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**European Refugee Policy: is there such a thing?**

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## Abstract

While the European Union is often thought of as having the most developed regional refugee policy, it is not in fact clear either that European states are working that closely together, or that what they have is a *refugee* policy. Rather, most European states have an asylum policy – which can at best be said only to be a quite small part of a full approach to refugee issues. Some states have developed resettlement policies, and limited policies geared towards the protection of refugees in their regions of origin, but no European state has developed these to the fullest extent, or linked the elements of refugee policy constructively together. While to a degree all refugee policy could be said to have European origins and have been influenced by European actors, that is not sufficient to say that there is a European Refugee Policy at work today. This paper discusses the nature of Europe and its approaches to asylum and refugee issues, from their origins through to the Hague Programme of 2004. It further analyses the type of (thus far) unsuccessful ‘visions’ that various governments have advanced to develop a European approach to the ‘refugee and asylum problem’ and the European Commission’s efforts to systematically broaden the debate. The paper concludes with indications of how more could be done to make a real European Refugee Policy a thing of the future.

## Introduction

Asylum, then Home Secretary Jack Straw said, in August 1999, is a “European problem” (BBC: 1999). Straw was speaking against the background of the conflict in Kosovo, the humanitarian evacuation of tens of thousands of people who had been initially displaced to Macedonia, and protection of a million people in that country and Albania. Straw’s comment also came during the build up to the October 1999 Tampere summit meeting of EU leaders to discuss the Area of Freedom, Security and Justice, which includes EU asylum policy. His words were the same as those of ministers and other leaders in most EU Member States at that time and since. When politicians and commentators talk of asylum as a “European problem” are they telling an incontrovertible truth, or seeking to justify themselves in the face of populations and media which are critical of seemingly weak national approaches to asylum seeking? If asylum is a “European problem” does it require a European solution because it is an *asylum problem* or because there is a *European* political integration process taking place within which asylum and refugee protection must play their roles, just as agricultural or fisheries policies must?

Researchers, analysts and policy makers are increasingly discussing ‘regional’ solutions to refugee problems. If one posed the question of which region had the most well developed ‘regional refugee policy’, Europe would be the most likely answer of experts and non-experts alike. That answer may be correct: all things are relative after all. However, the implication that Europe has a refugee policy would be an exaggeration.

The main question to be addressed in this paper is: Is there a European refugee policy? Yet to answer that question, we have to ask what the question itself means. Would a European refugee policy mean that the ‘global’ or ‘universal’ refugee policy was being made into something somehow European in nature? Or would it mean that the refugee policies of individual states in Europe were being made European? Or, a third alternative, that a fresh European refugee policy was being developed?

In addition to these questions, there are those of motive, raised in the opening paragraph. Does there need to be a ‘European refugee policy’ because Europe has a problem with asylum seeker arrivals; because Europe is integrating; or because Europe is a humanitarian continent which not only wishes, but is also obliged, to uphold the protection of people who no longer have the protection of their country of origin?

In fact, I will argue, there is, as yet, no European refugee policy as such at all. Most individual countries in Europe do not even have a refugee policy: they have only an asylum policy. These are two quite different things. An asylum policy is certainly one constituent part of any complete refugee policy. A refugee policy involves approaches to asylum, certainly. However, a refugee policy also involves resettlement through humanitarian admissions programmes with overseas selection. To be complete, a refugee policy also includes coherent approaches to refugee assistance in regions of origin, managed in the context of those needing this assistance being refugees or displaced persons, with protection, status and rights needs as well as assistance needs, being met.

An asylum policy frames the procedure for decisions taken as to the status of individuals who, having crossed a state border, arrive spontaneously and request protection and refugee status.<sup>1</sup> An asylum policy is generally conducted as a matter of internal justice or home affairs. A refugee policy encompasses a broader view of international or foreign affairs. This latter distinction is important in considering why Europe at large does not have a coherent refugee policy.

The main focus of this paper is a critique of the development of a common European policy related to asylum and to refugee protection, primarily during the period 1985 to 2005, but also including the preceding developments in international refugee law to which European states contributed, and by which they were impacted. Three sections will precede the main discussion. Before getting to the European level we need some background information and thoughts on what exactly we mean by Europe in relation to refugee and asylum policy; how Europe relates to the universal refugee regime; and some of the distinctions in national policies around Europe.

### **What do we mean by Europe?**

When we think of refugee policy in Europe, it is natural to think first and foremost of the European Union. Since enlargement on 1 May 2004, the EU includes twenty-five of the states between the Atlantic and the Urals. The Council of Europe, with forty-five member states, geographically covers all of Europe except Monaco and Belarus, both of which are candidates for membership.

The European Union is the forum in which the greatest efforts are being made to develop something which could be called a European refugee or asylum policy, as will be discussed in the main body of this paper. With little new policy development to be expected until well into the 2005-2010 Hague Programme, however, any EU asylum policy that exists in 2004 has been created by the fifteen pre-enlargement Member States (in fact by fourteen, as Denmark has opted out of the process of developing asylum law, but it has been involved in political discussions of the subjects open to negotiation). The ten new Member States were required to adopt all decisions made prior to their accession as part of the EU *acquis* (the body of European Union law). Some of the asylum decisions which had to be reached by a 1 May 2004 deadline, according to the Amsterdam Treaty agenda, were only political decisions at the moment of accession, having been concluded at the very last minute. Yet the ten new member states effectively had to accept even those steps towards a common asylum policy as a condition of membership. Indeed, having acted as a 'buffer zone' for several years, it could even be said that the eight Central and Eastern European Countries had more EU-like policies than the fifteen EU member states themselves.<sup>2</sup>

The Council of Europe has provided a solid basis for the development of European practice with regard not only to asylum policy but also to human rights. Arguably, the protection provided under the an enforceable regime that, the European Convention on Human Rights (ECHR) constitutes could even be said to provide a more solid

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<sup>1</sup> See the 1951 Convention and 1967 Protocol definitions of a refugee (Article 1a). Effectively, an asylum policy is the mechanism whereby a procedure is undertaken within a signatory state to determine refugee status.

