n_story.asp?item_id=424 [accessed 29 October 2004].

⁵ **Home Office** (March 2003) 'Home Secretary statement on Zones of Protection'. Press release, 27 March 2003. Home Office: London. Available at http://index.homeoffice.gov.UK/n_story.asp?item_id=424 [accessed 29 October 2004].

and saw the governmental proposals as an attempt to shirk its protection responsibilities under the Refugee Convention by keeping asylum seekers away from UK soil.⁶

The current situation

At the time of writing, the proposals had not been formally adopted by the EU as the UK government had hoped, and as a result the idea of TPCs has been shelved. The UK government is developing certain elements from the concept of RPZs. Despite the fact that the proposals are not being developed as initially envisaged, an understanding of the rationale behind them is integral to an appreciation of the direction in which the UK government is hoping to develop policy in the asylum field. It also enhances an understanding of the current debate on asylum within the European context. Additionally, the issues have recently re-emerged as a result of the public backing of the German and Italian governments of proposals to create TPCs.

⁶ This point will be explored in the 'Criticism of the UK proposals' section.

Context

The proposals

The history

In February 2003 a copy of a Cabinet Office and Home Office policy paper entitled *A new vision for refugees* was leaked to the press.⁷ This document was then revised and informally circulated at the beginning of March 2003.⁸ On 10 March, Tony Blair wrote to the European Presidency asking that a short discussion on the UK proposals take place at the Brussels European Council. The revised policy document was attached to this letter under the title [New international approaches to asylum processing and protection](#)⁹. These were also leaked to the press. On 27 March 2003 the Home Secretary, David Blunkett, issued a [statement](#)¹⁰ on the concept of zones of protection, once again with the new policy document attached.¹¹

New international approaches to asylum processing and protection¹²

The proposals detailed below are taken from this first official document released by the Home Office. It is important to note that the UK proposals have been developed and modified since their initial release. Where appropriate these developments are explored throughout the guide.

[New international approaches to asylum processing and protection](#) provides context to the proposals by stating that the European Union cannot carry on pursuing old solutions to the asylum problem and that the European governments need to show their citizens that the asylum policy is not just a gateway for uncontrolled migration. Blunkett acknowledges the benefits of a common European asylum policy (CEAS), but also states that alternative methods need to be pursued in order to reduce the number of asylum seekers. He emphasises the need to work with UNHCR and the European Commission in order to implement the proposals and states that the government is building upon the work that UNHCR has done on updating the Refugee Convention (a process that is termed as 'Convention Plus').

- For more information refer to the section on 'UNHCR and "Convention Plus"'.

⁷ The article that first referred to governmental plans to introduce regional protection zones is entitled 'Safe havens plans to slash asylum numbers' and was written by Seumas Milne and Alan Travis. It appeared in the Guardian on 5 February 2003 and is available at <http://society.guardian.co.uk/asylumseekers/story/0,7991,889116,00.html> [accessed 16 November 2004].

⁸ Noll, G. (2003) 'Visions of the exceptional: Legal and theoretical issues raised by transit processing centres and protection zones', working paper. Available at http://www.ecre.org/eu_developments/debates/noll_response_rev.pdf [accessed 29 October 2004]. A revised version is available in *European Journal of Migration and Law* 5 (3).

⁹ Available at http://www.refugeecouncil.org.uk/downloads/policy_briefings/blair_newvision_report.pdf [accessed 16 November 2004].

¹⁰ Home Office (March 2003) 'Home Secretary statement on Zones of Protection'. Press release, 27 March 2003. Home Office: London. Available at http://index.homeoffice.gov.uk/n_story.asp?item_id=424 [accessed 29 October 2004].

¹¹ 'Zones of protection' is the term used to describe the two-stranded approach of focusing more on regional intervention and implementing 'transit processing zones'.

¹² Home Office (March 2003) 'Home Secretary statement on Zones of Protection'. Press release, 27 March 2003. Home Office: London. Available at http://index.homeoffice.gov.uk/n_story.asp?item_id=424 [accessed 29 October 2004].

The premise

The stated premise of the proposals is that the current global system is failing for a number of reasons including:

- support for refugees is badly distributed, with asylum seekers who make it to Europe frequently receiving support and legal services costing in excess of \$10,000 a year, whereas UNHCR spends an average of only \$50 a year on each refugee or other 'person of concern' around the world;
- the current asylum-seeking system usually requires those fleeing persecution to enter the West illegally, often paying criminal organisations many thousands of dollars;
- between half and three quarters of those claiming asylum in Europe do not meet the criteria of full refugees, whereas according to UNHCR there are 12 million genuine refugees in the world, most of whom stay in their own regions;
- individual countries experience rapidly fluctuating and unmanaged intakes of asylum seekers and refugees, often resulting in poorly resourced responses and public concern about the numbers of unfounded claims; and
- because of these failures, public support for asylum is falling across the developed world.¹³

The aims

The general aims of the proposals are to contribute towards a better management of the asylum process globally, to reduce unfounded asylum applications,¹⁴ and to provide a more equitable process for 'genuine' refugees. The specific aims are to strengthen the external borders of the European Union (EU), and to tackle the causes of migration in source countries. The Home Secretary emphasises the need to develop a system in which the vast majority of migrants who come to Europe do so through legal channels, including refugee resettlement routes.¹⁵ He wants to tackle the illegal routes and the involvement of criminal gangs in the transportation of asylum seekers to the UK. The proposals are designed to complement the developing European-wide approach to asylum.

- For more information refer to the section on the 'The EU context'.

Regional intervention

The need to work on regional intervention is emphasised in the document. Four possible avenues are suggested:

- an increased focus on poverty reduction through the use of development assistance, including better conflict prevention in areas of instability and improved assistance to UNHCR and others in responding to emerging crises;
- the provision of managed resettlement routes from source regions to Europe in a way that avoids agencies being inundated with applications for resettlement in Europe;

¹³ These points are taken from Home Office (March 2003) *New international approaches to asylum processing and protection*. Home Office: London. Available at http://index.homeoffice.gov.uk/n_story.asp?item_id=424 [accessed 16 November 2004].

¹⁴ The reduction of asylum applications is presumably partly a result of the deterrent effect that is expected from processing applications outside of the EU.

¹⁵ Resettlement involves the transfer of refugees from their country of asylum to a third country that has already agreed to admit them and provide them with formal status. Refer to <http://www.unhcr.ch> for more information.

- raising awareness of state responsibility to accept returns; and
- the provision of better protection in source countries so that the incentive to move on to Europe is reduced.¹⁶

This last idea is referred to as the development of **regional protection areas** (RPAs). The document explores whether protection in the regions should and could reach a level where people could be moved from Europe to protected areas while their claims are being processed.¹⁷

Transit processing centres

TPCs are intended to deter 'those who enter the EU illegally and make unfounded asylum applications'.¹⁸ The idea is that those arriving to claim asylum in EU member states would be transferred to centres located beyond the borders of the EU. The document suggests that the centres could be managed by the International Organization for Migration (IOM), using a screening system approved by UNHCR and finance provided by the participating states.

Those awarded refugee status would then be resettled in participating member states on a 'burden-sharing' basis, and those applicants whose claims were unsuccessful would be returned to their country of origin. Individuals who could not be returned to their country of origin due to safety concerns could be given temporary status in the EU until the situation improved. It is also suggested that illegal migrants intercepted en route to the EU before they had lodged an asylum claim but where they had a clear intention of doing so could be sent to these centres.

It is undecided whether this process should apply to all or only certain categories of unfounded asylum applicants. However, the Home Office envisages that there will always be certain categories of people, such as disabled persons or minors, who would never be sent to a transit centre.

It is interesting to note how the ideas have been developed from the initial proposal. In the first version of *A new vision for refugees*, the suggestion was that asylum seekers would be moved to 'safe havens' where they would be given temporary protection and after six months a 'UNHCR-type body' would process cases.

Support for the proposals

Dutch and Danish backing of the UK proposals emerged at the inter-governmental conference (IGC) held between 2-4 April 2003. On 23 April, Denmark hosted the third meeting of a mini IGC on asylum, refugee and migration policies in Europe, North America and Australia, which resulted in a memorandum drafted by the Danish Ministry of Refugee, Immigration and Integration Affairs.

¹⁶ These points are taken from Home Office (March 2003) *New international approaches to asylum processing and protection*. Home Office: London. Available at http://index.homeoffice.gov.uk/n_story.asp?item_id=424 [accessed 16 November 2004].

¹⁷ Home Office (March 2003) *New international approaches to asylum processing and protection*. Home Office: London. Available at http://index.homeoffice.gov.uk/n_story.asp?item_id=424 [accessed 16 November 2004].

¹⁸ As defined in Home Office (March 2003) *New international approaches to asylum processing and protection*. Home Office: London. Available at http://index.homeoffice.gov.uk/n_story.asp?item_id=424 [accessed 16 November 2004].

Danish memorandum

The 'Danish memorandum' is the outcome of informal discussions between the UK, Dutch, and Danish governments and looks at the ways in which the proposals could become operational. The term 'regional protection area' is replaced with 'regional protection zone' (RPZ) and more detail on this proposal is provided.

The memorandum states that RPZs should provide a guarantee of non-refoulement, physical protection, and an appropriate level of social protection. Resettlement programmes are also identified as a necessary component of a protection zone. Individual asylum determination procedures are not seen as a necessity, and the possibility of recognising applicants on a group basis is discussed.¹⁹

The term TPC is retained and defined as 'a closed reception centre processing asylum applications. It would be located outside the destination state'.²⁰ It is proposed that only nationalities with a 'high rejection rate' would be sent to TPCs. It is noted that the determination procedure at the TPCs would not have to be identical to current national asylum procedures, as long as it were in accordance with the standards adopted by UNHCR. A proposal is outlined where destination countries would process the initial claims at the TPC and a review of the decision would be conducted by UNHCR. A screening process would determine if spontaneous arrivals were to be returned to 'protection zone' countries, processed in TPCs, or processed as ordinary asylum procedures in the destination country.²¹

The document also emphasises the need to establish pilot projects and readmission agreements between the destination state and the host country before the plans can be implemented.

