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The Realities of a New Asylum
Paradigm

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Abstract:

In recent years, forced migration scholars have begun to ask whether we are seeing the emergence of a New Asylum Paradigm around the current (or resurgent) debate on 'in-region asylum processing', 'regional protection zones' and 'transit processing centres'. Although similar ideas have been around in various forms for some time, there appears currently to be a convergence of thinking, seen in debates within the EU, the UNHCR's Convention Plus, the British government's proposal on 'new' approaches to asylum seekers and related proposals from the German and Italian governments. This article looks briefly at the discussions around processing centres, which seem to have focussed attention on whether a New Asylum Paradigm is emerging, and to explore developments on the ground, asking to what extent alleged novelties constitute a new, or a single, paradigm. We suggest that although there are apparently competing, conflicting and contradictory proposals and projects on the table, in fact a common logic underpins all of them. Following a sketch of the different proposals we consider the positions of some of the states involved in these developments. We then examine what's happening on the ground in two states targeted as potential partners in the proposals – Libya and Morocco. In the last section of the paper, the significance, novelty and dangers of the proposals are evaluated.

Keywords: Asylum policy, Refugees, UNHCR, Libya, Morocco, European Asylum Policy.

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Background and Introduction: The New (?) Proposals

In February 2003, a UK plan for creating Regional Protection Zones (RPZ) and Transit Processing Centres (TPC) hit the headlines and provoked considerable discussion (Home Office 2003a, 2003b). RPZs were to be located in the region from where refugees were fleeing, whereas TPCs were to be located in countries bordering the EU that are transited by people who might claim asylum in EU member states (Home Office 2003a). The plans were less surprising than the furore that was unleashed – especially since there was little that was new about the proposals – they had been around in different guises for at least 10 years. The UK government, borrowing inspiration from Australia's *Pacific Solution* and earlier Danish proposals for reception in the region (Noll 2003) and rhetoric from the UNHCR's *Agenda for Protection* (UNHCR 2003), had developed its own proposals[1] to contain potential asylum seekers either in the region of origin or in transit processing centres.

The UK proposals were born of an overriding concern to reduce the numbers of people entering and applying for asylum in the UK. They were leaked in the same month that the Prime Minister announced his intention to reduce applications to the UK by half. While not original, and while Britain's focus on asylum seekers is relatively unusual in Europe, the proposals chimed with a concern in other EU states to keep potential seekers of asylum at a distance. Although the numbers of asylum seekers has gone down in the intervening two years (UNHCR 2004a)[2], the desire to be able to control how many enter a state and under what conditions remains – there is always the possibility that another conflict will drive the numbers up again. There seems finally to be some acceptance that whatever the political rhetoric designed for domestic consumption – domestic policies relating to welfare etc. do not act as deterrents, and so the emphasis continues to be on preventing access.

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[1] Referred to in the plural because they went through a number of revisions – see Noll (2003) and Betts (2004).
[2] The trend is different in the 10 new Member States where numbers have increased in each year (UNHCR 2004a, 3).

This has led the UK and other EU states to move their migration controls outside their territories – for example, to Belgian and French ports and to Czech, Sri Lankan and Pakistani airports in order to prevent people entering the UK.

The tightening of controls has led to a sharp increase in the number of people dying as they try to enter EU states – a fact that is becoming increasingly difficult to ignore as bodies wash up on Mediterranean beaches (Statewatch 2003). The Association des Amis et des Familles des Victimes de l'Immigration Clandestine estimate that 3,285 bodies were found in the Straits of Gibraltar alone between 1997 and 2001. From a public relations perspective it would be far better to intercept these people quickly and return them whence they came. However, three conditions are necessary for this strategy: 1) that the transit states/states of origin accept the 'returnees'; 2) that there is somewhere to hold them while awaiting return to a final destination; and 3) the creation of asylum procedures in the transit countries that make return legally palatable. The UK proposals were designed to put these three conditions in place. The third condition overlapped with UNHCR proposals and perhaps explains the confusion between plans for camps to hold people, and plans to build greater capacity for protection in region.

In 2000, UNHCR had announced its Global Consultations, the purpose of which was 'to provoke both reflection and action to revitalize the 1951 Convention framework and to equip States better to address the challenges in a spirit of dialogue and cooperation'. This resulted in the publication of the *Agenda for Protection* at the end of 2001. The *Agenda* specified six goals that would progressively <u>reinforce</u> refugee protection over a multiyear period. These goals included the push for universal accession to the 1951 Convention, improving asylum procedures, the sharing of burdens and responsibilities more equitably and the building of capacities to receive and protect refugees in those countries that hosted the majority of refugees.

The *Agenda* placed a great deal of emphasis on reaffirming the 1951 Convention, but recognizing that more needed to be done, the Commissioner called for the development of new tools to improve the response to global refugee flows, to build the capacity of first countries of asylum – this became

known as 'Convention Plus'. Although 'Convention Plus' can be construed as a means to relieve the 'burden' on countries in the region, it could equally be argued that it played into the hands of European states anxious to shirk their responsibilities and would lead to greater pressure on those countries already struggling to cope with large refugee populations.

Subsequently, UNHCR presented a three-pronged proposal that would promote the goals of the *Agenda* at domestic, EU and regional levels. Following the UK's proposals in early 2003, the EU prong was revised, specifying a clearer administrative structure and providing a mechanism for shifting from national to EU reception, processing and return/resettlement arrangements. It would seem that UNHCR is seeking to anchor itself within the protective embrace of the more progressive organs of the EU, in particular the Commission, with whom it has recently entered into partnerships.