<sup>2</sup> See Sandra Lavenex and Emek Uçarer (eds.) *Migration and the Externalities of EU Integration* Lanham: Lexington Books 2002.

regional (pan-European) approach than most of the EU Member States' relatively weak decisions on basic policy.<sup>3</sup> The ECHR includes, for example, a prohibition on torture, and inhuman or degrading treatment or punishment (article 3) protecting people claiming refugee status from being returned to those countries if there is likelihood that they would be tortured or treated in an inhuman or degrading way. As this is enforceable through the European Court of Human Rights, it can in some instances provide even greater protection than the 1951 Convention Related to the Status of Refugees' *non-refoulement* clause, and can be the grounds on which subsidiary protection is granted to some refugees. Similarly, article 8 of the ECHR provides for the right to a family life, underpinning, through a legally enforceable mechanism, a bottom line on family formation and reunification for refugees and those people with subsidiary protection in a European signatory state.

In the light of this level of mechanism at the wider European level, it is useful to bear in mind that the development of any broad European refugee policy, while it may tend directly to focus on the European Union, should also be thought of in the wider, Council of Europe context.

### **How does Europe relate to the 1951 Convention refugee 'policy regime'?**

The signatory states to the 1951 Convention and 1967 Protocol, together with the UN refugee agency UNHCR in all its workings, could be said to constitute a significant part of the international community's expression of a refugee policy regime.<sup>4</sup> Such a regime forms when states come together on a policy issue, with common understandings, norms, and decision-making procedures. These latter procedures in this context of refugee policy should be seen as relating to broad principles, and not to specific case decisions.

In assessing Europe's relationship to that regime we need to address European states' role and influence in drafting the Convention in the early 1950s; European states' role in the Executive Committee of UNHCR; European contributions to the UNHCR budget and European nationals' appointments and tenure as High Commissioners. We also need to be aware of the distinction – and overlap – between what might be termed 'Europeanization' (the taking of policy areas to a regional level, beyond that of the nation-state) and the infusing of an issue or debate with what appear to be 'European values'. To a significant degree we could say that the discussion below on the international or global regime shows an infusion of 'European values' in what is broadly understood today to be a universal approach and set of obligations. At the same time, European states draw on the global regime as a source of guidance and

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<sup>3</sup> To an extent, it could be said that the reach of the European Convention on Human Rights' protections, into the ways in which the signatory states act everywhere, has a bearing on refugee policy (being broader than asylum policy as described above).

<sup>4</sup> The regime more fully, and as understood in wider legal terms, is expressed through other treaties, conventions, regional instruments, laws and practices. However, as a regime in the sense understood in International Relations theory (as a body of norms, principles and decision-making procedures around a given subject) the basis can be found in the universal instruments and international organization with all its workings. On regime theory in International Relations see Stephen D. Krasner, 'Structural Causes and Regime Consequences: regimes as intervening variables' in **International Organization** Vol. 36 (Spring 1982) and Friedrich V., Kratochwil **Rules, norms and decision: on the conditions of practical and legal reasoning in international relations and domestic affairs** (Cambridge: Cambridge University Press, 1989).

even of constraint for their developing regional, European approach. In other words, the regional developments in Europe over the last sixty years, when viewed as a whole are a multi-way, and in some ways contradictory, process with Europe influencing and helping to create the global approach, and later finding ways to limit its current approach by drawing on restrictive interpretations of the earlier, universal agreements.

Looking back at the origins of the 1951 Convention from the vantage point of 2005 it can seem that a Euro-centric tone was set from the start. One contributing factor to this is the possible geographic and temporal limitations (restricting the Convention's application to people who became refugees in Europe before 1951).<sup>5</sup> At the time, the Convention was lauded for its relative breadth, as previous definitions of refugees had been limited to specific nationalities and crises.<sup>6</sup> A second factor contributing to the apparent Euro-centrism of the origins of the Convention is the fact that the vast majority of states represented in the Conference of Plenipotentiaries that drafted the 1951 Convention, were Western European.<sup>7</sup> Thirdly, the exclusion of the biggest non-European refugee situation, that of the Palestinians, from the universal refugee regime, through the creation of the UNRWA (the United Nations Relief and Works Agency for Palestine Refugees in the Near East) has meant that what is understood as the 'universal' refugee focus remained initially on Europeans, and only really formally expanded from that starting point with the conclusion of the 1967 Protocol.<sup>8</sup>

It was only as decolonisation became widespread in the later 1950s and into the 1960s that the emphasis shifted away from Europe in the expansion of worldwide signatories. The 1967 Protocol broadened the definition, though some states maintained the geographic limitation, including, among EU Member States: France until 1971; Luxembourg until 1972; Portugal until 1976; Italy until 1990; Latvia until 1997; Hungary until 1998 and Malta until 2002. Monaco and Turkey maintain the geographic limitation (as do Congo and Madagascar).

Besides the fact that the juridical basis to the global refugee regime, which influences policies worldwide, began with a strong European impulse, the states of Europe, and in particular those of western Europe, have had a significant impact on the development of UNHCR's approach to refugee protection issues. Concern with European debates can be found, whether implicitly or explicitly, in the Conclusions of

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<sup>5</sup> While the definition initially drafted by the General Assembly had not geographic limitation, the French proposed that one be included to reflect the fact that non-European states were not participating in the 1951 Conference of Plenipotentiaries. (With thanks to Sharon Rusu for this comment and information).

<sup>6</sup> See the **Times** of 31 July 1951 (p.7) which reported "From time to time, whenever an international effort is concerted to deal with a refugee problem, the attempt at definition is made; the resultant form of words may serve its immediate purpose, but it is likely to be useless for any other ... In the discussions [on a new Convention] the refugee problems of Europe played a large and perhaps dominant part, and the definition adopted reflects clearly the present state of Europe ... The convention, though it does not go far, will be valuable to the limited extent to which it gives him [the refugee] the freedom to rehabilitate himself."

<sup>7</sup> Of course in an era of continuing, if soon to diminish, colonialism, this was natural. Furthermore, Europe was facing a refugee problem of significant proportions following World War II and the start of the Cold War, and western Europe expected only more refugees from the east.

<sup>8</sup> In fact, many Arab states insisted on separate treatment for Palestinians, lest their situation be consumed by a more general convention on refugees. (With thanks again to Sharon Rusu).

the Executive Committee of the UNHCR programme through the decades, and most especially since the mid-1990s, when the ‘asylum crisis’ in Europe became particularly strong. The debates of European states on return (2003); reception conditions (2002); on comprehensive approaches to refugee protection during the Balkan wars and; on asylum generally (prompting the Conclusion on “Safeguarding Asylum” in 1997) demonstrate this point. The Conclusions, which must be agreed by sixty-six states represented on the Committee, frequently set high aims for refugee policy globally. This means they often take the subject, but not the negative tone, from European debates. This might largely be due to the presence of UNHCR in the drafting process of the ExCom Conclusions, as well as the involvement of non-European states.