Prior proposals

In 1986 Denmark presented a draft resolution to the UN General Assembly proposing the use of regional processing centres run by the UN in order to administer resettlement. The draft failed to gain support and the idea was discarded.

In 1993 the Netherlands proposed the idea of regional reception and it was placed on the agenda for the 1994 inter-governmental conference. The proposal was outlined in a speech made by the then Dutch State Secretary of Justice, Aad Kosto. His speech detailed a process whereby 'all asylum seekers would be sent back to reception centres in their own region of origin for the processing of their claims'.²²

In the second half of 2002, the Danes began to promote the idea of 'reception in the region', which was developed in the form of regional protection zones by the UK government.

¹⁹ Noll, G. (2003) 'Visions of the exceptional: Legal and theoretical issues raised by transit processing centres and protection zones', working paper. Available at http://www.ecre.org/eu_developments/debates/noll_response_rev.pdf [accessed 29 October 2004]. A revised version is available in *European Journal of Migration and Law* 5 (3).

²⁰ Noll, G. (2003) 'Visions of the exceptional: Legal and theoretical issues raised by transit processing centres and protection zones', working paper. Available at http://www.ecre.org/eu_developments/debates/noll_response_rev.pdf [accessed 29 October 2004]. A revised version is available in *European Journal of Migration and Law* 5 (3).

²¹ Noll, G. (2003) 'Visions of the exceptional: Legal and theoretical issues raised by transit processing centres and protection zones', working paper. Available at http://www.ecre.org/eu_developments/debates/noll_response_rev.pdf [accessed 29 October 2004]. A revised version is available in *European Journal of Migration and Law* 5 (3).

²² Noll, G. (2003) 'Visions of the exceptional: Legal and theoretical issues raised by transit processing centres and protection zones', working paper. Available at http://www.ecre.org/eu_developments/debates/noll_response_rev.pdf [accessed 29 October 2004]. A revised version is available in *European Journal of Migration and Law* 5 (3).

EU response to the proposals

In March 2003 the UK proposals were noted by the European Council in Brussels. The Commission was invited to explore these ideas further, in particular with UNHCR, and to report to the European Council meeting in June 2003.²³ The proposals were also presented at a meeting of the informal EU Justice and Home Affairs Council on 28 March 2003 where it was agreed that the UK and its partners would produce a "worked up set of proposals" in time for the June 2003 European Council in Thessaloniki.²⁴

The Commission's response

The Commission produced its response to the UK proposals on 3 June 2003 in a document entitled *Towards more accessible, equitable and managed asylum systems*.²⁵ It highlights the need for further clarification on certain issues, including:

- Would the proposed procedures compliment or substitute the current system?
- Are TPCs and RPZs compatible with EU legislation, national legislation, the legislation of the envisaged countries hosting such centres or zones, and the European Convention on Human Rights?
- By which procedural rules would TPCs be governed?²⁶

The Commission outlines ten basic premises that should underpin any new approaches to the international protection regime:

- the need to fully respect the international legal obligations of member states, in particular the full and inclusive application of the 1951 Refugee Convention, the non-refoulement principle, and the European Convention on Human Rights;
- the most effective way of addressing the refugee issue is by reducing the need for refugee movements;
- the legal entry of third country nationals into the EU for employment (skilled, unskilled and seasonal labour) and/or family reunification purposes will assist in discouraging migrants from using the asylum channel for non-protection related reasons;
- illegal immigration should continue to be combated;
- any new approach should be built upon a genuine burden-sharing system, both within the EU and with host third countries, rather than shifting the burden to them;
- any new approach to improving the management of asylum in the context of an enlarged Europe should build upon existing EU policy objectives such as protected entry schemes and resettlement programmes;

²³ **European Council** (2003) *Conclusions of the Presidency: 20 and 21 March 2003*. Bulletin 24.03.2003. Brussels: European Council. Available at http://www.europarl.eu.int/summits/pdf/bru041_en.pdf [accessed 16 November 2004].

²⁴ **Noll, G.** (2003) 'Visions of the exceptional: Legal and theoretical issues raised by transit processing centres and protection zones', working paper. Available at http://www.ecre.org/eu_developments/debates/noll_response_rev.pdf [accessed 29 October 2004]. A revised version is available in *European Journal of Migration and Law*, 5 (3).

²⁵ **Commission of the European Communities** (June 2003) *Towards more accessible, equitable and managed asylum systems. Communication from the Commission to the Council and the European Parliament*. Commission of the European Communities: Brussels. Available at http://www.ecre.org/eu_developments/debates/comUKcomm.pdf [accessed 16 November 2004].

²⁶ **Commission of the European Communities** (June 2003) *Towards more accessible, equitable and managed asylum systems. Communication from the Commission to the Council and the European Parliament*. Commission of the European Communities: Brussels. Available at http://www.ecre.org/eu_developments/debates/comUKcomm.pdf [accessed 16 November 2004].

- any new approach should be complementary to the common European asylum system;
- discussions of new approaches should not result in delaying the present negotiations on the common European asylum system;
- new initiatives should be in line with the global, UNHCR-steered 'Agenda for Protection' and 'Convention Plus' initiatives; and
- current financial strategies should remain in place.²⁷

Three specific policy objectives are identified:

- the orderly and managed arrival of persons in need of international protection in the EU from the region of origin;
- burden- and responsibility sharing within the EU as well as with regions of origin, enabling them to provide effective protection as soon as possible and as closely as possible to the needs of persons seeking international protection; and
- the development of an integrated approach to efficient and enforceable asylum decision-making and return procedures.²⁸

The Commission concludes the paper by observing that the UK proposals are timely and link well to the 'Agenda for Protection' and 'Convention Plus' initiatives instigated by UNHCR. It also accepts the premise that there are problems with the current asylum system and welcomes the UK analysis of these problems. However, it notes that the UK proposals do not build upon and complement the policies already agreed upon in the first phase of the developing common European asylum system, and states that any new approach to the international protection regime should first and foremost not result in shifting, but in genuinely sharing the asylum burden.

The report also outlines UNHCR's response to the proposals and the views of non-governmental organisations.

- For more information refer to the section on 'UNHCR's three prong model' and 'Criticisms of the UK proposals'.

Thessaloniki summit

At the end of June 2003, a UK delegation pitched the idea of TPCs and RPZs to fellow member states at the European summit in Thessaloniki. The UK government was hoping that these ideas would be endorsed and developed by the European Union. However, the delegation met with strong resistance, particularly from Sweden, Germany, and France and especially on the issue of TPCs.²⁹ The ideas were not endorsed and the presidency conclusions for the meeting make it obvious that the Council eschewed the proposal of TPCs by making the following comments on the Commission's report *Towards more accessible, equitable and managed asylum systems*:

²⁷ Commission of the European Communities (June 2003) *Towards more accessible, equitable and managed asylum systems. Communication from the Commission to the Council and the European Parliament*, p. 11-13. Commission of the European Communities: Brussels. Available at http://www.ecre.org/eu_developments/debates/comUKcomm.pdf [accessed 16 November 2004].

²⁸ Commission of the European Communities (June 2003) *Towards more accessible, equitable and managed asylum systems. Communication from the Commission to the Council and the European Parliament*, p. 13. Commission of the European Communities: Brussels. Available at http://www.ecre.org/eu_developments/debates/comUKcomm.pdf [accessed 16 November 2004].

²⁹ Refugee Council (September 2003) 'International Protection Project update'. London: Refugee Council. Available at http://www.refugeecouncil.org.UK/downloads/publications/ipp_update/sept03.pdf [accessed 16 November 2004].

'The European Council takes note of the Communication from the Commission, which is focussing on more accessible, equitable and managed asylum systems, and invites the Commission to explore all parameters in order to ensure more orderly and managed entry in the EU of persons in need of international protection, and to examine ways and means to enhance the protection capacity of regions of origin with a view to presenting to the Council, before June 2004 a comprehensive report suggesting measures to be taken, including legal implications. As part of this process the European Council notes that a number of member states plan to explore ways of providing better protection for the refugees in their region of origin, in conjunction with UNHCR. This work shall be carried out in full partnership with the countries concerned on the basis of recommendations from UNHCR'.³⁰

The Council displays interest in developing the concept of regional protection, but focuses on managing the entry of asylum seekers into the EU rather than replacing these routes with an alternative system.

- For more information about UNHCR's recommendations see the section on 'UNHCR's three prong model'

'Improving access to durable solutions'³¹

The Thessaloniki summit of June 2003 resulted in a request by the Council for a detailed report from the European Commission on the managed entry to the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin. The resulting report was entitled *Improving access to durable solutions* and was produced in June 2004.

The main conclusions and recommendations of the report are presented under headings and are as follows:

Orderly and managed entry into the EU for persons in need of international protection

- The Commission proposes the eventual setting up of an EU-wide resettlement scheme. A general procedural framework on resettlement is suggested. This could form the basis for individually tailored, situation-specific schemes which would have greater flexibility than an annual programme with a set number of places to be allocated.
- Resettlement is seen as complementary and member states still have an obligation to determine asylum claims. The Commission emphasises flexibility and recommends setting targets rather than quotas. It is suggested that the EU takes some special responsibility for vulnerable groups.
- The potential challenges of designing the selection criteria for resettlement are highlighted, as is the need to iron out the proposals in this area.
- The need for orientation programmes as a feature of an EU resettlement scheme is noted.

³⁰ **European Council** (2003) *Presidency Conclusions - Thessaloniki European Council, 19 and 20 June 2003*. Brussels: European Council. Available at http://europa.eu.int/futurum/documents/other/oth200603_en.pdf [accessed 16 November 2004].

³¹ **Commission of the European Communities** (June 2004) 'Communication from the Commission to the Council and the European Parliament on the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin – "*Improving access to durable solutions*". Brussels: European Commission. Available at http://www.europa.eu.int/comm/justice_home/doc_centre/asylum/seekers/doc/com_2004_410_en.pdf [accessed 16 November 2004].