The EU is another major player in these developments, one whose different organs (the Council, the Commission and the Parliament) seem to be in conflict within each other. The EU response to the UK proposals was developed with the context of the drive towards establishing a common European asylum policy and system. The Council, while initially rejecting the UK proposals, nonetheless recommended that the Commission examine them in more detail. Some months later, the Commission published that response as the document *Towards more accessible, equitable and managed asylum systems* (Commission 2003), which inter alia, noted critically that the UK proposals 'do not build upon or complement the policies already agreed upon in the first phase of developing a common policy'.

The Council responded to this document at Thessalonika by inviting the Commission, now the policy-initiating organ of the EU, to 'examine ways and means to enhance the protection capacity of regions of origin' and 'to ensure more orderly and managed entry into the EU of persons in need of protection'. A year later, in June 2004 – the report *Improving Access to*

Durable Solutions (Commission 2004) was published. While the directives[3] that form the cornerstones of the Common European Asylum Policy deal with asylum seekers within the territory of the Union, this report concentrated largely on regions of origin. The goal is to create mechanisms in those regions that remove the necessity for people in need of protection to come to Europe by creating procedures and infrastructures that 'enable the countries in the region of origin to offer effective protection to persons requiring international protection as soon as possible and as closely as possible to the countries of turmoil (*sic*)' (Vitorino 2004), i.e. that render their first countries of asylum 'safe third countries', though this seems to be less about protecting vulnerable people than ensuring that people can be legitimately returned to regions of origin.

The EU Commission sought and found partnerships with countries in the region to promote these goals. The Commission and the Dutch government are financing 5 UN pilot projects in Mauritania, Morocco, Algeria, Tunisia and Libya using the B7-667 budget line (although at the time of writing, March 2005, these were still at the consulting stage). Both the Commission and UNHCR were at pains to point out that these projects aim to build and strengthen asylum systems in the region, and not to create reception centres (UNHCR 2004b). The confusion arises because these same countries are being proposed as sites for the transit centres and because they are part of the same logic, in that the existence of asylum systems will make it possible to designate those countries safe first countries of asylum and hence to return people who transit them en route to Europe.

Inevitably the plan to return people to, for example, the Maghreb countries, gives rise to the same kinds of concerns voiced in the early 1990s by Italy, a significant transit country for migrants heading to Northern Europe, in response to the Dublin Convention – that the majority of asylum seekers would sent back to Italy to have their claims heard. There are three possible responses to such concerns: assist the country in question to strengthen those sections of their borders across which the transit migrants

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[3] E.g. on minimum standards for the reception of asylum seekers, on assigning responsibility for examining a claim, on qualifications and procedures and on granting and withdrawing status.

travel, encourage them to repatriate people back to their country of origin (or the last transit country) and finally, as part of a commitment to burden-sharing promise to resettle in Europe at least some of those found to be in need of protection. At a recent meeting in Brussels of policy-makers and NGOs it was stressed that it would not be possible to expect countries in the region to take people back, unless EU member states agreed resettlement quotas. To date, as can be seen from the Table 1, the numbers envisaged are minimal, and yet the quotas are not being filled in spite of the numbers warehoused in camps across Africa and Asia.

Table One: EU resettlement Quotas

Country	Year	Quota	Arrivals/Acceptances
Denmark	1 Jan 2004 – 31 Dec 2004	500	At 20 February 2004, 20 persons had been accepted.
Finland	1 Jan 2003 – 31 Dec 2003	750	748 accepted, 562 arrivals [of which 489 were from the 2002 quota].
Ireland	1 Jan 2004 – 31 Dec 2004	10 cases [around 40 persons total]	At the beginning of January 2004, 10 persons had been admitted, all of whom were from the 2003 quota.
Netherlands	1 Jan 2004 – 31 Dec 2004	500	By end February 2004, 189 cases had been accepted and there had been 166 arrivals.
Sweden	1 Jan 2004 – 31 Dec 2004	1,700	By end February 2004, 300 had been accepted and 35 had arrived.
UK	1 April 2004 – 31 March 2004	500 + approx. 250*	By September 2004, 69 people, all from Liberia[4], had arrived via the Gateway programme.

Source: ICAR Navigation Guide to Key Issues: Resettlement Programmes and the UK available at http://www.icar.org.uk/pdf/ng005.pdf
*500 through the Gateway Protection Programme + approx. 250 through other resettlement programmes.

Although the UK's (and the German-Italian) proposals are contentious and in December 2004 were rejected by the European Parliament (European Parliament 2004), nonetheless the dominant logic as revealed by the resettlement quotas is to permit a limited and carefully selected group of

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[4] At the time, there were 500,000 Liberian refugees, most of whom were in neighbouring countries (UNHCR 2002 'Refugee population and major changes, 2002' from *2002 Annual Statistical Report: Liberia,* Geneva, UNHCR, 23 July 2003)

refugees into Europe, while ensuring that the majority stays outside of Europe. The reinforcing of capacity in the region, of putting in place asylum procedures, training officials in countries of first asylum and creating resettlement programmes may be a way of assisting countries who already host comparatively large numbers of refugees, and of trying to ensure that people have access to legal and other protection, but it is hard to avoid the conclusion that these measures also serve the purposes of European Union states, who will be able legally to return people to 'safe third countries'.