Sixteen of the sixty-six members of the Executive Committee are EU member states. Four more of them are members of the Council of Europe (so twenty of the forty five Council of Europe members are on the Executive Committee).

In terms of contributions to UNHCR’s budget, European states are significant contributors, although the level of contributions has dropped for many of these states, and for the European Commission since the mid-1990s. The European Commission itself, drawing on the Union budget which is made up of Member State contributions, was the third largest donor to UNHCR, behind the US and Japan, in 2004. The Netherlands was the fourth largest donor. EU Member States and the European Commission collectively in 2004 contributed US\$427,237,862.00.<sup>9</sup> By comparison, the US contributed US\$302,252,199.00 in the same year. Many of the European contributions had been increased from the levels of 2003. In addition, private donors in EU member states had contributed a total of US\$12,017,640.00, with the Dutch and Italians being the major private donors to the organization.<sup>10</sup> Thus, strong European financial input to the work of UNHCR can be seen. However, many of the European contributions, with the notable exception of the Dutch support, are primarily earmarked funds, which must be spent as the donor requires and not at the will of UNHCR in the light of developments.

Seven of the nine High Commissioners have been European (although the two non-Europeans, Sadruddin Aga Khan and Sadako Ogata served for the longest periods – twelve and ten years respectively). This does not mean the European High Commissioners have always taken a specifically European view of refugee protection issues.

In the earliest days, of course, Europe was the focus, as a consequence of the aftermath of the Second World War and early decades of the Cold War. Swiss High Commissioner Schnyder expanded the focus to Africa.<sup>11</sup>, while High Commissioner Sadruddin Aga Khan expanded the agency’s vision to the global level.<sup>12</sup> Loescher notes that the 1960s and 1970s, when UNHCR was under the leadership of Aga Khan,

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<sup>9</sup> This total includes 24 Union member states: only Malta is not listed by UNHCR as having contributed in 2004.

<sup>10</sup> UNHCR, **Contributions to 2004 UNHCR Programmes** (in United States Dollars) **Situation as at 31 December 2004**, [www.unhcr.org](http://www.unhcr.org) (accessible via Donor/Partners page).

<sup>11</sup> Gil Loescher, **The UNHCR and World Politics: a perilous path** (Oxford: OUP 2001) Chapter 5.

<sup>12</sup> **Ibid.**, Chapter 6.



saw few problems in western Europe for UNHCR which “was still primarily a European agency with European values”.<sup>13</sup> This was, of course, also at the height of the Cold War, the political and geographic realities of which meant that the agency’s reach and influence was anyway limited.

Under the Dane, Paul Hartling, who, Loescher notes, surrounded himself with other Danes, UNHCR was critical of European governments and their increasingly restrictive asylum policies. This criticism alienated several European governments.<sup>14</sup> Thorvald Stoltenberg, the Norwegian High Commissioner in office as the Cold War ended, is noted by Loescher to have reflected European concerns with uncontrolled immigration, and worries about the abuse of the asylum system.<sup>15</sup>

Sadako Ogata, meanwhile, sought to be pragmatic with Europeans facing electoral difficulties on the asylum issue, and seeing increasing arrival rates. Rather than taking the moral high ground as the restrictions rose in Europe, Ogata chose dialogue with, and understanding for the European position.<sup>16</sup>

With the appointment of former Dutch Prime Minister Ruud Lubbers as High Commissioner in 2001, UNHCR was firmly back in European political hands. It was hoped that Lubbers would bring in much needed European funds to the agency (something he did not achieve in his first years in office, although there seems to have been some impact by the end of 2004, just before his resignation in February 2005).

Certainly, his appointment brought to UNHCR a leader with a strong sense of west European politics, whose only previous dealings with the refugee issue had been in the context of ever tightening Dutch restrictions on asylum policy issues in the late 1980s and early 1990s. High Commissioner Lubbers’ chief initiatives, including Convention Plus and the High Commissioner’s Forum, spoke very loudly to European concerns of the era, including relations between the regions of origin of refugees and the developed countries of the north, managed arrivals of some refugees through resettlement, rather than the asylum system as their sole entry route, and return and repatriation issues. In the wake of his early departure, it remains to be seen how these initiatives will fare.

In sum, the ‘universal’ refugee regime seems clearly European in origin and nature. Nonetheless, European influence has waned. In part this is due to the fact that Europe’s financial impact is not strong, since its contributions are divided country by country and are not backed by any collective voice. It is also due to the fact that the refugee regime by nature is grounded in high moral values, and the restrictive approach of European states towards refugees and asylum seekers in the last two decades means most European states, and Europe as a general region, have lost some of their humanitarian moral clout. The fact that the universal regime comprises strong European elements and influences complicates enquiry into the development of a European refugee policy. The question arises whether refugee protection *per se* has ever been anything other than ‘European’, as it is informed by European values.

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<sup>13</sup> **Ibid.**, p.176.

<sup>14</sup> **Ibid.**, p.202.

<sup>15</sup> **Ibid.**, pp.267-268.

<sup>16</sup> **Ibid.**, pp. 274 and 316-321.

## What distinctions are there in national refugee policies across Europe?

Even if the universal refugee regime has always been to some extent ‘European’ in nature, the question is still open as to whether there is a single ‘European’ approach as such to refugee policy. Beyond the broad-brush strokes of an appeal to a humanitarian and rights respecting history, certain elements of refugee policy display distinct national characteristics. In particular, asylum policies across Europe, as an element of refugee policy that is very closely associated with immigration admissions law and policy, has shown quite distinct national tendencies through the decades. It would be impossible to go into full details of each policy here, but general distinctions in trends can be elaborated through examples. One of these examples is that of the use of time-limited statuses, highlighting the ‘law and order’-oriented nature of asylum policies; another is the use of resettlement, broadening refugee admissions away from asylum policy alone.