- There is a suggestion that funding could come from the European Refugee Fund.³²
- The Commission does not recommend the setting up of an EU-protected entry procedure mechanism. This is because there is disagreement amongst member states on this issue.³³

Enhancing the protection capacity of regions of origin

The Commission provide an overview of the work that has been carried out by the EU on enhancing protection capacity. The Commission's previous communication on integrating migration issues in EU relations with third countries, which was released in December 2002, is highlighted.³⁴ This communication comments that the burden on the developing countries that host large refugee populations is often exacerbated by the limited capacities of those countries. It also observes that humanitarian assistance is not sufficient to address the needs arising from protracted refugee situations and, accordingly, it is important to address initiatives that link relief, rehabilitation, and development.

The Commission highlights the following areas that need to be looked at when assessing and developing the protection capacity of a host country:

- accession and adherence to refugee instruments, including regional refugee instruments and other human rights and international humanitarian law treaties;
- adoption and/or amendment of asylum and refugee legislation in national legal frameworks;
- registration and documentation of asylum seekers and refugees;
- admission and reception of asylum seekers and refugees; and
- support for self-reliance and local integration.³⁵

The Commission suggests that the personal circumstances of the person who requires protection must be considered in relation to five basic principles:

- life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group, or political opinion;
- the principle of non-refoulement in accordance with the Geneva Convention is respected;
- the right to freedom from torture and cruel, inhuman or degrading treatment is respected as well as the prohibition of removal to such treatment;

³² The European Refugee Fund was set up to help member states receive asylum seekers, refugees and displaced persons. It is due to operate under its present form until December 2004. For more information visit http://europa.eu.int/comm/justice_home/funding/refugee/wai/funding_refugee_en.htm [accessed 16 November 2004].

³³ Protected entry procedures are described by Noll as being operated from the platform of diplomatic representations and allow a non-national to approach the potential host state outside its territory with a claim for asylum or another form of international protection. There is a mechanism for applicants to be granted an entry permit in the cases where a full, or preliminary investigation finds that there are protection needs. Noll, G. (2003) 'Visions of the exceptional: Legal and theoretical issues raised by transit processing centres and protection zones', working paper. Available at http://www.ecre.org/eu_developments/debates/noll_response_rev.pdf [accessed 29 October 2004]. A revised version is available in *European Journal of Migration and Law* 5 (3).

³⁴ European Commission (2002) *Integrating migration issues in the European Union's relations with third countries – The December 2002 Communication*. Brussels: European Commission.

³⁵ **Commission of the European Communities** (June 2004) 'Communication from the Commission to the Council and the European Parliament on the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin – "Improving access to durable solutions"', p. 15. Brussels: European Commission. Available at http://www.europa.eu.int/comm/justice_home/doc_centre/asylum/seekers/doc/com_2004_410_en.pdf [accessed 16 November 2004].

- the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention; and
- the possibility exists to live a safe and dignified life taking into consideration the relevant socio-economic conditions prevailing in the host country.³⁶

The Commission suggests that a financial scheme is used to fund projects that enhance the protection capacity of the country or region concerned. It recognises the need for long-term planning on this issue and that developments in this field will be incremental.

EU regional protection programmes

These programmes are suggested by the Commission and would be made up of an agenda of actions and projects on asylum and migration in partnership with third countries in the region. They would provide a tool-box comprising a range of measures. Examples might include support provided to third countries in developing their ability to provide protection; a registration scheme for the better management of people needing protection; cooperation on legal migration; and agreement on returns to third countries. It is envisaged that UNHCR would play a central role in the development of these programmes. It is also suggested that the Commission take charge of drawing up a pilot regional protection programme and proposes that the relevant Council groups are presented with a 'plan of action' by July 2005.

Chronology of the European discussion

February 2003 – The Cabinet Office and Home Office paper *A new vision for refugees* is leaked to the press.

10 March 2003 – Prime Minister Blair writes to EU President Simitis requesting that a discussion of improved management strategies of asylum processes be put on the European Council agenda for 23 March 2003. The document *New international approaches to asylum processing and protection* is attached to the letter.

23 March 2003 – The UK proposals are noted and the Commission is asked to explore these ideas and report back at the European Council meeting in Thessaloniki in June 2003.

27 March 2003 – David Blunkett issues a statement on the concept of 'zones of protection'.

2-4 April 2003 – The proposals are presented to the Full Round IGC as a discussion paper.

7 April 2003 – The proposals are discussed and expanded at the sixth meeting of the EU Immigration and Asylum Committee in Brussels.

23 April 2003 – Denmark hosts a mini IGC dedicated to the discussion of the UK proposals.

3 June 2003 – The Commission produces its response to the UK proposals, entitled *Towards more accessible, equitable and managed asylum systems*.

19-20 June 2003 – The UK proposals are presented at the European summit in Thessaloniki. The Commission is invited to explore how asylum systems could be better managed and regional protection developed. The UK proposals are not taken up.

February 2004 – The UK government announces that it is working on developing regional protection arrangements.

³⁶ **Commission of the European Communities** (June 2004) 'Communication from the Commission to the Council and the European Parliament on the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin – "Improving access to durable solutions"', p. 16. Brussels: European Commission. Available at http://www.europa.eu.int/comm/justice_home/doc_centre/asylum/seekers/doc/com_2004_410_en.pdf [accessed 16 November 2004].

4 June 2004 – The Commission produces the report requested at the Thessaloniki summit, entitled *Improving access to durable solutions*.

July 2004 – The German government suggests to the EU the idea of establishing processing camps in North Africa where asylum seekers can apply for refugee status and have their claim determined within the camp instead of travelling to Europe.

August 2004 – The Italian Commissioner, Rocco Buttiglione, backs the German plan.

October 2004 – The German-Italian plan is presented to a meeting of the G5 EU nations in Florence.

UNHCR's three-prong model

An appreciation of UNHCR's perspective on extra-territorial protection is vital to understanding the development of the UK proposals. On 17 March 2003 Ruud Lubbers responded to the UK proposals by presenting a counter-proposal to a meeting in London hosted by the UK government.³⁷ The counter proposal is a three-prong model and covers:

- o solutions in the region;
- o improved domestic asylum procedures; and
- o the processing of asylum cases that are likely to be unfounded in EU-operated closed reception centres within EU borders.³⁸

At the end of March, a more detailed breakdown of the proposal was presented to an informal meeting of the EU Justice and Home Affairs Council at the same time as the UK proposals were pitched.

In May 2003, just before the European Summit in Thessaloniki, Ruud Lubbers released a signed [editorial](#)³⁹ on the issue of refugee protection in Europe. In this editorial he underlines the three-pronged approach adopted by UNHCR and expands on the objective of developing solutions for refugees in their region of origin:

'Unilateral actions by a single state, or even a small club of states, will not bear fruit unless they are acceptable to other countries, particularly developing countries that host huge refugee populations, sometimes for decades. These countries will need to be convinced that the richer states will share the economic, social and political burdens imposed by large movements of refugees. If they feel the rich states are only interested in passing the buck back to them, they will not cooperate. The amount spent on supporting refugees in their regions of origin is woefully inadequate. Little wonder that refugees - genuine refugees - lose hope and head towards Europe. Their original hosts, with inadequate financial support, are unlikely to encourage them to stay.'⁴⁰

Lubbers calls for more support for refugees to be provided by donor states in the form of development assistance. The idea of processing asylum claims from countries where they are likely to be unfounded in

³⁷ Noll, G. (2003) 'Visions of the exceptional: Legal and theoretical issues raised by transit processing centres and protection zones', working paper. Available at http://www.ecre.org/eu_developments/debates/noll_response_rev.pdf [accessed 29 October 2004]. A revised version is available in *European Journal of Migration and Law* 5 (3).

³⁸ This is in contrast to the UK proposals that advocate the processing of claims beyond European borders.

³⁹ Lubbers, R. (May 2003) 'Op-ed by Ruud Lubbers, UN High Commissioner for Refugees.' Available at http://www.unhcr.org.UK/press/press_releases2003/prMay03op_ed.htm [accessed 29 October 2004].

⁴⁰ Lubbers, R. (May 2003) 'Op-ed by Ruud Lubbers, UN High Commissioner for Refugees.' Available at http://www.unhcr.org.UK/press/press_releases2003/prMay03op_ed.htm [accessed 29 October 2004].

reception centres within the EU is also proposed. It is suggested that 'the limited number of recognised refugees among them would be shared between the EU states'.⁴¹ He emphasises the need for a strict time limit for the entire process.

He also stresses the need for readmission agreements between the EU and the rejected asylum seekers' countries of origin to be reached before the process is put in motion so that people are not detained indefinitely because they cannot be removed. The necessity of locating the initiative within the borders of the EU is emphasised. This is so that reception centres would be bound by EU legal standards and the human rights of people being assessed would be safeguarded. Finally, he notes that more efforts need to be made to make domestic systems 'faster, fairer and more efficient'.⁴²

The UNHCR proposals⁴³

In June 2003, a UNHCR working paper⁴⁴ was published which presented the proposals in far more detail. In this document, the proposals are broken down into the domestic prong, the EU prong, and the regional prong.

The paper makes clear that while it is a contribution to the current debate in the UK, it also draws upon the analyses that were undertaken as part of the Global Consultation process and the experience derived from UNHCR's work.