The Coalition of the Willing

While initially some other EU states were quick to distance themselves from the UK proposals, others were more receptive. Denmark had already presented a similar proposal for processing centres in the region of origin in 1986 (to the UN General Assembly) and during their presidency of the EU in 2002 began to promote the idea of 'reception in the region'. In 1993 a representative of the Dutch Ministry of Justice suggested to a meeting of EU ministers responsible for asylum and migration that asylum seekers should be sent back to reception centres in the region of origin to have their claims processed (Ministry of External Affairs 2003), so their support for the idea is perhaps unsurprising. Following the UK's proposals, informal discussions between the UK, Dutch and Danish governments (together with the EU Commission, IOM and UNHCR) took place, leading to the 'Danish Memorandum' (Noll 2003), which set up the conditions for establishing both RPZs and TPCs. Although the UK has since announced that it has dropped plans for TPCs, from the perspective of the governments involved, they remain a logical development.

At a recent seminar in Brussels organised by Oxfam, a Dutch representative of the Ministry for Foreign Affairs stated his government's position:

'For the Dutch government protection in the region is about ensuring that refugees have access to protection and durable solutions as quickly as possible and as closely as possible to their needs. The current

international asylum regime shows some serious shortcomings. Strengthening protection in the region and durable solutions could do much to improve this situation' (Wijnen 2004).

He went on to explain that cost was a significant driving factor, illustrating his point by contrasting the $1 billion dollars UNHCR spent on caring for 20 million people of concern in 2002, with the $1.4 billion dollars the Dutch government had spent on 81,000 asylum seekers in the same year. This echoes the claims in the UK proposals that 'asylum seekers who make it to Europe frequently receiv[e] support and legal costs exceeding $10,000 a year, whereas the UNHCR spends an average of only $50 a year on each refugee or other 'person of concern' around the world' (Home Office 2003a). Noll disputes the anticipated savings, arguing that in the Australian case 'all the savings from reduced onshore arrivals are consumed by the massive costs of offshore processing in the excised zones of Australian territory and in third countries (Nauru & PNG)' (2003a: 22).

Wijnen then outlined two current pilot projects co-sponsored by the European Commission, the Netherlands, Denmark and the UK to be carried out by UNHCR: a 'Comprehensive Plan of Action for Somali Refugees' and a project which focuses on a 'Gaps Analysis on Protection Building' in Benin, Burkina Faso, Kenya and Tanzania. In addition to these projects, the Dutch parliament also designated an extra 5 million Euro to UNHCR in 2004, specifically for enhancing protection in the region. UNHCR has allocated these funds to protection projects in Ghana, Kenya, Tanzania and Yemen. However, once again, none of these projects have progressed beyond the discussion/desk stage. While UNHCR and the European Commission might argue that these projects are conceptually and legally very different from the camps proposed by the UK in 2003 and are instead about capacity building and consolidating protection in the region, the reality is that all of these initiatives are linked politically since overwhelmingly they are about keeping people as close as possible to their country of origin, that is, the site of the conflict. It seems inevitable therefore, that they will be linked practically in the future.

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In the same speech, Wijnen argued that consolidating protection in the region would diminish the need for asylum seekers to risk their lives crossing the Mediterranean or to entrust them to traffickers. This is a theme picked up by Germany's Otto Schilly. Germany, originally highly critical of the UK's proposals, has now become a staunch supporter of these ideas, and with support from Italy and others, is pushing most strongly the aspects of the proposals that were most heavily criticised. After initially rejecting the UK proposals, Schilly performed a *volte face* and suggested his own variation, though this seemed to be in the words of his own foreign minister, Joschka Fischer, 'ill-thought out'. Schilly proposed large centres where migrants intercepted en route to Europe would be detained. In a newspaper interview he explained 'there will be a reception centre run by an EU agency made up of civil servants from different EU member states. These authorities will check whether there are grounds according to the Geneva Convention why the refugees (sic) should not be returned to their countries of origin. If there aren't, then they'll have to go back' (*Süddeutsche Zeitung*, 2 August 2004). According to Pro Asyl the camps are not only for those rescued on the High Seas, but also, or more so, for those refugees who traverse Africa fleeing to Europe (Pro Asyl 2003). Schilly's plans will mean that those who are not entitled to asylum will be repatriated, while those that are will be accommodated in the region - 'only in exceptional cases and only as a voluntary act will an exception to this rule be made (FAZ 22 July 2004).

The present Italian government also forms part of this coalition of the willing. It has generally been unsympathetic to those arriving on its territory from North Africa and from the outset has favoured returning people as quickly as possible whence they came, seeking no guarantees as to their treatment. Of all the EU member states, Italy has actually pushed ahead quickest, unconcerned by the need for legislative niceties, deporting people to Libya without allowing them to make asylum claims. UNHCR and the Italian Refugee Council have both been refused entry to the camp where people are held on 'security grounds' (*l'Unita* 17 March 2005). Before dealing with the Italian-Libyan situation in greater detail, it is worth discussing the opposition to the proposals.

The Coalitions of the Unwilling

Shortly after the proposals were presented to the JHA Council meeting in June 2003, the Swedish Migration Minister sharply criticized them and expressed astonishment that Lubbers, then High Commissioner, was supporting them (Nol 2003, 6). Sweden's opposition has remained constant, and it is not alone. After the G5 in 2004 there was also French and Spanish opposition to the [German-Italian] plan in particular, with Dominique de Villepin (French Interior Minister) announcing that 'for France, it is out of the question to accept transit camps or shelters of any kind' (*Le Figaro* 19 October 2004), while the Spanish Interior Minister Jose Antonio Alonso said the camps could not give humanitarian guarantees. France remains opposed to establish holding camps for asylum seekers to Europe, including in North Africa. According to French Prime Minister Jean-Pierre Raffarin in an interview with the Tunisian daily Le Temps:

> 'The Mediterranean has always been a crossroads of migration and a human melting-pot (but) states have a duty to exercise control over the flows in the interest of everyone…Paris is opposed to the idea, raised by certain European partners, to set up transit centres outside the EU, notably in North Africa, to filter candidates for immigration. Such a solution, apart from the moral and ethnical questions involved, because it is against our traditions, would have the disadvantage of concentrating flows of illegal immigration and assist criminal gangs making profits out of this traffic' (*Le Temps* 24 January 2005).