### *Time-limited statuses*

Two European states have decided to make all refugee protection limited in duration at least in the first instance. These are Denmark and the Netherlands. In Denmark, the 2002 Act introduced a seven-year period of protection for refugees and people with ‘protected status’ prior to them becoming eligible for a permanent residence permit. Previously, Convention refugees and ‘de facto refugees’ had received an initial temporary status of three years.<sup>17</sup>

In the Netherlands, the Aliens Act of 2000, which entered into force in 2001, introduced a single status for people who qualify as Convention refugees and those who qualify for protection for non-Convention reasons. Previously, Convention refugees would have received an ‘A-status’, permitting them to remain in the Netherlands indefinitely, or until cessation might apply. Others would receive either a ‘C-status’ on humanitarian grounds, with a permanent residence permit, or an ‘F-status’ (ie temporary protection) for up to three years (renewable annually during that three-year period) if they were fleeing conflict, for example. Appeals proceedings, both on the part of those who were rejected and of those who received a C or F status and felt they should have received an A-status, were slowing up the whole asylum system. This had special impact in the Netherlands, where the type of accommodation in a reception centre that an asylum seeker would be offered was linked to their stage in the initial or appeals process. The government of the day’s solution to this was to make a single status, which would be granted for three years, and if at the three-year point it was decided that the person could not return to their country of origin, the status would be made permanent.<sup>18</sup>

Other European countries maintain different types of status (Convention, subsidiary and various forms of temporary status for those in need of protection but who do not qualify as Convention refugees or for subsidiary protection). However, Convention status, and often also subsidiary protection, are not ‘temporary’ in nature, or at least not defined as granting residence for only a defined or limited period of time.

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<sup>17</sup> Danish Refugee Council, **ECRE COUNTRY REPORT 2002: DENMARK**  
<http://www.drc.dk/publications/ecre2002.pdf>

<sup>18</sup> Joanne van Selm ‘Asylum in the Netherlands: a hazy shade of purple’, **Journal of Refugee Studies**, Vol. 13 No. 1 Special Issue: ‘Changing Asylum Policies in Europe’ (2000)

Making all asylum within Europe, whether linked to Convention grounds or not, time-limited in the first instance could be interpreted as a tightening of the control aspects of Justice and Home Affairs Ministries handling of what should be ‘refugee protection’. Refugee protection, under the Convention, should be limited only by the period of time during which protection is needed – something which is not known at the time at which asylum is requested. By adding time constraints to the stay of refugees present in their states, the Netherlands and Denmark give the appearance of limiting or tightening their willingness to offer asylum. This is also an example of how some European states are going back to the originally ‘European’ 1951 Convention and giving it a stricter interpretation than they previously had. The argument that the Cessation Clauses of Article 1C indicate that the status granted through application of the Convention is ‘temporary’ may be accurate according to the letter of the Convention. However, this goes against the spirit of implementation in past decades, and contributes to an appearance of diminishing the sense of obligation these states feel, and in fact have, under the Convention.

### *Resettlement*

Another area in which refugee policy distinctions can be seen among European states is in the use of resettlement as a refugee admissions tool. Six EU Member States (Sweden, Finland, Denmark, The Netherlands, the UK and Ireland) as well as Norway currently operate resettlement programmes for between 60 and 1,000 refugees respectively. These resettlement programmes differ in themselves, in terms of levels setting, selection criteria beyond the refugee definition and procedures. Beyond these seven states, however, no European state has a formal resettlement programme at present, although a few, including Belgium and France, do respond to urgent appeals from UNHCR for admission and protection in special circumstances.

Resettlement is handled quite distinctly from asylum in all those states with a programme.<sup>19</sup>

In sum then, there are national distinctions in policy and law. These could either form the basis upon which any truly European refugee policy would need to build, or they could be anachronistic elements of past national controls which could be cast aside in the face of a truly European refugee policy. In the final, and major, section of this paper, we will turn to the European level, and to EU level discussions in particular, to further assess whether or not there is anything which we can speak of as a European refugee policy.

### **The European level: a European refugee policy?**

Thus far we have established that the universal refugee regime is, to a certain degree, ‘European’ in its principles. National policies across Europe are, by definition,

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<sup>19</sup> The one country which comes close to being an exception in this distinction is Australia. For a description of all national resettlement programmes see Joanne van Selm, Tamara Woroby, Erin Patrick and Monica Matts (2004) **Study On The Feasibility Of Setting Up Resettlement Programmes In EU Member States Or At EU Level, Against The Background Of The Common European Asylum System And The Goal Of A Common Asylum Procedure** (Brussels: European Commission).

reflective of some sort of 'European' policy. However, the real question is whether or not a specific European refugee policy has emerged or is emerging. If that is the case, how does it sit between the universal regime of principles and national policy and legal implementation of protection for refugees? In order to assess the extent of progress towards a European refugee policy we need to address the context within which any European discussions of asylum and refugee policy have taken place; the question of how "European" those discussions make refugee policy across Europe in fact; and the future for any European refugee policy.

### *Talking about asylum in context*

The asylum issue first arose on the EU (at that time EC) agenda in 1985. Rising numbers of asylum seekers were one factor drawing attention to the issue at that time. Another factor was the increasing attempts to bring down internal frontiers between Member States. Goods, capital and workers were meant to be able to move freely around this common market made up of the then twelve Member States. Even for goods to move around, people had to be able to cross borders with relative ease. Long queues, for border checkpoint officers to be able to both inspect the goods in transit and inspect the passport of the driver, were not conducive to free trade. What is more, at its heart, the European integration project embarked upon by six states in the 1950s, based on ideas set out by Jean Monnet, Robert Schuman and others, included some notion of a common European identity. This identity should be part of the new, post World Wars' Europe, where fighting between European powers would no longer happen – rather security would be established and guaranteed through collective peace and prosperity.

As such, the start of discussions on some level of cooperation on asylum policy was very much inspired by the concern to develop cooperation on all kinds of policies in Europe, and by the desire to bring down borders and trust each other on the matter of who was within the broader European Union territory. It was much less inspired, if it was inspired at all, by any idea that European states acting together could provide greater protection to more refugees. Nonetheless, there is a strong tendency for the outcome of European Union negotiations on common policy developments to be measured more by the yardstick of their impact on refugee protection, and less by the measure of their impact on deepening European integration. This should not be surprising: asylum policy is one of the most human policy areas with which the Union has yet dealt. Integrating agricultural, fisheries, and transportation policies, and even creating a single currency, for example, are not only about the people who come into contact with the outcomes, as workers or consumers, for example. These policies may impact lives, but not totally alter them. These other policy areas, unlike asylum, do not have the potential to become a matter of life and death for their subjects.

Asylum policies touch at least two 'nerves': the issue of sovereign control over access to territory and the issue of human rights protection. These two issues frequently give rise to dilemmas and controversies. And the quite dry, and outwardly dispassionate, European Union bureaucratic decision-making process can often make it seem that the humane has been sacrificed to serve the state.