The **domestic prong** involves the implementation and development of measures that have already been outlined by UNHCR.⁴⁵ The proposed measures include:

- o the rationalisation of asylum systems by introducing consolidated legislation and establishing a single procedure;
- o investment in good quality, first level decision-making by a single, central specialised agency;
- o admissibility procedures, preferably at points of entry and where relevant as a result of significant numbers of asylum applications;
- o specific short time lines for first instance decisions;
- o fast-track procedures;
- o exclusion units, where appropriate, for cases raising exclusion questions;
- o reducing levels and layers of appeal; and
- o swift enforcement of return.⁴⁶

⁴¹ Lubbers, R. (May 2003) 'Op-ed by Ruud Lubbers, UN High Commissioner for Refugees.' Available at http://www.unhcr.org.UK/press/press_releases2003/prMay03op_ed.htm [accessed 29 October 2004]

⁴² Lubbers, R. (May 2003) 'Op-ed by Ruud Lubbers, UN High Commissioner for Refugees.' Available at http://www.unhcr.org.UK/press/press_releases2003/prMay03op_ed.htm [accessed 29 October 2004]

⁴³ UNHCR (June 2003) 'UNHCR's three-pronged proposal', working paper. Available at http://www.ecre.org/eu_developments/debates/unhcr3prong.DOC [accessed 29 October 2004]

⁴⁴ UNHCR (June 2003) 'UNHCR's three-pronged proposal', working paper. Available at http://www.ecre.org/eu_developments/debates/unhcr3prong.DOC [accessed 29 October 2004]

⁴⁵ In UNHCR (2001) 'Asylum processes (fair and efficient asylum procedures)', Global Consultations on International Protection, 2nd meeting, 31 May 2001. Available at http://www.unhcr.ch/cgi-bin/texis/vtx/home/+dwwBme1zzd_wwwAwwwwwwhFqA72ZR0gRfZNIfrpGdBnqBAFqA72ZR0gRfZNcfq+E5Oc1MapGdqm55n5aeNVwoGawDmanhhoqonDBaw5Oc1MapGdqm1Gn5eZX3qmxwwwwww/openodoc.pdf [accessed 29 October 2004].

⁴⁶ UNHCR (June 2003) 'UNHCR's three-pronged proposal' Working paper, p. 9-10. Available at http://www.ecre.org/eu_developments/debates/unhcr3prong.DOC [accessed 29 October 2004]

The **EU prong** section of the paper proposes that all asylum seekers arriving in the EU would be transferred immediately to processing centres unless they were medically unfit or unaccompanied children. These centres would be located within and close to the current borders of the EU. Other proposals include:

- closed reception centres would provide accommodation and reception facilities in line with international and EU standards. Legal counselling and interpretation services should be provided and asylum seekers should remain in the centre for the duration of their case;
- the processing of claims would be in accordance with commonly agreed procedures respecting international standards. Appeals would be replaced by simplified reviews;
- the processing centres would require joint EU funding, possibly with funding from a special EU budget;
- returns of people found not to be in need of protection would be carried out by the EU and its member states and the responsibility would not solely lie on the state hosting the centre; and
- all persons found in need of protection would be distributed fairly amongst the member states and this process would take into account effective links, including family, educational, or cultural ties.⁴⁷

UNHCR envisages that if a joint EU mechanism is efficiently managed then it should (i) deter abuse of the asylum system, (ii) avoid burden-shifting in Europe, (iii) enhance burden-sharing in the EU and (iv) help towards developing a common European asylum system.⁴⁸

The following measures are identified under the **regional prong**:

- UNHCR is undertaking the analysis of gaps in the treatment of specific groups of refugees in selected countries. The results of this analysis should then be used to encourage host countries to address protection deficiencies and ensure that they, and UNHCR, are provided with the necessary financial and material support to carry out this work. Development assistance for refugees (DAR) should be built into responses to protracted refugee situations.
- Plans of action for dealing with targeted refugee groups could be developed. Such plans might include the active promotions of voluntary repatriation and sustainable reintegration; the strategic use of targeted development assistance, the promotion of self-reliance in refugees and multilateral commitments to expand resettlement options.
- Arrangements need to be made on resettlement criteria. Where there are strong links to the destination country and/or a large-scale influx of refugees in the country of first asylum, applications should be processed in the destination country.
- Readmission arrangements need to be in place so that effective protection is offered and targeted support provided.
- Co-operative international partnerships need to be developed and should build upon the existing programmes such as the voluntary return programme managed by the IOM.⁴⁹

⁴⁷ UNHCR (June 2003) 'UNHCR's three-pronged proposal' Working paper, p. 6-7. Available at http://www.ecre.org/eu_developments/debates/unhcr3prong.DOC [accessed 29 October 2004]

⁴⁸ UNHCR (June 2003) 'UNHCR's three-pronged proposal' Working paper, p. 7. Available at http://www.ecre.org/eu_developments/debates/unhcr3prong.DOC [accessed 29 October 2004]

⁴⁹ UNHCR (June 2003) 'UNHCR's three-pronged proposal' Working paper, p. 3-4. Available at http://www.ecre.org/eu_developments/debates/unhcr3prong.DOC [accessed 29 October 2004]

States are encouraged to give active consideration to Agenda for Protection and the Convention Plus initiatives and to use these mechanisms as a basis for implementing responses to the causes and effects of irregular migration and forced displacement.

The revised UNHCR proposals⁵⁰

A revised version of UNHCR proposals was released in December 2003. This was used as the basis of a presentation by the High Commissioner to the Justice and Home Affairs Council in January 2004. The intention of the revised document was to respond to developments at the EU level and to take into consideration the following:

- concerns of EU states on the borders of the EU, who are most likely to be affected by the implementation of Dublin II and Eurodac⁵¹;
- the priority of member states to return individuals not in need of international protection; and
- the longer term objective of creating a common European asylum system.

Accordingly, the document elaborates and builds upon the 'EU prong' proposal by recommending the following:

- Registration and pre-screening of applicants should be carried out at an EU level rather than at a national level.
- Member states should consider processing claims in EU reception centres when the number of transfers under Dublin II and Eurodac threatens to jeopardise the effective implementation of these instruments, when there are applications in several member states from countries that have a high rejection rate, and where there are applications in several member states that are particularly complex.
- Decision-making in the reception centres would lead to a uniform status for those in need of international protection that was valid throughout the EU.
- Eventually initial decisions would be made by an EU asylum agency and appeals decided by an independent EU asylum review board.
- Decision-making will be under a regular rather than an accelerated procedure.
- EU reception centres will generally be open. The idea is that there is an incentive for applicants to remain in reception centres while their cases are being decided because successful applicants will be settled throughout the EU and not just in the country where the reception centres are located.
- The proposals include a mechanism for a progressive shift from national to EU reception, processing, and settlement or return arrangements.⁵²

UNHCR and the UK proposals

Initially the Home Office tried to associate its proposals for extra-territorial protection with UNHCR. In *New international approaches to asylum processing and protection*, Blunkett observes that 'there is a lot of work

⁵⁰ UNHCR (2003) 'UNHCR working paper. A revised 'EU Prong' proposal'. Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/rsd/rsdocview.pdf?CATEGORY=RSDLEGAL&id=400e85b84&FILETYPE=pdf> [accessed 16 November 2004].

⁵¹ The Eurodac system 'was established by the European Union for the comparison of fingerprints of asylum applicants and illegal migrants. The system helps member states to track the movements of asylum seekers within the EU and helps to identify the states responsible for processing asylum claims.

⁵² It is emphasised that the settlement of those found in need of international protection should be done on a burden-sharing basis so that those countries on the external borders of the EU do not shoulder an undue burden.

to be done but I think that EU countries by working together with UNHCR can make real, lasting progress to benefit asylum seekers, their home countries and the European Union'.⁵³ However, UNHCR has distanced itself from the UK proposals, and on 20 June 2003 spokesperson Kris Janowski issued a press release which states that:

'In the run-up to the Thessalonika Summit, UNHCR's position has been widely misinterpreted, and we would like to set the record straight. UNHCR has NOT been talking about "zones of protection". We're not sure what this concept means exactly.'⁵⁴

Janowski emphasises that UNHCR is interested in removing the pressures on refugees to move from their country of origin and not in containing them.

- For more information on the relationship between the UK proposals and UNHCR's position refer to the section on 'Commonalities and differences between the proposals from the UK and UNHCR'.

The development of 'migration partnerships'

Due to the negative response to the TPCs proposal, the UK government seems to have shelved this element of the proposals.⁵⁵ However, the government does want to develop certain elements from the concept of RPZs and has been working with The Netherlands and Denmark to seek EU support for pilot projects.⁵⁶

In February 2004, the Prime Minister confirmed to the House of Commons that the UK government was in negotiations with the Tanzanian government on how they might process asylum claims nearer the country of origin.⁵⁷ The development of regional protection arrangements are now referred to as 'migration partnerships' by the government:

'Following Thessaloniki and pending the Commission's further proposals on a possible EU-wide approach to these issues, we have moved away from the idea of zones of protection and are now looking to develop migration partnerships with third countries in the region of origin. The aim of such partnerships is to reduce the pressure on our asylum system while facilitating UK assistance with refugee caseloads in the partner country.'⁵⁸

⁵³ Available at http://index.homeoffice.gov.UK/n_story.asp?item_id=424 [accessed 16 November 2004].

⁵⁴ Kris Janowski, UNHCR (2003) 'UNHCR asylum policy: setting the record straight'. Press briefing, 20 June 2003 Available at http://www.unhcr.org.UK/press/press_releases2003/pr20Jun03.htm [accessed 16 November 2004].

⁵⁵ Home Affairs Committee (January 2004) *Second report 13*, section 8 (international cooperation). Available at <http://www.publications.parliament.UK/pa/cm200304/cmselect/cmhaff/218/21813.htm> [accessed 16 November 2004].

⁵⁶ Home Affairs Committee (January 2004) *Second report 13*, section 8 (international cooperation). Available at <http://www.publications.parliament.UK/pa/cm200304/cmselect/cmhaff/218/21813.htm> [accessed 16 November 2004].

⁵⁷ Prime Minister's Questions, 25 February 2004. Available at http://www.britainusa.com/sections/other_show.asp?SarticleType=2&other_ID=552 [accessed 16 November 2004].

⁵⁸ European Standing Committee B (2004) 'Standing Committee debates: asylum systems', 21 April 2004, column 006. Available at <http://www.publications.parliament.UK/pa/cm200304/cmstand/eurob/st040421/40421s01.htm#end> [accessed 16 November 2004].