Nonetheless, de Villepin has said that he was in favour of creating guichets or 'counters' in Maghreb countries where migrants could be received and be helped to repatriate (*Le Monde* 19 October 2004).

Opposition has also come from outside Europe – notably from some of the countries mooted as potential sites from the camps. From 2003, there have been persistant rumours of camps either already being built (Croatia) or of plans and negotiations for camps in Tanzania, South Africa and the

Ukraine – all countries hosting significant refugee populations. Some of the countries hosting pilot projects, like Tanzania and Kenya, have long established refugee camps on their territory, so getting support for these camps may be an important short- to medium-term objective for these states. However, changing the primary function of the camps from protection to processing and detention prior to deportation could destabilise already fragile infrastructures and make them even more places to be avoided (Verdirame and Harrell-Bond 2005). It is difficult to see how this will provide a solution to a situation that is undesirable from the perspective of the host governments and the refugees.

Certainly, Tanzania features in at least two of the planned projects supported by the Dutch government and UNHCR and outlined above. The British Home Office also proposed setting up camps in Tanzania to receive rejected Somalian asylum seekers from the UK or those claiming to be Somalian. According to a report in the *Guardian*, the UK had proposed a £4million aid package as a carrot. However, in April 2004, Peter Kallaghe, an aide to President Mkapa, was reported as saying this idea would be difficult to sell in Tanzania, given that it already hosts 400,000 refugees from neighbouring states. There also seemed to be a certain amount of resentment at the failure of the UK government to consult the Tanzanian government about its plans. The same month, the Home Office announced that it had abandoned its plans.

Nonetheless, it is important to stress that while the proposals remain just that – proposals - , they embody ideas that stubbornly resurface. While occasionally there may be talk of development or addressing root causes as solutions to the 'problem' of migration, EU states are looking for a quick fix and stopping people entering their territories when they want to claim protection or find work as opposed to when states need labour, remains the preferred option. Nonetheless there are developments on the ground that indicate the way is being prepared for the implementation of the proposals.

Developments on the ground – Libya and Morocco

While rumours have surfaced of camps in Eastern Europe and East Africa, two countries in particular seem ideal candidates for the proposed camps – Libya and Morocco. Both are significant transit countries for sub-Saharan Africans and so much could be done to reduce the number of people heading north across the Mediterranean if these two countries could be persuaded to seal the borders traversed by the migrants, to detain and remove those that do manage to enter their territories, and to readmit and remove those who have managed to successfully transit their territories and reach Europe. Certainly negotiations are taking place with both countries and both have accepted people deported by EU states.

Libya and Morocco are two of the five Maghreb countries targeted by the UNHCR/Commission proposals. These proposals have 3 strands: encouraging the Maghreb states to set up a joint intercept and rescue scheme in the Mediterranean; training officials in human rights; and undertaking a mapping exercise of who is transiting the Maghreb countries, their routes, proposed destinations etc. To date there has been little or no progress in either country on any of the strands. Instead progress is happening outside these frameworks and through bilateral arrangements with individual EU member states. During the summer of 2004, Italy and Germany had put their weight behind the idea of camps in North Africa to the dismay of NGOs and some of their fellow EU Member States.

Italy has had close relations with Libya for some time now and pressed firmly for the sanctions against Libya to be lifted for trade and economic reasons and to allow it to send more assistance, in particular to stop migrants and traffickers for whom Italy's long coast offers multiple points of entry. On 24 August 2004, the two countries reached an agreement on combating 'illegal immigration'. Libya agreed to control the borders in the Sahara and provide barriers against the immigration from the south. Berlusconi suggested that "The model of Italian-Libyan cooperation for fighting illegal immigration should be an example for relations between Europe and Africa" (*Espresso* 17 March 2005). Italy pursued in relation to Libya the same carrot and stick approach that it used in relation to other

North African countries such as Morocco and Tunisia – in this case giving financial and material support in return for readmission agreements. At the end of September 2004, the Interior Minister, Pisanu announced in *Il Messaggero* that "The lifting of the embargo will allow Italy to sell to Gaddafi…aeroplanes, boats, helicopters and off-road vehicles, necessary to block the traffic of illegal immigrants". But the assistance is more than just material. Italy has also been sending officials to Libya to help in the attack on human trafficking rackets, a practice already in place in Albania and Morocco.

In contrast to the various proposals outlined above the Italian-German agreement took effect very quickly. In the first month of cooperation, Pisanu referred to results that were 'decidedly satisfactory, as shown by the intense activity curbing the traffic of human beings and irregular immigrants. This has permitted the repatriation to the countries of origin of many thousands of illegal aliens, of whom 4,500 headed for Italy' (cited in *Espresso* 17 March 2005). The most high profile of these deportations occurred in October 2004 when Libya accepted 1,000 people deported by Italy from Lampedusa and, unencumbered by the need to observe international conventions since it is not a signatory of the Geneva Convention, in turn deported them to Egypt and Nigeria without checking whether any of them had any claim to asylum.