This bureaucratic process has had another effect which might in some ways hamper the efforts to achieve a Common European Asylum System – or a European refugee

policy. In order to ‘deal with Brussels’, each Justice, Interior or Home Affairs ministry in each Member State, as well as the European Commission and Council secretariat, has had to expand its staff numbers significantly. This phenomenon has continued with the accession of ten new Member States in 2004.<sup>20</sup> This means that ever more national civil servants are dealing with asylum and refugee policy. They are all within the most sovereign control-oriented of ministries too: since Justice and Home Affairs ministries are by definition the guides to the law of the land, and the controllers of entry and exit. Since where you stand is influenced by where you sit, it seems natural that these policy makers would be more likely to guard national interest and defend national policy than to consider the situations in countries and regions around the world, and the most appropriate policy Europe as a whole could pursue in the interest of maintaining stability by guaranteeing protection to refugees.

In 1985, the then EC Member States set out to develop an initial informal cooperation on issues such as who they considered to qualify for refugee status (ie how they each interpreted in law and policy the definition of a refugee in the 1951 Convention) and the way in which they would deal with asylum seekers arriving in their territory (reception conditions, access to procedures etc). They were not really seeking to do all of this in the exact same way, but through discussion, to understand each other’s *modus operandi* and assumptions, and make sure that none of them were acting so out of line from the others that they could cause problems for each other – such as letting in people who might later travel around the Union, but who would be ‘unwanted’ by other Member States.

By 1992, when the governments agreed on their Treaty of European Union in Maastricht, the Netherlands, they had also concluded, but not yet put into force, the Dublin Convention which would determine which of the signatory states was responsible for handling an asylum seeker’s claim, based on criteria including family relationships and place of entry to the Union. In the Treaty on European Union, the Member States set out an outline for formal inter-governmental cooperation, and started to talk about harmonisation of their policies.

The term harmonization suggests a choir, singing to the same hymn sheet, but perhaps in different voices. In order to harmonize policy, however, you need to know what the substance is behind each of the voices, and then determine the common tune. Yet harmonization was seen as a preliminary phase, prior to the goal of a common policy and Common Asylum System, set out in the 1997 Treaty of Amsterdam and reinforced by the Conclusions of a special summit meeting in Tampere, Finland, in October 1999.

The themes on which there would be informal discussions (1985), formal inter-governmental cooperation leading to harmonization (1992), and semi-communitarian activity leading to a common system (1999-2004 – a five year programme following the entry into force of the Treaty of Amsterdam) remained remarkably constant over time. By 1 May 2004, five ‘building blocks’ were to be in place – the basis of an EU Common Asylum System. These were:

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<sup>20</sup> These points come from the author’s own observations from working in and alongside the European Commission and several Member States’ ministries over the past decade, and from conversations with civil servants from several of the Member States

- A system of temporary protection to be used in case of mass influx into any Member State;
- An arrangement for deciding which Member State is responsible for determining specific asylum applications (known as Dublin II – a second version of the 1990 Dublin Convention. This measure was not actually subject to the five year deadline, but was agreed in 2002);
- Agreement on common standards for the reception of asylum seekers (Reception Directive);
- Agreement on common understandings of the qualifications required for refugee and subsidiary protection status (Qualification Directive);
- Agreement on common asylum procedures (Procedures Directive).

The first Directive to be agreed was the Temporary Protection Directive – the only one which in fact was a response to on-the-ground developments, specifically the Balkans crisis, during the 1990s, rather than being on the table already in 1985. The other Directives are built on ‘soft law’ agreements made during the 1990s or, as indicated, on the Dublin Convention.

The first round of agreements as ‘joint positions’ and other soft law instruments, were much more of a ‘getting to know your policy’ type of process rather than a ‘harmonising’ process. Even the discussions during five years of seeking a so-called ‘common policy’ (ie the method for reaching the minimum standard agreements) have all involved each delegation in Brussels setting out their existing policy, finding overlap with the thirteen others (Denmark has opted out of this area; the UK and Ireland have opted in to each asylum policy measure), and joining up the dots between the fourteen policies so that all can agree that the EU level agreement reflects in some way the policy they have.

The agreements negotiated on the subjects listed above, with the exception of the Temporary Protection Directive, were all a question of finding the lowest common denominator. This comment has been made by many – usually to indicate that the common policy is weak because it takes the harshest position there is in any EU Member State and makes it the line on which everyone agrees – and which critics expect every state will adopt.<sup>21</sup> In one sense these critics are correct: the agreements take the minimum everyone can agree to, leaving the states that practice the minimum already to continue to do so (whereas a stronger agreement should have forced them to improve standards) and opening up the risk that other states will reduce their standards to the agreed minimum.

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<sup>21</sup> Eg ECRE in its **Comments of the European Council on Refugees and Exiles on Future Orientations for an Area of Freedom, Security and Justice** CO4/09/2004/ext/RW states that “Negotiations mostly reduced standards to the lowest common denominator to allow countries to continue with their narrow national priorities in a way which has in some cases turned restrictive national practices into Community law.” (p.6) <http://www.ecre.org/statements/comfutur.doc>. See also, for example, Amnesty International’s EU office’s **Threatening refugee protection Amnesty International’s Overall Assessment of The Tampere Asylum Agenda, June 1999 – May 2004**, July 2004 [http://www.aie.u.be/static/documents/Tampere\\_AI\\_June\\_2004.doc](http://www.aie.u.be/static/documents/Tampere_AI_June_2004.doc).

However, I would argue that the consistent decisions to pass Directives only when they contain the minimum to which every government can agree is more a symptom of harmonisation finally being achieved than of anything else. In the minds of the politicians and policy makers, the priority is achieving an agreement that shows Europe is integrating. The agreement happens to be on refugee protection: but however unfortunate advocates will find this to be, refugee protection is not necessarily the states' priority in this context: their focus is on achieving an EU level agreement. The ability to agree only on minimum standards, thus, demonstrates a level of commitment to the process of European integration. However, it simultaneously demonstrates how limited the commitment to upholding obligations under the 1951 Convention really seems to be in the Europe-wide context. If the obligations are to be upheld, that must happen within the realm of domestic law and policy, because the EU level agreements are falling short. But what critics also see in the minimum standard EU level agreements is an undermining of each individual Member States' commitment to their international obligations in the field of refugee protection. The critics do not expect any Member State to continue to do more than the minimum agreed to in Brussels: they expect them to live up to the minimum EU-level agreement and not the higher standards they had themselves previously set in upholding their international obligations. As the hard law decisions reached between 2001 and 2004 have not yet been transposed and implemented, it is hard to say whether this worst case scenario will prove true. However, it is safe to say that this situation again makes it far from clear that a European refugee policy (ie one committed to refugee protection whether through asylum or other means) is truly emerging.