The government has confirmed that another key element in these migration partnerships is the identification and return of failed asylum seekers to the country in question.⁵⁹ The emphasis is very much on partnerships with individual countries at this stage rather than on 'regional zones'. However, there is a possibility that these individual arrangements may develop into a regional nexus.⁶⁰ Newspaper reports indicate that the Tanzanian government has now rejected the UK proposals and that there is a possibility that a 'migration partnership' may be developed with South Africa.⁶¹

Current international situation

Transit processing centres

The UK proposals for TPCs were rejected at the EU level in 2003, but they have recently returned to the EU asylum agenda. Although the German government did not initially support the idea of TPCs, in July 2004 the German Interior Minister, Otto Schilly, decided to revive the proposal. It has also been given backing by the Italian government.

The German Interior Minister advocates the processing of asylum seekers in centres in North Africa. The plan would involve intercepting potential asylum seekers before they enter EU territory. Italy has already signed an accord with Libya in July 2004 agreeing to mount joint sea, air and land patrols in order to intercept and interdict potential asylum seekers.⁶² The Italian government also has plans to establish centres in Libya that will process asylum applications, but it is not clear yet how these will actually operate.⁶³

They have also begun to return illegal migrants from the southern island of Lampedusa without assessing their asylum claims and protection needs. The potential asylum seekers have been returned to Libya. Libya in turn has been expelling individuals returned there by Italy.⁶⁴ These developments have been criticised by human rights groups.⁶⁵

The German-Italian plan was formally proposed at an EU justice and interior ministers meeting on 1 October 2004. While the UK, Poland, and Austria have voiced support for the plan, France, Sweden, and Spain have stated that the establishment of processing centres is an unacceptable development. As a result, the plans have not been adopted by the EU.

⁵⁹ **European Standing Committee B** (2004) 'Standing Committee debates: asylum systems', 21 April 2004, column 006. Available at <http://www.publications.parliament.UK/pa/cm200304/cmstand/eurob/st040421/40421s01.htm#end> [accessed 16 November 2004].

⁶⁰ **European Standing Committee B** (2004) 'Standing Committee debates: asylum systems', 21 April 2004, column 006. Available at <http://www.publications.parliament.UK/pa/cm200304/cmstand/eurob/st040421/40421s01.htm#end> [accessed 16 November 2004].

⁶¹ **Alan Travis and Ewen MacAskil** (2004) 'South African help sought on refugees', *The Guardian*, 26 February 2004. Available at <http://www.guardian.co.uk/guardianpolitics/story/0,,1156438,00.html> [accessed 16 November 2004].

⁶² **BBC News** (2004) 'Italy tackles Libya migrant route', *BBC Online*, 26 August 2004. Available at <http://news.bbc.co.uk/1/hi/world/europe/3600792.stm> [accessed 16 November 2004].

⁶³ **BBC News** (2004) 'Analysis: Italy Woos Libya', *BBC Online*, 8 October 2004. Available at <http://news.bbc.co.uk/1/hi/world/europe/3727218.stm> [accessed 16 November 2004].

⁶⁴ **BBC News** (2004) 'Italy seeks Libya immigrant deal', 7 October 2004. Available at <http://news.bbc.co.uk/1/hi/world/europe/3722480.stm> [accessed 16 November 2004].

⁶⁵ **Amnesty International** (2004) 'Italy: Human rights of refugees violated', 6 October 2004. Available at <http://www.amnesty.org.UK/news/press/15628.shtml> [accessed 16 November 2004].

In a separate plan, the European Commission and the Netherlands have agreed to finance five United Nations projects in North Africa to assist these countries with developing better systems for dealing with asylum seekers. The chosen countries are Mauritania, Morocco, Algeria, Tunisia, and Libya. UNHCR will assist with developing their asylum laws and training personnel dealing with asylum claims.

Protection in regions of origin

The targeting of development assistance (TDA) is one of UNHCR's priority issues in the Convention Plus process. The aim of TDA is to ensure that development assistance is more strategically targeted so that durable solutions for refugees can be supported by facilitating local integration and return.

UNHCR's framework for durable solutions provides methodological models for protection in regions of origin. When the focus is on the countries of origin and post-conflict situations, then the model of sustainable repatriation, reintegration, reconciliation and reconstruction – otherwise known as the '4Rs' – is drawn upon. When the focus is on countries of first asylum, then development assistance for refugees and development through local integration are used as models.⁶⁶ The idea is that the targeting of development aid will equip refugees with one of the three durable solutions: voluntary repatriation, local integration and resettlement.⁶⁷

TDA is being debated amongst a core group of states led by Japan and Denmark. This work is building upon bilateral initiatives developed in the context of the European debate on protection in regions of origin. The agreement between Italy and Libya is an example of this, as are the recent EU projects in North Africa and the attempts by the UK government to establish migration partnerships.

In 2003 Denmark developed a strategy for promoting durable solutions for refugees by integrating them in development programmes. This strategy has its own budget line under which UNHCR has presented a proposal to Denmark for work in Sri Lanka.⁶⁸

The EU has allocated money to co-operate with third countries in the area of migration. In 2002 it was agreed by the EU that it would explore the possibility of co-operating with geographical regions that were not covered by the migration action plans that had been developed by the Council. The aim of these plans is to give financial and technical aid to countries of origin or countries of transit in order to support their efforts in managing migratory flows, especially within the areas of migration management, international protection, and illegal immigration. A large portion of the funds went to finance measures under the EU return plan for Afghanistan.⁶⁹ The EU has also been used to fund UNHCR projects.

⁶⁶ For more information refer to http://www.unhcr.ch/cgi-bin/texis/vtx/protect/+wwwFqz6X_m+W8X+xFqz6X_m+W8X+mFqA72ZR0gRfZNhFqhT0NultFqrpGdBnqBzFq72ZR0gRAFqWdzmwwwwww1Fqr72ZR0gR [accessed 16 November 2004].

⁶⁷ UNHCR (various dates) 'Targeting of development assistance'. Available at http://www.unhcr.ch/cgi-bin/texis/vtx/doclist/+hwwBmeGIG4ewxwwwnwwwwwwFqz6X_m+W8X+mFqA72ZR0gRfZNhFqhT0NultFqrpGdBnqBzFqmRbZAFqA72ZR0gRfZNDzmwwwwww5Fq-luF40gRacoAnaetzbmc15mnVncdpMnDBeTGktqmRbZ [accessed 16 November 2004].

⁶⁸ UNHCR (2004) 'Issues paper on targeting of development assistance', 30 June 2004. Available at http://www.unhcr.ch/cgi-bin/texis/vtx/doclist/+hwwBmeGIG4ewxwwwnwwwwwwFqz6X_m+W8X+mFqA72ZR0gRfZNhFqhT0NultFqrpGdBnqBzFqmRbZAFqA72ZR0gRfZNDzmwwwwww5Fq-luF40gRacoAnaetzbmc15mnVncdpMnDBeTGktqmRbZ [accessed 16 November 2004].

⁶⁹ European Commission (2003) 'EU proposes financial and technical assistance to third countries in the field of migration and asylum', 11 June 2003. Available at http://europa-eu-un.org/articles/lt/article_2426_lt.htm [accessed 16 November 2004].

Resources on international developments on protection in regions of origin

UNHCR (June 2004) *Convention Plus: Issues paper on targeting of development assistance*. Draft. Geneva: UNHCR. Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=PROTECTION&id=40e408924&page=protect>.

Betts, A. (September 2004) *International cooperation and the targeting of development assistance for refugee solutions: Lessons from the 1980s*. Working Paper No. 107. Geneva: UNHCR. Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RESEARCH&id=415d0d982&page=research>.

[urls accessed 29 October 2004]

Key issues

The EU context

The UK proposals should be understood against the backdrop of the developing common European asylum system (CEAS). One of the reasons why the proposals were met with resistance at the EU level is because they did not build upon the policies already agreed upon in the first phase of the developing CEAS.

- For a more detailed breakdown of European asylum policies and procedures refer to ICAR's navigation guide on [UK asylum law and process](#).

This section offers an overview of the major developments in this field.

Treaty of Amsterdam⁷⁰

In 1997 the Treaty of Amsterdam (TOA) was agreed 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'.⁷¹ 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 – in other words by or before 1 May 2004.

Tampere

After the Treaty of Amsterdam came into force in May 1999, a special council meeting was convened in Tampere, Finland, in October of the same year. The [presidency conclusions](#)⁷² of this meeting committed states to:

- o 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;
- o partnerships with refugees' countries of origin which address human rights and development issues in these countries;
- o a more vigorous approach to integration which would grant refugees rights and obligations comparable to EU citizens; and
- o the development of a common asylum procedure.

Seville

After the meeting at Tampere, the EU began to negotiate a number of legislative instruments that set out minimum standards on asylum policies and procedures. In Seville in June 2002, developments in this area

⁷⁰ *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts* (1997). Luxembourg: Office for Official Publications of the European Communities. Available at <http://www.europarl.eu.int/topics/treaty/pdf/amst-en.pdf> [accessed 29 October 2004].

⁷¹ *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts* (1997: 8). Luxembourg: Office for Official Publications of the European Communities. Available at <http://www.europarl.eu.int/topics/treaty/pdf/amst-en.pdf> [accessed 29 October 2004].

⁷² Available at http://europa.eu.int/council/off/conclu/oct99/oct99_en.htm [accessed 23 July 2004].

were welcomed but it was observed that the programme agreed upon in Tampere needed to be speeded up. The [presidency conclusions](#)⁷³ of the Seville meeting are available on the ECRE website.

Common European asylum system

The first stage of a common European asylum system (CEAS) is to harmonise the 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](#))⁷⁴

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](#))⁷⁵

The Dublin II Regulation came into force in September 2003 and replaces the original Dublin Convention, which was not EU law. The main aim of the regulation is to determine which country has responsibility for an asylum claim, which is done by applying a hierarchy of criteria. The first step is to establish if the asylum seeker has family in any country of asylum, and if not then the country which allowed her/him into EU territory must be identified.