Those that have been sent to Libya had already arrived on Italian territory, and so should have had access to the asylum procedures had they so wished – this was the main objection raised by NGOs and Human Rights organisations at the time, but the deportations continue. Amnesty International has three times urged the European Commission to take a stand on the situation and break its silence (Amnesty International 2005). It might be argued that the Libyan situation is very different from the pilot projects currently underway elsewhere in Africa. Libya is not a signatory of the Geneva Convention, there are no asylum procedures in place and the operations are carried out in a brutal and excessively hasty manner. But UNHCR, funded by the European Commission, is planning on training Libyan officials and the *Agenda* commits them to encouraging Libya to sign up to the Convention and introduce asylum procedures.

The situation in Morocco is somewhat different. Morocco signed the 1951 Geneva Convention in 1956 and ratified the 1967 New York Protocol in 1971. It is also a signatory of the Convention on the Rights of Migrant Workers and their Families, unlike most EU states, and a number of other international conventions relating to the rights of migrants (Lindstrom 2002). Although it has taken some time, Morocco finally passed a law regulating to the entry and residence of foreigners on 11 November 2003[5]. Belguendouz argues that this law is a response to external pressures, that it is an attempt to adapt Moroccan migration legislation to rules fixed by the Schengen Agreement, and that in passing it Morocco is bowing to the security pressures of the EU, which 'has assigned to Morocco the role of Europe's policeman in North Africa' (Belguendouz 2003a).

All of this legislation makes Morocco a 'legitimate' and therefore attractive partner to EU member states in their drive to control migration. Furthermore the two Spanish enclaves at Ceuta and Melilla have already created a high level of cooperation between Spain and Morocco, as Morocco seeks to further demonstrate its credentials as a good neighbour by readmitting those caught on the Spanish side of the fences. From January 2004, under the readmission agreement, Morocco began to accept the return of both Moroccan and non-Moroccan nationals from the enclaves and those intercepted in boats. Morocco and Spain began joint naval patrols aimed at catching boat migrants in February 2004 and in collaboration with the Spanish Integrated Service of Vigilance of the Straits (SIVE) (in return for in return for $390 million of aid), these developments are expected to have a significant impact on illegal migration (Baldwin-Edwards 2004). For 2003, Morocco claims to have prevented some 32,000 cases of illegal migration to Spain, of which only half were Moroccans (Baldwin-Edwards 2004). On five flights between November 2003 and January 2004 around 1,500 migrants were deported to Lagos – not all Nigerians (Briscoe 2004).

Denmark, France, Italy, the Netherlands and the UK too have an interest in establishing some kind of project, though as yet nothing has been

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[5] La loi marocaine relative à l'entrée et au séjour des étrangers au Maroc à l'émigration et l'immigration irrégulières du 11 Novembre 2003 (02-03)

formalised, and EU negotiations have not yielded a great deal formally. Morocco had been earmarked for an Action Plan by the EU's High Level Working Group on Migration and Asylum in 1999. The HLWG had formulated Actions Plans for a number of countries including Morocco. The goal was to coordinate EU policies on security, foreign policy, and development so as to influence the target country's policies on human rights, democratisation, poverty, asylum and migration. As with most of these initiatives, this translated into an emphasis on pressurising the countries in question to sign readmission agreements and step up migration controls, and suffered from a lack of consultation with the Moroccan government (Belguendouz 2003b, Geddes 2005). The Council mandated the Commission in 2000 to seek readmission agreements with 11 countries including Morocco, but to date this has not yet been concluded (Geddes 2005, CIMADE 2004).

Nonetheless, informally the pressure from the EU and individual member states has led to worrying developments within Morocco. In Morocco it is difficult to speak of 'refugees' (Lindstrom 2002, 8) or 'asylum seekers' and both groups tend to be subsumed under 'illegal migrants'. Nonetheless, the since 1957 the Bureau of Refugees and Stateless Persons (BRA) has been charged with assisting and protecting refugees, 'yet most refugees recognised by UNHCR are not granted status by the BRA' and so cannot access the rights enshrined in domestic legislation (Lindstrom 2002, 13). Furthermore, it seems that many do not approach UNHCR either because they do not know of UNHCR's existence or because of fears that their claim will be rejected and they will be deported (Lindstrom, 2002).

While there are as yet no formal camps for detaining foreigners in Morroco, there are a number of 'informal' camps at important entry and exit points, for example close to Ceuta and Melilla, and near the Algerian border at Oujda, where people are deported and re-enter, and at Laayoune, jumping off point for the Canary Islands (in particular since it has become difficult because of surveillance to leave from Tangiers). There are also camps near the larger cities, where people seek work to support themselves and pay for their onward journeys. CIMADE in October last year published a report into the 'alarming situation of sub-Saharan migrants in transit in Morocco and the

consequences of the European Union policies' (CIMADE 2004). In the report they examined conditions in three of the ad hoc or squatters camps: those at Gourougou, Belyounech and Oujda.

According to the report, the populations in these camps included some who had been recognised as refugees by UNHCR in Mali and Guinea, and others, who had they known it was possible to claim something like asylum, would have had grounds to do so, if not according to the 1951 Geneva Convention, then according to the Organisation of African Unity's Refugee Convention (of which Morocco is a signatory, though it has not yet been invoked). Just over half of those interviewed (53.6%) had left their country of origin more than two years earlier, and on average, they had spent at least one year in Morocco. Most of those in the camps were the least well-off, few of them having the resources to pay the 'smugglers', and those had had money to pay when they left their countries of origin had fallen victim to 'smugglers' who had disappeared with the money (CIMADE 2004, 21).