The Hague Programme, agreed in November 2004, sets an ambitious agenda for the next five years, but shows little sign in itself of taking the European Union beyond this process of harmonization and towards a common policy. The Programme envisages monitoring by the European Commission of the implementation of the directives agreed under Tampere (although it is still not clear that the Procedures Directive will be fully passed, in spite of last minute political agreement). From 2007 onwards the Commission is to start to propose amendments to the directives to correct any deficiencies which become apparent through the process of transposition and implementation. In theory at least, this could mean going beyond European integration being the determining process (ie achieving a common lowest denominator agreement because it proves the Member States can agree) into a new stage of basing agreements on what is appropriate in terms of refugee protection mechanisms. However, even the start of that phase is some years off. And in practice, this process is more likely to involve a patching up of the protection gaps left by the currently agreed directives. Many observers suggest that international standards and safeguards will be undermined with the implementation of the directives, leaving the EU and its Member States less able than ever to defend their restrictive approach to asylum while talking about a broader protection system.

There has been no attempt to actually take a blank sheet headed "Common European Asylum System", assess the actual situation with regard to asylum seeking and the response authorities, on behalf of European societies, should have, and then sketch out a solid, new, single and common policy, and certainly not attempt, to date, to look for

a Common Refugee Policy.<sup>22</sup> In other words, while saying they were harmonising, the Member States just became acquainted; while saying they were making a common policy, the Member States were harmonising. The Hague Programme does not really present a vision for clearly entering the next phase in the search for a common policy. The Constitution likewise continues to deal with refugee policy as if it is merely asylum policy, and offers no clear basis for a fresh, common approach. Thus the real question for EU States seems to be: Should they really be trying to find a common policy? And if they should, should they do that to advance their own European integration project or to advance refugee protection? Or can these two goals be joined? We will return to these questions below: first it is necessary to ask whether policies on refugee protection across Europe are in any way regionalised.

### *How 'European' is refugee policy in Europe?*

The European Union level agreements have led to baselines in policy terms for how each Member State should act. However much 'harmony' these agreements seek to achieve, their implementation is still going to have twenty-five differing formats: one per Member State. There is no call for uniform implementation, since the agreements are all intended to be minimum norms. Under the Hague Programme there is the possibility that by 2010 some EU level institutions or frameworks would be established for harmonised implementation also. At present, however, there is primarily EU level monitoring of the national implementation process. The European Commission is responsible for this, and has created implementation committees related to each individual directive, constituted by Member State officials. If the Commission is concerned about implementation in a given Member State it can bring a case at the European Court of Justice, which will rule on interpretations of the directives as they pass into practice. While many people talk of "EU asylum policy" in terms of both what is on paper and what is done in practice, there are only minimum agreements on paper which are to be implemented through national practice. There is not even very much sharing of human or technological resources to date, and the little sharing that does take place is on a bilateral basis, with no EU structure as yet to oversee or coordinate it. This should come with the Hague Programme: once more the process of European integration requires a slower and more deliberate pace than those focused on refugee protection in the asylum harmonisation process might expect.

Only one EU measure comes close to adding a pan-EU dimension to dealing with asylum claims: the Dublin II regulation. That regulation, with the associated EURODAC system for fingerscans of asylum seekers making applications in all signatory states, requires that checks be made into any previous asylum applications filed by individuals in other Member States. In a minority of cases, overlap is found. Then the question is whether or not asylum seekers are actually moved between Member States as a result of the process. The Dublin regulation then requires that, according to a hierarchical list of criteria, a decision be taken on which Member State should be responsible for assessing the asylum claim. In order to implement the Dublin Regulation effectively, several Member States have exchanged, on a bi-lateral

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22 Joanne van Selm (2004) The EU as a Global Player in the Refugee Protection Regime, Academy for Migration Studies in Denmark (AMID) Working Paper Series 35/2004 online at: [http://www.amid.dk/pub/papers/AMID\\_35-2004\\_Joanne\\_van\\_Selm.pdf](http://www.amid.dk/pub/papers/AMID_35-2004_Joanne_van_Selm.pdf)



basis, liaison officers, who deal with the inter-state communication on the individual cases. Usually these exchanges are with neighbouring states, through which a 'Dublin case' may have passed in transit.

An evaluation was carried out into the working of the predecessor instrument: the 1990 Dublin Convention.<sup>23</sup> That showed that in 6.00 percent of asylum cases a request was made to another Member State to take back an asylum seeker for determination procedures. In a total of 4.20 percent of all asylum requests, states agreed to take back an asylum seeker as a result of a Dublin claim by the second Member State. In only 1.70 percent of cases did the asylum seeker actually move.<sup>24</sup> This Evaluation preceded the new Dublin Regulation and the coming into operation of the EURODAC system. The Commission has not conducted a new evaluation. There are, however, indications that EURODAC could be proving effective. Commission officials suggest that about twice as many asylum seekers, compared with the Evaluation statistics reported above, should in fact, according to the Dublin Regulation, have their claim processed in a country other than the one in which they are present. One outcome of this 'success', however, is an increasing degree of self-mutilation among asylum seekers wary of authorities, and of being instructed on where they should seek a safe and peaceful future. Swedish officials have reported that 5 percent of the twenty-six thousand sets of fingerprints it has taken since EURODAC started in January 2003 are illegible due to asylum seekers having deliberately cut or burned their hands.<sup>25</sup>

In actual fact, the most European form of refugee law might be the opportunity afforded to those asylum seekers whose cases are rejected in a national asylum system to bring their appeal to the European Court of Human Rights in Strasbourg. Here, they can seek recourse to prevent expulsion and return to their country of origin if there are grounds for believing that they might be tortured, or suffer inhuman or degrading treatment or punishment if returned. This possibility, more than any minimum line policy agreement within the EU, offers a European mechanism to ensure, on the agreement of all European states, that people who would be harmed if returned receive at least the protection of *non-refoulement*. These people may not be granted asylum or refugee status as such, but in being allowed to remain, they achieve a minimum of protection.

Directives agreed in the EU on the definition of a refugee (Qualification Directive) and on asylum procedures may prove in the next two or three years to have some impact in approximating practice across Europe.<sup>26</sup> However, neither of these agreements seems to have been reached to the satisfaction of all parties – rather the political pressure to meet the self-imposed 1 May 2004 deadline, which coincided with enlargement and all that would entail for reaching any later decision seems to

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<sup>23</sup> The 1989 (Dublin) Convention determining the state responsible for examining applications lodged in one of the Member States of the European Community, CONV/ASILE came into force in 1997 once it had been ratified by all Member States.