A common definition of who is a refugee or requires international protection and agreement on the rights and benefits attached 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](#))⁷⁶

The Procedures Directive was not adopted by the 1 May 2004 deadline, but a 'general approach' was agreed 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.

⁷³ Available at <http://www.ecre.org/seville/sevconc.pdf> [accessed 23 July 2004].

⁷⁴ Available at http://www.ecre.org/eu_developments/reception/recdirfinal.pdf [accessed 29 October 2004].

⁷⁵ Available at http://www.ecre.org/eu_developments/responsibility/dublinreg.pdf [accessed 29 October 2004].

⁷⁶ Available at <http://www.statewatch.org/news/2004/may/Dir-min-stan-proced.pdf> [accessed 29 October 2004]

UNHCR and 'Convention Plus'

Global Consultations

In late 2000 UNHCR launched the 'Global Consultations', which were designed to engage states in a dialogue about existing refugee protection mechanisms and ways in which they could be developed to meet contemporary needs. 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. The second track involved consultations on 'contentious areas' with governmental and non-governmental experts in a series of roundtables hosted by research institutions. Subjects under discussion in the third track were protection policy issues that are not covered by the Refugee Convention and took place within the framework of the Executive Committee of UNHCR.

Agenda for Protection

As a result of the Global Consultations, UNHCR produced the first edition of a document entitled *Agenda for Protection*⁷⁷ at the end of 2001. This was formally endorsed by the Executive Committee of the Programme of UNHCR at the end of 2002 and is the first comprehensive framework for refugee policy since the Geneva Convention of 1951. There are six main goals highlighted in the document. Goal 3, on 'sharing burdens and responsibilities more equitably and building capacities to receive and protect refugees', is the most relevant to the issue of regional protection.

- For more information on the Agenda for Protection, see ICAR's navigation guide to [UK asylum law and process](#).

The policy conclusions for goal 3 that relate most directly to the UK proposals on regional intervention are:

- UNHCR and individual states, in cooperation with NGOs, should develop and implement concrete models to strengthen protection capacities, based on best practice, in refugee-receiving countries and at regional level. These should also aim to reduce the need for asylum seekers and refugees to move on in an irregular manner by making protection available and generating solutions.
- In this regard, states should target financial and technical assistance in a manner that boosts the capacity of countries of first asylum to meet basic protection needs and to provide essential services, including education and vocational training.
- States should consider allocating development funds, or possibly a percentage thereof, to programmes simultaneously benefiting refugees and the local population in host countries.
- States and UNHCR should examine ways in which resettlement capacities can be enhanced.

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'.⁷⁸

⁷⁷ Available at http://www.unhcr.ch/cgi-bin/texis/vtx/home/+TwwBmSe_DTpwwwwwwwwwwwwwhFqA72ZR0gRfZNtFgrpGdBngBAFqA72ZR0gRfZncFq5wtnDmwaapGdBngBodDDzmxwwwwww1FqmRbZ/opensdoc.pdf [accessed 16 November 2004].

⁷⁸ UNHCR (2002) 'Lubbers proposes "convention plus" approach'. UNHCR press release, 13 September 2002. Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opensdoc.htm?tbl=NEWS&id=3d81dfcb4&page=news> [accessed 29 October 2004].

'Convention Plus' is a reference to UNHCR's current position on the Geneva Convention, which the organisation feels needs to be built upon and developed in order to deal with contemporary refugee flows.

UNHCR's aim is to 'improve refugee protection worldwide and to facilitate the resolution of refugee problems through multilateral special agreements. This will be achieved through a process of discussion and negotiation with states and other partners of UNHCR'.⁷⁹ The focus will be on the development of multilateral special agreements on the following three priority issues:

- the strategic use of **resettlement** as a tool of protection, a durable solution and a tangible form of burden-sharing;
- more effective **targeting of development assistance** to support durable solutions for refugees, whether in countries of asylum or upon return home; and
- clarification of the responsibilities of states in the event of **secondary movements** of refugees and asylum seekers, that is, when refugees and asylum seekers move, in an irregular manner, from an initial country of refuge to another country.⁸⁰

Other examples of extra-territorial protection and processing

The UK proposals for extra-territorial protection and processing build upon the precedents set by other countries. This section offers a brief outline of some of these examples.

Australia

The UK government has been directly inspired by the Australian government's 'Pacific solution' for refugees and asylum seekers. The catalyst for its development was the Tampa controversy in August 2001. The Tampa was a Norwegian freighter that rescued 438 people from a dilapidated Indonesian fishing boat off the coast of Australia's Christmas Island, which is in the Indian Ocean.⁸¹

Most of the people on the boat were Iraqi and Afghani asylum seekers. The Australian government refused permission for the boat and its human cargo to land anywhere in Australia. Instead, the asylum seekers were transported to the Pacific countries of Nauru and Papua New Guinea where they were detained in camps while their claims were processed.

The Australian government has funded the processing camps on Nauru and Papua New Guinea and provided the two countries with incentives to allow detention and processing facilities to be established on their territories. UNHCR conducted the status determination procedure for the initial group of asylum seekers from the Tampa and subsequent arrivals were screened by Australian immigration officials.

The Tampa incident gave the Australia government the momentum to push through laws in September 2001 to establish its 'Pacific solution', which is the term that has been used for the policy of processing asylum

⁷⁹ Available at <http://www.unhcr.ch>.

⁸⁰ UNHCR (2004) *Convention Plus at a glance* p.1. Geneva: UNHCR. Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/+gwwBmeZxYdewxwwwwwwwwwwhFqA72ZR0gRfZNIffqrpGdBnqBAFqA72ZR0gRfZNCfqqdDVnDBodDapc15Dzmxwwwwww1FqmRbZ/opensdoc.pdf> [accessed 29 October 2004].

⁸¹ **Amnesty International** (2002) 'Australia – Pacific: Offending human dignity - the "Pacific Solution"', 25 August 2002 (AI Index: ASA 12/009/2002). Available at <http://web.amnesty.org/library/print/ENGASA120092002> [accessed 16 November 2004].

applications offshore. Australia has continued to intercept and redirect boats that carry potential asylum seekers to Nauru, a practice known as interdiction. Hundreds of people continue to be detained on Nauru.⁸²

There have been a number of criticisms of the 'Pacific solution':

- The cost of asylum processing has gone up with '\$140 million, including \$72 million spent on establishing and running the two detention centres on Nauru, and \$42.5 million for the camp on Manus Island. Beyond this, \$26.5 million of "additional aid" has been allocated for Nauru in 2002–2003, to meet pledges made by then Defence Minister Peter Reith and Foreign Minister Alexander Downer to Nauru, in return for taking the asylum seekers'.⁸³
- Even when the asylum determination process is completed, recognised refugees have still been detained and there are lengthy delays in resettling them.⁸⁴
- Under Australian temporary visa conditions, even those recognised as refugees will not receive permanent status, but are instead granted a three-year temporary protection visa (TPV). This is because anyone arriving in the country without a valid visa is not eligible for permanent status. Refugees with TPV can apply for an extension of their visa or permanent residency after three years.
- The conditions of the camps are poor and the ones in Nauru do not provide the educational and welfare facilities that would be available to children in Australian detention camps.
- The constitutions of Nauru and Papua New Guinea prevent arbitrary detention from occurring and have explicit provisions providing for the right to a lawyer and for detainees to be brought before a court and charged with an offence requiring detention. These human rights have been denied to the detainees on Nauru and Manus Island.⁸⁵

The United States

Haitians

In 1981 the US entered into a bilateral agreement with the Haitian government, which enabled it to intercept boats outside US territorial waters carrying Haitians bound for the US. These Haitians were interviewed aboard the boats by US Immigration and Naturalization Service (INS) officers and a very small number were sent to the US to pursue formal asylum claims because they were deemed to have a 'refugee-like' fear.⁸⁶

⁸²UNHCR (2003) 'Nauru: hunger strike symptomatic of refugee despair', 19 December 2003. Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=3fe2dc394&page=news> [accessed 16 November 2004].

⁸³ Oxfam Community Aid Abroad (august 2002) 'Still drifting, Australia's Pacific Solution becomes a "Pacific nightmare"'. Available at http://www.oxfam.org.au/campaigns/refugees/still_drifting/still_drifting.pdf [accessed 16 November 2004].

⁸⁴ Amnesty International Australia (2002) 'Pacific: Offending human dignity - the "Pacific Solution"', 25 August 2002 (AI Index: ASA 12/009/2002). Available at <http://web.amnesty.org/library/print/ENGASA120092002> [accessed 16 November 2004].

⁸⁵ Oxfam Community Aid Abroad (august 2002) 'Still drifting, Australia's Pacific Solution becomes a "Pacific nightmare"'. Available at http://www.oxfam.org.au/campaigns/refugees/still_drifting/still_drifting.pdf [accessed 16 November 2004].

⁸⁶ Refer to the INS website for more information at <http://uscis.gov/text/aboutus/history/histmnth.htm> [accessed 16 November 2004].

From November 1991 until late May 1992, forced repatriations were suspended as a result of a law-suit against the government. The basis of this legal case was that the government did not have in place screening procedures sufficiently adequate to protect refugees from being returned to Haiti, which they asserted was a violation of the international law of non-refoulement.⁸⁷

During this period, Haitians intercepted at sea were taken to a camp at the US naval base at Guantánamo Bay, Cuba, where they were interviewed by INS officials to determine whether they had a credible fear of persecution on return. If they were judged to have a credible fear then they would be transferred to the US to pursue a formal asylum claim. In late May 1992, the policy changed and asylum seekers intercepted at sea were returned directly to Haiti.⁸⁸

In May 1994 the US changed its policy once again and Haitians who had been interdicted were screened at sea and about a third of them were allowed to enter the US to pursue asylum claims. By July of that year Haitians were no longer being screened and were instead taken to a 'safe haven' at Guantánamo Bay. Once the political situation changed in Haiti, a majority of Haitians were returned to their country from Guantánamo as there was no prospect of them receiving status in the US.