Of the 95 people interviewed, 67 had suffered violence at the hands of the Spanish Guardia Civil, and 'only' 15 at the hands of the Moroccan forces, although these included a Cameroonian who had been hit by lead balls fired as he was trying to scale a fence. Two Nigerians were also killed by the Moroccan forces at Nador, near Ceuta (CIMADE 2004, 33). In January this year, a few days before the visit of the King of Spain, the Moroccan police cleared Gourougou, destroying the makeshift shelters and returning the migrants to Algeria. The following month, they surrounded the forest of Belyounech where approximately 1,000 people were sheltering refusing to allow those who left seeking food to re-enter. However, these measures are unlikely to have any long term effect – any more than the deportations from Libya. CIMADE reported that more than half of their interviews had already been deported and returned, in some cases up to seven times.

The camps in this report were not enclosed, there was no intention to offer protection, or to process the residents. They were not managed in anyone's interest. They developed spontaneously as people gathered together for shelter and to pool information. The irony is that migrants are not allowed to develop their own camps, but soon they may be incarcerated

in camps created by Morocco at the behest of European states, and trapped in a place they don't want to be. Given Morocco's uneasy relationship with UNHCR and its record of granting refugee status, it seems likely that there will be only the most perfunctory examination of asylum claims and that instead people will quickly be dispatched to Algeria, Nigeria, or Senegal or Mali – irrespective of where they come from.

What's new and what's old about this emerging Asylum Paradigm?

Although a number of scholars have pointed to the novelty of the emerging paradigm, in fact there are precedents for most of the elements of the paradigm. It is true that the political context has changed in the last 20 years. The end of the Cold War marked a real and dramatic shift in international relations, leading to a more unstable and unpredictable world. From a time when international relations were, could only be, conducted within the framework of two powerful blocs, we now a situation where the fear remains, but none of the 'frozen certainties'. One of the consequences of the end of the Cold war was that the fall of the Iron Curtain also allowed greater mobility because the political, if not economic, constraints on a significant proportion of the world's population were removed.

At the same time, there has been a transport and communications revolution, which while not alleviating poverty, has brought long distance travel within the means and imagination of more of the poor. More recently, the communications and identification technology has allowed states to register and monitor the movement of people in a light, hands-off or surreptitious and unaccountable manner (depending on one's perspective) very different to the measures employed in the former Soviet Union, for example. Technology seems to allow for the tracing, monitoring and control of people and that is a prospect that is seductive and dangerous for any government. With machine readable passports, iris scans, fingerprints, tagging and CCTV, some governments, such as the UK's, seem to believe that it will be possible to monitor movements into and out of the territory (Home Office 2005), and that with for example the introduction of ID cards,

surveillance of those in the territory and of their access to resources will be that much easier. If this technology can be shared with transit, or buffer, states then the degree of control will be enhanced even further and this is happening, with states including Germany and Italy sending money, materials and personnel to Albania, Libya and other significant transit states. And yet, previous innovations, passports and photo identity cards, also seemed to promise control, but each time technology has also provided the way round these barriers.

Rhetorically, there was been a shift towards an increased use for the term 'management' rather than 'control'[6], a term that seemed somehow more benign, although recently there has been a shift back again towards 'control'[7]. The rhetoric of 'migration management' acknowledges migration as something positive, but a phenomenon that must be and can be managed (controlled?). However, as Crisp points out 'migratory movements involving refugees and asylum seekers are inherently chaotic and unpredictable ... While the notion of 'migration management' has a reassuringly technocratic ring to it, we can be sure that the reality will be considerably more complex, controversial and costly than this concept implies' (2004, 14).

This 'management' rhetoric has to a certain extent displaced talk of preventative measures in the shape of 'root causes' strategies, and the implementing mechanisms have slipped down the agenda. Now attention is focusing on the containment of refugees in the region of origin to a far greater extent. And yet, camps as an institution have a very long history, with some contemporary camps having been around for a very long time, even though the word camp itself seems to characterise a temporary phenomenon – an *ad hoc* response to an unexpected event, with was assumed to be temporary, exceptional and soluble. However, camps have too often become rooted, developing a life and identity of their own. What is not so clear is whether the European states that are pressurizing other countries to create or expand the camps within their territories see these camps as permanent or temporary fixtures – or whether they care.

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[6] See Bentley et al. (2003) and Spencer (2004).
[7] Compare for example Home Office 1998, 2002 and 2005.

It does seem that the pressures that have always been exerted on developing countries to contain refugees in the region are now becoming joined up. For some years now, European governments have been using a carrot and stick approach to migration policy, including asylum policy, promising aid or visa quotas in return for readmission agreements. And the reception policies of some of those countries is changing, in particular since the countries doing the pressurizing seem much less concerned about Human rights norms being respected. A blind eye is being turned by the EU and its liberal democratic member states to the actions of the police and armed forces who are pushing people back across their borders into the Sahara, for example.

Finally, extra-territorial processing too, is not new – though traditionally it has been linked to a particular crisis and has occurred within the context of resettlement operations, with UNHCR processing people in camps in a first country of asylum before assigning them to a third country such as Australia, Canada or the US – who include criteria beyond protection needs when choosing their quota. And people have been held in camps around the world while being processed, perhaps most famously the Vietnamese Boat-People, many of whom were held in camps for decades. What is new is the declared and expressed intention to return people from EU states without examining their claim to asylum.