<sup>24</sup> Commission of the European Communities (2001) **Commission Staff Working Paper: Evaluation of the Dublin Convention**, Brussels, 13.06.2001 SEC(2001)756

<sup>25</sup> BBC (2004) **Sweden refugees mutilate fingers** (April 2, 2004) <http://news.bbc.co.uk/2/hi/europe/3593895.stm>

<sup>26</sup> It remains to be seen whether the Procedures Directive will be fully accepted and become a legal instrument, having achieved only political agreement by the time of the May 1, 2004 deadline, and having changed so much that the process of consultation with the European Parliament had to begin again.

have been the driving factor. In particular, concepts such as the ‘safe third country’ and ‘safe country of origin’ if applied consistently across Europe would show some Europeanisation of policy and practice – though not necessarily an adherence to more traditional European values and humanitarian principles.

### *The future: a European refugee policy?*

As indicated at the start of this paper, one of the major arguments to be made is that no European country has a fully developed refugee policy. Six of the twenty-five European Union Member States have resettlement policies, as does Norway. The other nineteen EU Member States, and a total of thirty-eight of the forty-five Council of Europe member states, use their asylum systems for the admission of refugees in need of international protection. While most of the fifteen longer-standing EU states, and several other Council of Europe members provide funding to UNHCR, and use part of their own overseas development aid to assist refugees in emergency and protracted situations around the world, this is rarely done in a systematic way. In sum, the Europeans generally have asylum policies, which may or may not be “European” as discussed above. However, there is a way to go before they develop anything so robust and complete that it could be called a refugee policy. Any hope that the Hague Programme would set out a path to satisfy European integration needs as well as promoting the better protection of more refugees, by covering all the bases of a true refugee policy went unsatisfied. One major reason for this was that resettlement did not make it fully into the programme as a policy area on which a decision must be made, but only as a sub-part of so-called ‘Regional Protection Programmes’ which would focus on capacity building for protection in regions of origin. This failure to expand the European approach came in spite of the Dutch Presidency and one or two other member states seeking resettlement’s inclusion. Of course, decisions can be taken on proposals which are not strictly part of the work programme – yet with such a full agenda as that presented by the Hague Programme it is difficult to see member states permitting themselves the space to discuss resettlement, if by doing so they risk missing their self-imposed deadline on another round of discussions about the refugee definition.

During the 1990s and into the early 2000s, several government leaders have found it difficult to contain their visions for a grand future for European refugee policy. Most of these have been unfortunate in their wording, if the reader is looking to see refugees achieve protection rather than looking to see European states work together. European integration has clearly been the prime interest. Refugee protection seems to have fallen by the wayside. All of the proposals seem to have focused on keeping refugees out of the EU. All have failed. To some, the Regional Protection Programmes first suggested by the European Commission in its June 2004 Communication and later inserted in the Hague Programme, look like potentially yet another step in this direction, though they need not be.

The first example of the failed ‘big visions’ in the EU context was the Austrian strategy paper in 1998, which called for the abandonment of the 1951 Convention relating to the Status of Refugees. Previous suggestions for more collective European action, had been issued by, for example the Dutch and the Danes in the Intergovernmental Consultations and UN contexts respectively on ‘protection in the region’ and by the Swedes on burden-sharing within the Council of Europe. All of

these suggestions for broader European action were founded on a philosophy which took 'Europe' as a whole to be the central actor, rather than Member States as actors within a European context. The Austrian proposals were briefly entertained, but put to one side within weeks. The suggestion of abandoning the 1951 Convention went too far for many – although it was a theme which would not subside even after UNHCR took the bull by the horns with its fiftieth anniversary Global Consultations process, culminating in a re-affirmation of the Convention by all signatory states in December 2001.

Just over two years later, in early February 2003, the Guardian newspaper in the UK carried reports of a leaked UK government proposal for a new vision for refugee protection. The leak took most by surprise – including the majority of British policy-makers working on the asylum issue within the Home Office, since the actual proposals came from the Cabinet Office with little or no consultation with the Home Office. Once leaked, the proposals were drastically modified through some three versions as they were presented to EU colleagues. Some basic features remained, including the idea that asylum claims could be dealt with outside the EU, with those seeking asylum being either warehoused in some agreeing, if not agreeable, location, or in their 'region of origin' and that intervention to prevent refugee flows could be legitimate. The Greek Presidency reluctantly agreed to a formal presentation of the plans, which were quickly countered by a UNHCR three-pronged approach, and voted down by Member States. The UNHCR 'counter-proposal' struck many commentators as remarkably European or EU-government-, rather than refugee-, friendly in nature. The European Council ultimately decided, in Thessaloniki, to approve pilot projects on assistance to regions of origin, conducted by a few Member States (led by the UK, Netherlands and Denmark) together with UNHCR. The UK withdrew significant parts of its proposals, including the notion of transit camps.<sup>27</sup>

The one important point which emerges from these developments is that, in spite of the bureaucratic work programme, with its focus on five key building blocks and approximation or harmonization of Member States' national policies, government leaders have been impatient and sought to engage a broader debate about how Europe could approach refugee protection. Much of the language has been misguided at best, but the general direction has coincided with an effort by the European Commission to seek to broaden the EU's role in refugee issues away from asylum alone, and into broader refugee protection, through resettlement and through greater assistance to regions of origin. It would be generous to suggest that this was the way the Commission envisioned the debate they were leading would go when they issued their earliest Communications on the matter. However, developments have taken the Commission, if not all the Member States, in the direction of looking more broadly at refugee protection and less exclusively at only asylum.

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<sup>27</sup> During the 2005 General Election Campaign in the UK, Labour Prime Minister Tony Blair attacked Conservative Party suggestions that the UK withdraw from the 1951 Convention, saying that if they did that they could no longer work appropriately with UNHCR to determine who needed protection and ensure they received it. He also challenged Conservative Party proposals for 'islands in the sun' (which had in fact been at the heart of his own 'Vision' in 2003) as much more expensive than an on-shore asylum system such as the UK has, and as unworkable because there is no 'island' or country to which asylum seekers could be sent. Apparently, his vision has changed and become, at least on these points, more aligned with reality. See **Concern over asylum and immigration is about fairness** Speech delivered in Dover on 22 April 2005 text at [http://www.labour.org.uk/index.php?id=news2005&ux\\_news\[id\]=tbasylum&cHash=b8e9302a7b](http://www.labour.org.uk/index.php?id=news2005&ux_news[id]=tbasylum&cHash=b8e9302a7b).