Cubans

The numbers of Cubans arriving spontaneously in the US rose dramatically in 1994 and in response to this, the government held Cubans who had been intercepted at sea by the US authorities at the military base in Guantánamo Bay. Initially the US government maintained that the Cubans were not able to apply for asylum in the US because Guantánamo did not constitute US territory. However, under a joint US-Cuban agreement, no one could be forcibly returned to Cuba, so the US government began to identify 'safe havens' for them in other countries in the region.⁸⁹

The US government underwent a change of policy and in October 1994 the White House announced that a few hundred of those being held in Guantánamo would be 'paroled'⁹⁰ into the US if they were in need of medical attention not available in the camps, were unaccompanied minors under the age of 18, or were over the age of 70.

The US government declared an end to the safe havens in May 1995 and in January 1996, the last Cubans and Haitians left the military base.

Criticisms

The main criticisms of the use of Guantánamo Bay to hold interdicted boat passengers are as follows:

⁸⁷ The principle of non-refoulement is that refugees should not be expelled or returned to territory where their life or freedom would be threatened.

⁸⁸ **Amnesty International** (1993) 'United States of America: Failure to protect Haitian refugees', 31 March 1993. Available at <http://www.amnestyusa.org/countries/usa/document.do?id=5006E86DE9B952DE802569A600602F92> [accessed 16 November 2004].

⁸⁹ **Amnesty International** (September 1994) 'Cuban 'rafters' – pawns of two governments' Available at <http://www.amnestyusa.org/countries/usa/document.do?id=7916C7D99ECA8040802569A600605620> [accessed 29 October 2004].

⁹⁰ Parole status is a temporary status for one year with the opportunity to apply for permanent residency at the end of that year.

- The US government has used the creation of a 'safe havens' as a way to obviate the need to grant potential asylum seekers the constitutional and international protection held by foreigners on US sovereign territory.⁹¹
- 'Safe havens' do not provide a long-term solution to refugee flows and keep refugees in an indefinite limbo.⁹²
- The 'screening processes' used by the United States to decide if asylum applicants should be transferred to the US to present their asylum claim in full are not comprehensive enough to meet international standards. Groups, such as the Haitians, should not be singled out from other asylum applicants and all applicants should be given adequate legal representation and access to an effective appeal process.⁹³
- The cost of up keeping the safe havens was too high.⁹⁴

Criticisms of the UK proposals

NGOs⁹⁵, academics⁹⁶ and a [Select Committee](#)⁹⁷ have all criticised the proposals at different stages of their development. For the sake of completeness, the criticisms of the RPZs and TPCs are both included here, despite the fact that the plans for TPCs have currently been abandoned. The main criticisms and concerns have been grouped together under themes.

- The resources used to identify the criticisms highlighted below are listed at the end of this section.

Ethics and motivations

- There is a concern that the motivation behind the proposals is to reduce the number of spontaneous asylum seekers rather than to develop a managed response to current asylum flow pressures. As a result, the emphasis is on restrictive policies rather than on taking the right to asylum and protection as a starting point. Long-term and durable solutions need to be developed and the root causes of migration need to be tackled.
- The development of resettlement programmes should not be at the expense of the right to seek asylum spontaneously. It would be preferable to devote resources to strengthening and

⁹¹ Gibney, M. and Hansen, R. (September 2003) *Asylum policy in the West: Past trends, future possibilities*. Discussion Paper No. 2003/68. Geneva: WIDER. Available at <http://www.ciaonet.org/wps/gim03/gim03.pdf> [accessed 16 November 2004].

⁹² Amnesty International (September 1994) 'Cuban 'rafters' – pawns of two governments' Available at <http://www.amnestyusa.org/countries/usa/document.do?id=7916C7D99ECA8040802569A600605620> [accessed 29 October 2004].

⁹³ Amnesty International (1993) 'United States of America: Failure to protect Haitian refugees', 31 March 1993. Available at <http://www.amnestyusa.org/countries/usa/document.do?id=5006E86DE9B952DE802569A600602F92> [accessed 29 October 2004].

⁹⁴ Secretariat Inter-Governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (August 1995) *Reception in the region of origin. Draft follow-up to the 1994 Working Paper*. Available at <http://fmo.qeh.ox.ac.UK/Repository/getPdf.asp?Path=Oxford/1610/10/13&PageNo=29> [accessed 16 November 2004].

⁹⁵ Examples include Amnesty and Human Rights Watch.

⁹⁶ An example includes Gregor Noll.

⁹⁷ House of Lords European Union Committee (April 2004) *Handling EU asylum claims: new approaches examined*. HL Paper 74. Available at <http://www.publications.parliament.uk/pa/ld200304/ldselect/lducom/74/74.pdf> [accessed 29 October 2004].

- accelerating procedures in the EU member states and ensuring high minimum standards at the EU level.
- One of the main criticisms of RPZs and TPCs is that the transfer of asylum seekers and the containment of refugees to poorer countries does not promote burden-sharing and is unprincipled. The fear is that in the case of RPZs countries of first asylum will have an increased responsibility for refugees when they do not have the resources to deal with this burden. In the case of TPCs the concern is that there will not be the support provided to meet increased demands on the countries chosen for the centres and they will find it as difficult to return unsuccessful asylum applicants as the UK does.
 - It would be unreasonable to send someone to a TPC when they are already in the UK legally and then become an asylum seeker due to a change of situation in their country of origin.

Negative consequences

- There is a concern that resettled refugees will be perceived as 'genuine refugees' and spontaneous asylum seekers will be automatically seen as 'bogus' without the content of their claim being examined.
- It is possible that the UK proposal will set a precedent, and other countries will use the example to justify closing their borders to refugee flows.

Human rights and legality

- A major concern of observers is that TPCs and RPZs do not have the same safeguards as national law. It is unclear which countries' legal system would apply either in TPCs or RPZs. The level of protection that applicants would be offered is not clearly defined and does not seem to cover human rights, other than Article 3 of the European Convention on Human Rights.⁹⁸ It is unclear how quality determination procedures would be maintained and monitored, effective legal representation provided, and a meaningful right to appeal upheld.
- Transferring asylum seekers to another state for the process of refugee determination was not the intention of the drafters of the Refugee Convention. There is also an argument that it is not possible for individual states to divest themselves of legal responsibilities for individuals who have claimed asylum in their territory.
- Asylum seekers should not be detained unless they have been charged with a criminal offence as this contravenes the European Convention on Human Rights.
- The overwhelming majority of the world's refugees are hosted by developing countries. There is evidence to show that refugee camps are unsafe and the conditions poor. These countries of first asylum do not have the capacity to safeguard the human rights of refugees on their territory and some have very poor human rights records themselves.

⁹⁸ Article 3 of the European Convention on Human Rights states that 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment'.

Effectiveness and practicality

- It would be costly, inhumane and difficult to orchestrate the involuntary transfer of thousands of applicants to TPCs every year and then to remove unsuccessful applicants to their countries of origin. The UK experience of removals has shown that it is a very difficult policy to actually implement.
- People are likely to be discouraged from claiming asylum and will be driven underground, including those applicants with well-founded claims.
- It will be difficult to find hosts for TPCs and RPZs, as countries will be apprehensive about the logistics of these schemes. It is likely that RPZs will attract large numbers of people hoping to be resettled, which will put a strain on resources. It is also likely that the large numbers of people in both schemes would attract people smugglers, traffickers, and organised crime.
- The costs of running the schemes are likely to be very high and much more than the current system of asylum determination.
- More resources need to be put in to resettlement programmes, as the logistics of resettling large numbers of refugees can be difficult.

Lack of clarity

It is difficult to track the UK position on TPCs and regional protection because there is no single document setting out the proposals in detail. Instead, different versions of the ideas have either been leaked through the press (sometimes as an unfinished version), as part of a memorandum, and in the form of written answers in parliament. The proposals have also been presented with varying levels of detail and have been criticised for their lack of clarity.⁹⁹ The areas where the proposals are most vague include:

- the way in which 'protection in the region' will guarantee effective protection, provide durable solutions, and address the management of asylum flows to the EU;
- whether asylum seekers will be removed to 'protection zones' and in what circumstances;
- whether the determination of unfounded asylum claims will be based on rejections rates of asylum claims and will take into account national rates or global rates of rejection;
- who will be responsible for protection in TPCs and which legal regime/safeguards would apply;
- how the proposals will be funded; and
- how individuals will be identified for resettlement in protection zones.

⁹⁹ 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> [accessed 29 October 2004].

Resources

Refugee Council (May 2003) *Unsafe havens, unworkable solutions*. London: Refugee Council. Available at http://www.refugeecouncil.org.UK/downloads/policy_briefings/unsafehav_lv_may03.pdf.

Amnesty International (June 2003) *UK/EU/UNHCR unlawful and unworkable - Amnesty International's views on proposals for extra territorial processing of asylum claims*. London: Amnesty International. Available at [http://web.amnesty.org/library/pdf/IO610042003ENGLISH/\\$File/IO6100403.pdf](http://web.amnesty.org/library/pdf/IO610042003ENGLISH/$File/IO6100403.pdf).

House of Lords European Union Committee (April 2004) *Handling EU asylum claims: new approaches examined*. 11th report of session 2003-04, HL Paper 74. Available at <http://www.publications.parliament.UK/pa/ld200304/ldselect/ldeucom/74/74.pdf>.

Betts, A. (2003) 'The international relations of the "new" extra-territorial approaches to refugee protection: explaining the policy initiatives of the UK government and UNHCR' *Refuge*, 22 (1).

Betts, A. (June 2003) 'The political economy of extra-territorial processing; Separating "purchaser" from "provider" in asylum policy.' *New Issues in Refugee Research*, Working Paper 91. Geneva: UNHCR. Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opedoc.pdf?tbl=RESEARCH&id=3efc0ea74&page=research>.