And it is this, the abandonment of the principle of non-refoulement, and of any duty to those who do make it to the territory of European states that is causing the most concern. Whatever the rhetoric of commitment to the 1951 Geneva Convention (and that is not universal), reality seems to be moving in a very different direction.

What is the relationship between the rhetoric and the reality?

The rhetoric varies enormously, from that which speaks to national electorates of the need to reduce the number of asylum seekers (or clandestine entrants) by preventing them from landing in EU states, to that which seeks to improve the asylum infrastructure in countries in regions of origin, so that those who arrive in neighbouring countries can quickly seek

and find protection without having to undertake long and dangerous journeys. There continues to be talk of development, democratisation and of human rights though to a large extent this has now slipped down the political agenda – not least because it necessitates long term investment, considerable forward-planning, real cooperation between sending, transit and receiving countries that make the welfare of migrants a priority. Talk of control is supposed to appeal to national electorates in the receiving countries, but is greeted with hostility by those who are involved in refugee protection, who see protection losing out to the drive for control, which seeks short term fixes and new technology, is less concerned with development, and at least on the evidence so far is prepared to ride roughshod over human rights. The other discourse, that of capacity building, of universalising the 1951 Geneva Convention, of creating infrastructures in those countries that receive most refugees and of creating durable solutions should appeal to both camps, refugee advocates and the advocates of control, since both desire, from different perspectives to reduce migratory pressures.

It may take years for the policies relating to containment in the region that are currently being developed to become institutionalised within the EU or internationally, but they are taking shape and being implemented in a piecemeal fashion that lacks coherence, cooperation and courage. When the 'vision' thing gets rejected, it is not always dumped – instead pilot or exploratory projects are launched, or the vision is used to transform structures already in place, so that a few years down the line, one discovered that what had been rejected is now well-established. That these initiatives happen outside of the normal policy frameworks and are promoted quietly and discreetly by men and women out of the political limelight means that they are not subject to scrutiny. And once in place, they become the norm, and very difficult to reverse.

Lack of oversight is not just a problem in policy terms, but also in practical terms. Many camps that exist today do so in desolate and isolated places. While camps develop on the outskirts of cities and ports, in general governments prefer to site them at a distance from local populations, which means that what happens in those camps is also free from scrutiny. And by

and large, out of sight is out mind. It is already difficult to persuade populations in the developed and developing world to care about the conditions of those whose misery or abuse is visible. Confining people to camps renders them still more vulnerable. And people would have to be confined behind fences and barbed wire, and patrolled presumably by armed guards – if not, it seems inevitable that people would move on in an attempt to reach a destination they choose for themselves. And if guards are armed, inevitably those weapons will be used – this paper has made reference to a few instances where this has already occurred.

There is a real danger that the existence of 'protection areas' in regions of origin would be used by states to shrug off their responsibilities for those who arrive in their territories and claim asylum. In sending people back to an alleged first country of asylum we will see an increase in a phenomenon to which the Dublin Convention was supposed to bring an end – 'refugees' in orbit. And where people end up in states in which checks and balances do not exist, in Libya, for example, who will be accountable for their welfare? The official tally of deaths of those deported from or trying to re-enter Libya was 106 in the six months after the agreement came into effect. In the twelve months leading up to the agreement it was 103.

Conclusion – Some Questions

In spite of the work of academics, experts in IGOs and NGOs and even of their own civil servants, in spite of good work within some Ministries, and of rhetoric that acknowledges the importance of a holistic approach – one that involves joined-up policies, that deal with conflict, underdevelopment, political and economic instability, overwhelmingly European governments continue to define their 'problem' as one of control and all of the strategies developed to deal with this issue of control revolve around protecting their right to decide who may, or may not enter their territory and under what conditions. While there continues to be those who argue that governments must address root causes such as poverty, conflict and human rights abuses (for example, Castles, Crawley and Loughna 2003, Crawley 2004), others argue that one must understand the perspective of states and develop

solutions that states will find acceptable and that stand a chance of being implemented (Hathaway 1990).

Some years ago, James Hathaway argued that it was important to understand what drove government policy in order to present solutions to real problems and hence improve the protection of refugees. At that time – the solution that was proposed to the problem of recalcitrant states was 'temporary protection' – it was assumed that states would find this more palatable and that it would encourage them to take more refugees. Assurances were given that 'temporary protection would be complementary to, and not a substitute for, the protection system in place. There is an important lesson to be learnt from this pandering to states' concerns. Hathaway was attacked at the time, justifiably it turns out, because it was argued that states would use temporary protection as an excuse to move away from what had become de facto permanent protection. 15 years later exactly the same rhetoric is being used about transit centres in North African countries, which are said by the JHA ministers to be 'not an alternative, but complementary to the European asylum system' (CIMADE 2004, 10). The lesson from the temporary protection debate is that such rhetoric is not to be trusted.

The consensus among NGOs and scholars seems to be that in some shape or form camps for the processing, detention and containment of migrants will go ahead. A phenomenon, a camp, that has traditionally been associated with an exceptional situation, and therefore a phenomenon that should be temporary while a solution is found, becomes itself a permanent solution, one in which the interests of states take precedence of those of individuals. I would conclude by echoing Noll and arguing that 'the drafters of the "new approaches" should permit themselves a historical and analytical detour'. They should look again at the 1930s and the consequences putting groups of people into camps and dehumanising them.