In its November 2000 Communication, the European Commission began to discuss the ways in which processing of claims for refugee protection could take place outside the Union. It was still discussing these as if the claims were for asylum – whereas asylum claims are by definition territorial in nature. The Commission continued to talk about ‘managed entries’ as part of the asylum system in its March 2003 and June 2003 Communications. A citation from the June 2003 Communication makes the Commission’s position clear:<sup>28</sup>

Any new approach to improve the management of asylum in the context of an enlarged Europe should build upon the policy objectives identified in the March 2003 Asylum Communication: **improvement of the quality of decisions** (“frontloading”) in the European Union, **consolidation of protection capacities in the region of origin**, and **treatment of protection requests as close as possible to needs**, which presupposes regulating access to the Union by establishing protected entry schemes and resettlement programmes.

In the meantime, the Commission contracted two feasibility studies: one on ‘protective entry procedures’ where by those in need of protection might be able to apply for an entry visa permitting them admission to the territory of the Member State(s) in order to apply for asylum and one on resettlement.<sup>29</sup>

These two studies were presented at an Italian Presidency seminar in October 2003. The Conclusions of that seminar demonstrate that there was broad, if cautious, interest in resettlement, and far less interest in protected entry procedures, which several Member States had recently ceased as a consequence of the practical and resource difficulties involved. By June 2004, with the Commission’s Communication in response to the Thessaloniki Conclusions of June 2003, the Commission had firmly moved in the direction of proposing a broad, and rather new, refugee policy regime for Europe.

Since 1994, when the European Commission issued a Communication on a Comprehensive approach to asylum policies, the European Union has been talking about the need to develop a holistic, all encompassing approach to refugee protection. The will to actually come together to do this – and to actually work out what it would involve – has been lacking for a full intervening decade. The June 2004 Communication from the Commission on Access to Durable Solutions and the Hague Programme could be a first step in developing the will to really generate such an approach. However, while the Communication deals broadly with a full range of refugee protection issues, including resettlement, protected entry procedures and action to promote the capacity to more effectively protect the refugees who remain in their region of origin, the Hague Programme focuses primarily on the latter measure. There is, as noted above, no commitment to expand the avenues for refugee admission

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<sup>28</sup> Commission of the European Communities (2003a) **Commission of the European Communities, Communication from the Commission to the Council**, 3 June 2003, COM(2003) 315 final, premise 6, p.12

<sup>29</sup> Gregor Noll, on behalf of the Danish Human Rights Centre, conducted the former study, together with colleagues from the Danish Refugee Council (Jessica Fagerlund and Fabrice Liebaut). I conducted the second study on behalf of the Migration Policy Institute, with the assistance of two colleagues (Erin Patrick and Monica Matts), and with input on the economic aspects of resettlement by Professor Tamara Woroby, Johns Hopkins School of Advanced International Studies.

to Europe through resettlement contained in the Hague Programme, although there is reference to the fact that the Regional Protection Programmes will “include a joint resettlement programme for those Member States willing to participate in such a programme”.<sup>30</sup> That limitation on the part of Member States as compared to the Commission’s suggestions indicates that most European states still hesitate to make refugee policy in its full sense a part of their domestic approach, and thus certainly will not commit to more than a common approach to asylum at the EU level.

## Conclusion

We started out with a rather basic question: Is there a European refugee policy? The sections above have demonstrated that it is:

- Difficult to say that European states have refugee policies at all – rather they generally have asylum policies.
- Accurate to say that there are policy decisions in place in the European Union which are intended to guarantee a minimum standard for refugee protection in their asylum systems.
- Difficult to infer from those policy decisions that their implementation by national authorities will, in the short-term, prove to be equivalent to a European policy or system.
- Useful to look beyond the EU to the Council of Europe, and particularly the European Convention on Human Rights and the Court which enforces that document if we want to find a European level of practice which affects refugees’ lives and protection opportunities in Europe, and performs a braking function on national practices.

A European refugee policy would ultimately need to be a policy which encompassed asylum in Europe, protection or assistance in protection beyond Europe, and an efficient and effective regime for assisting in the search for durable solutions for refugees. The US Committee for Refugees has pointed out that of the world’s twelve million refugees, seven million have, by 2004, languished for more than ten years in a refugee camp.<sup>31</sup> A European refugee policy needs to act for those people as well as for the few hundred thousand who might seek asylum in Europe annually.

To be European, the ‘global’ or ‘universal’ refugee policy, including the 1951 Convention relating to the Status of Refugees, its 1967 Protocol and the wealth of conclusions and notes produced by the Executive Committee of the UNHCR would need to be made the basis of collective policies. But, in addition, the refugee policies of individual states in Europe would need to either be abandoned in favour of a European policy or revised into something which has a common European line.

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<sup>30</sup> **The Hague Programme: Strengthening Freedom, Security And Justice In The European Union** Annex I to The Presidency Conclusions of the Brussels European Council (4/5 November 2004), Council Of The European Union, Concl 3, 14292/04, Brussels, 5 November 2004:21

<sup>31</sup> Merrill Smith (2004) ‘Warehousing Refugees: a denial of rights, a waste of humanity’ in US Committee for Refugees, **World Refugee Survey** (Washington DC: USCR) pp.38-56.

To develop a European refugee policy, national policies, which might anyway be 'European' in nature need to be less well defended in Justice and Home Affairs Council meetings. Instead, a European vision on the need for and utility of a European refugee policy would need to be crafted. Potentially, General Affairs actors, with a Foreign Policy purview, could facilitate this process. However, portents raised by the response to the High Level Working Group on Asylum and Migration, with its somewhat rocky start in discussing policies towards people from six specified countries, do not bode well for this type of shift. It would rather seem to indicate that European Union states may not be ready to actually tackle asylum or refugee protection more broadly as a European issue – whether or not politicians call it a European problem.

Europe, and the EU in particular, produces powerful rhetoric about the 'European problem' that is asylum and the 'European policy' which is needed to deal with asylum as a domestic, justice and law and order issue. However, there is much more talk than action in creating a European refugee policy in the sense of a policy shared by European states to deal with refugee issues worldwide. In order to cement the European integration project; to deal with the fact that refugees, like others who are legally resident in the EU should want to participate in the mobility promised by the EU elite; to show a 'European face' to the world, and not least, to deal comprehensively and collectively with refugee policy in its fullest sense, there being strength in numbers, European states probably should develop a European policy. Getting there may be a slow process. It is certainly not yet as well developed as many might think.



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