Noll, G. (2003) 'Visions of the exceptional: Legal and theoretical issues raised by transit processing centres and protection zones' Working paper. Available at http://www.ecre.org/eu_developments/debates/noll_response_rev.pdf.

Human Rights Watch (June 2003) *An unjust vision for Europe's refugees. Human Rights Watch commentary on the UK's 'new vision' proposal for the establishment of refugee processing centres abroad*. London: Human Rights Watch. Available at <http://www.hrw.org/backgrounder/refugees/UK/newvision.pdf>.

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>.

[all urls accessed on 29 October 2004]

Commonalities and differences between the proposals from the UK and UNHCR

As stated above, UNHCR has been keen to distance itself from the UK proposals for TPCs and RPZs. However, some organisations, such as Amnesty International, have been sceptical about UNHCR's attempts to distance themselves from the UK government and highlight the commonalities between the two approaches.¹⁰⁰

¹⁰⁰ **Amnesty International** (June 2003) *UK/EU/UNHCR unlawful and unworkable - Amnesty International's views on proposals for extra territorial processing of asylum claims*. London: Amnesty International. Available at [http://web.amnesty.org/library/pdf/IO610042003ENGLISH/\\$File/IO6100403.pdf](http://web.amnesty.org/library/pdf/IO610042003ENGLISH/$File/IO6100403.pdf)

Transit processing centres

Both the UNHCR and UK proposals work from the premise that the Refugee Convention does not require states to process claims in the country of application. The key difference is that while the UK proposals suggest processing all applicants outside of Europe, UNHCR advocates the processing only of claims that are likely to be unfounded *within* Europe.¹⁰¹

The UK government and UNHCR both envisage removing asylum applicants to TPCs on the basis that they are unlikely to have a well-founded claim.

Protection in regions of origin

Both the UK and UNHCR advocate better development assistance as an integral part of developing protection in regions of origin. UNHCR identifies countries of origin and post-conflict situations as well as countries of first asylum.

- For more information refer to section on the 'Current international situation'.

The UK government proposals on protection in the region of origin are far less comprehensive than those outlined by UNHCR, and it is unclear how much of UNHCR's work on this area is supported by the UK.

The need for readmission agreements is highlighted by both the UK and UNHCR.

When talking about regional protection, the UK government emphasises the need to contain or manage refugee flows. In contrast, UNHCR has emphasised the need to protect refugees in the region of origin but also acknowledges that these measures should aim to reduce the need for asylum seekers and refugees to move on. UNHCR has also quite clearly rejected the notion of 'zones' or 'areas'¹⁰² and instead supports 'capacity building' in the relevant regions – 'this notion of zones of protection is not what we mean when we talk about capacity building in a country and in regions'.¹⁰³ However, it is of note that the UK government has stated in a written answer that they are focusing less on zones of protection and more on capacity building.¹⁰⁴

Resettlement

Both the UK and UNHCR have advocated the use of resettlement programmes and it is one of the durable solutions identified by UNHCR.

¹⁰¹ **Betts, A.** (2003) 'The international relations of the 'new' extra-territorial approaches to refugee protection: explaining the policy initiatives of the UK government and UNHCR' *Refugee*, 22 (1).

¹⁰² **Lubbers, R.** (May 2003) 'Op-ed by Ruud Lubbers, UN High Commissioner for Refugees.' Available at http://www.unhcr.org.UK/press/press_releases2003/prMay03op_ed.htm [accessed 29 October 2004].

¹⁰³ **Select Committee, Sub Committee F** (October 2003) 'Memorandum submitted by UNHCR. Examination of Witnesses.' Uncorrected evidence of Erika Feller, Director, International Protection, UNHCR. Available at <http://www.publications.parliament.UK/pa/ld/lduncorr/euf2210.pdf> [accessed 29 October 2004].

¹⁰⁴ **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> [accessed 29 October 2004].

The UK government outlined its intention to establish a formal refugee resettlement programme in the white paper, *Secure Borders, Safe Haven*,¹⁰⁵ published in February 2002. The UK quota resettlement programme (known as the Gateway Protection Programme) was established to allow the UK, through 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.¹⁰⁶ The first group of refugees arrived in Sheffield, South Yorkshire, in March and April 2004. Around 70 individuals were settled at this time, consisting mainly of Liberians who had been living in refugee camps in Guinea-Conakry. Further groups of Liberian and Congolese refugees, including families from refugee camps in Uganda and Sierra Leone, were also resettled in autumn 2004.

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. They also undergo health and security screening before a decision is made. Caseworkers must be satisfied that the UNHCR criteria for resettlement are met. These criteria require that the applicant is deemed in need of 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 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.

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](#).¹⁰⁷

UNHCR's position

NGOs such as Amnesty International have criticised UNHCR for not resisting the UK proposals more wholeheartedly. Instead, they see the agency as a compliant partner in the drift towards the erosion of protection principles and of the refugee rights enshrined in the 1951 Convention.

¹⁰⁵ Home Office (2002) *Secure borders, safe haven: integration with diversity*. CM 5387. London: Home Office. Available at <http://www.official-documents.co.uk/document/cm53/5387/cm5387.pdf> [accessed 29 October 2004].

¹⁰⁶ UNHCR (2004) 'Easy guide on refugee resettlement programmes 2003/04'. Geneva: UNHCR. Available at [http://www.unhcr.ch/cgi-bin/texis/vtx/home/+AwwBme1FyDewxwwwwwwwwwwwwwwwFgzvxm_mXmX6hFqA72ZR0gRfZNIqRq72ZR0gRzFqmRbZAFqA72ZR0gRfZNDzmxwwwwwwwww1FqmRbZ/opendoc.pdf](http://www.unhcr.ch/cgi-bin/texis/vtx/home/+AwwBme1FyDewxwwwwwwwwwwwwFgzvxm_mXmX6hFqA72ZR0gRfZNIqRq72ZR0gRzFqmRbZAFqA72ZR0gRfZNDzmxwwwwwwwww1FqmRbZ/opendoc.pdf) [accessed 29 October 2004].

¹⁰⁷ Available at <http://www.icar.org.UK/content/res/nav/ng005/ng005-01.html> [accessed 29 October 2004].

In particular they criticise UNHCR for backing the transference of some classes of asylum seekers, already within the EU, out of the state where they requested the determination of their claims. They also criticise the detainment of asylum seekers in closed reception centres and the diminishment of procedural safeguards.¹⁰⁸ Much of the content of the criticisms echoes those levelled at the UK proposals.

A number of publications have underlined the difficulties that UNHCR has in trying to implement its mandate in an effective manner because of the lack of funding and political will from signatory states.¹⁰⁹ It has been argued that UNHCR has limited power and is responding to the debate by trying to negotiate a difficult balance between the will of states and the protection of refugees.¹¹⁰ 'Convention Plus' is seen by some as an exercise representing UNHCR's attempt to channel the desire of states to contain asylum flows into a protection framework.

¹⁰⁸ Amnesty International (2003) *UK/EU/UNHCR: Unlawful and unworkable – Amnesty International's views on proposals for extra-territorial processing of asylum claims*. Available at [http://web.amnesty.org/library/pdf/IOR610042003ENGLISH/\\$File/IOR6100403.pdf](http://web.amnesty.org/library/pdf/IOR610042003ENGLISH/$File/IOR6100403.pdf) [accessed 29 October 2004].

¹⁰⁹ Troeller, G. (2003) 'Refugees in contemporary international relations: reconciling state and individual sovereignty.' UNHCR Working Paper 85. Geneva: UNHCR. Available at <http://www.unhcr.ch/cgi-bin/texis/vtx/home/openssl.pdf?tbl=RESEARCH&id=3e71f1b64&page=research> [accessed 29 October 2004]

¹¹⁰ Betts, A. (2003) 'The international relations of the 'new' extra-territorial approaches to refugee protection: explaining the policy initiatives of the UK government and UNHCR' *Refuge*, 22 (1).

Projects

This section provides basic information relating to a number of current or recently completed projects and initiatives addressing the issue of regional protection zones and transit processing centres. This list is intended to be indicative only. If you would like your project to feature in the list and ICAR's projects database, then please contact us at kim.ward@kcl.ac.uk.

A new asylum paradigm? In-region protection and asylum processing: a review of past and current proposals

Centre on Migration, Policy and Society (COMPAS)

Liza Schuster, Nicholas Van Hear, Stephen Castles, Alexander Betts (doctoral student), Charlotte Fiala (doctoral student), Anna Lindley (doctoral student), Heaven Crawley (AMRE), and refugee community organisations

The project explores whether a 'new asylum paradigm' is emerging around the current (or resurgent) debate on 'in-region asylum processing', 'regional protection zones' and 'transit processing centres' as measures that seek to address what are perceived as unmanageable mixed flows of asylum seekers and irregular migrants, 'secondary movements', and so on. Although similar ideas have been around in various forms for some time, there appears currently to be a convergence of thinking, seen in debate within the EU, the UNHCR's Convention Plus, the British government proposal on 'new' approaches to asylum seekers, the Demos document on 'People Flow', and other recently aired approaches. The project traces the evolution of this debate, its policy manifestations and its meaning for asylum seekers and other migrants.

Description from http://www.compas.ox.ac.uk/research/migration_asylum_nexus.shtml

COMPAS

University of Oxford

58 Banbury Road

Oxford

OX2 6QS

Telephone 01865 274711

Fax 01865 274718

Email info@compas.ox.ac.uk

Website <http://www.compas.ox.ac.uk>

PhD research on international cooperation in forced migration

Alexander Betts

University of Oxford

This research explores the debates surrounding UNHCR's 'Convention Plus', and the historical precedents on which the initiative implicitly draws, as an empirical basis for applying the international relations literature on regime theory to refugee and asylum issues.

Description from <http://www.compas.ox.ac.uk/about/biog/alexander.betts@st-antonys.ox.ac.uk.shtml>.

Telephone 01865 284973

Email alexander.betts@st-antonys.ox.ac.uk