References

Amnesty International. 2005 *Letter to Frattini* Available at
http://www.amnesty-
eu.org/static/documents/letters_2005/B456_Letter-
to_Frattini_Italian_expulsions.pdf (accessed 24 March 2005)

Baldwin-Edwards, Martin. 2004 'The Changinging Mosaic of Mediterranean
Migrations' in *Migration Information Source* Available at
http://www.migrationinformation.org/feature/display.cfm?ID=230
(accessed 29 March 2005)

Belguendouz, Abdelkrim. 2003a 'Le Maroc non Africain, gendarme de
l'Europe ? Alerte au projet de loi no. 02-03 relative à l'éntrée et au
séjour des étrangers au Maroc, à l'émigration et l'immigration
irrégulière' *Plein Droit 57* GISTI : Paris

Belguendouz, Abdelkrim. 2003b 'Le Maroc, pays d'émigration et de transit
vers l'Europe et le Plan d'Action de l'Union Européenne: Quel dialogue
migratoire?' paper prepared for the seminar series of the Association
Marocaine d'Etudes et de Recherches sur les Migrations 18 January 2003

Bentley, Tom, Buonfino, Alessandra and Veenkamp, Theo. 2003 *People Flow:
Managing migration in a New European Commonwealth* Available at
www.demos.co.uk (accessed 28 March 2005)

Betts, Alexander. 2004. '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).

Briscoe, Ivan. 2004 'Dreaming of Spain; Migration and Morocco' Available at
http://www.opendemocracy.org.uk/debates/article-2-103-1919.jsp
(accessed 29 March 2005)

CIMADE. 2004. *la Situation Alarmante des Migrants SubSahariens en transit
au Maroc et les Consequences des politiques de l'Union Européenne*
CIMADE : Paris

Commission of the European Communities. 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 23 March 2005)

Commission of the European Communities. 2004 *Communication from the Commission to the Council and the European Parliament on the Managed Entry into the EU of Persons in Need of Protection and the Enhancement of protection Capacity of the Regions of Origin – Improving Access to Durable Solutions.* Commission of the European Communities: Brussels. Available at http://www.ecre.org/eu_developments/debates/comUKcomm.pdf (accessed 23 March 2005)

Castles, Stephen, Crawley, Heaven, and Loughna, Sean. 2003. *States of Conflict: Causes and patterns of forced migration to the EU and policy responses.* London: Institute for Public Policy Research.

Crawley, Heaven. 2004 *The UK, the EU and Forced Migration* Commissioned Paper for Refugee Studies Centre Research Consultancy on 'Developing DfID's Policy Approach to refugees, Asylum Seekers and Internally Displaced People' unpublished paper received from the author.

Crisp, Jeff. 2004 'A new asylum paradigm? Globalization, migration and the uncertain future of the international refugee regime' UNHCR New Issues in Refugee Research Working Paper No. 100 UNHCR, Geneva

European Parliament. 2004 *European Parliament resolution on asylum procedure and protection in regions of origin* (2004/2121(INI)) European Parliament: Luxemburg. Available at http://www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//TEXT+TA+20041215+ITEMS+DOC+XML+V0//EN&LEVEL=3&NAV=X (accessed 23 March 2005)

Geddes, Andrew. 2005 *The European Union and Migration from Sub-Saharan Africa* IOM: Geneva (forthcoming – check before publication)

Hathaway, James. 1990 'A Reconsideration of the Underlying Premise of
     Refugee Law' *Harvard International Law Journal* 31, 1 pp. 129-183

Home Office. 2005 *Controlling our Borders: Making Migration Work for Britain*
     Home Office: London

Home Office. 2003a. *A New Vision for Refugees.* Home Office: London

Home Office. 2003b Home Secretary Statement on Zones of
     Protection.Reference: Stat010/2003 - Date: 27 Mar 2003 11:02
     Available at

 http://index.homeoffice.gov.uk/n_story.asp?item_id=424 (accessed 23
     March 2005)

Home Office. 2002 *Secure Borders, Safe Haven : Integration with Diversity in
     Modern Britain*

Home Office. 1998 *Fairer, Faster and Firmer; A Modern Approach to
     Immigration and Asylum* Home Office: London

Lindstrom, Channe. 2002 'Report on the Situation of Refugees in Morocco' for
     the Forced Migration and Refugee Studies Programme, American
     University of Cairo. Available at

http://www.aucegypt.edu/academic/fmrs/Reports/morroco.pdf (accessed 29
     March 2005)

Ministry of External Affairs. 2003 *Brief over bescherming in de regio 3 mai
     2003* Available at

http://www.minbuza.nl/default.asp?CMS_ITEM=82A401963C0D46888CC13B
     D3EDB4ADE7X3X45963X09 (accessed 23 March 2005)

Noll, Gregor. 2003 'Visions of the Exceptional: Legal and Theoretical Issues
     Raised by Transit Processing Centres and Protection Zones' *European
     Journal of Migration and Law, 5 (3)*

Pro Asyl. 2003 *Asyllager in Nordafrika?* Available at

 http://www.proasyl.de/texte/2004/Nordafrika_0904.pdf (accessed 23 March
     2005)

Spencer, Sarah, ed. 2004 'The Politics of Migration: Managing Opportunity, Conflict and Change' special issue of *Political Quarterly*, Oxford: Blackwell.

Statewatch News Online. 2003. *Weekly Deaths at European Borders – Fatal Realities of Fortress Europe* www.statewatch.org.uk June, 2003

UNHCR. 2004a *Asylum Levels and Trends in Industrialised Countries, 2004* Geneva, UNHCR

UNHCR. 2004b *Press Release* accessed at www.unhcr.ch/press-releases 1 October 2004

UNHCR. 2003 *Agenda for Protection* Geneva, UNHCR

L'Unita. 2005 *Immigrati, tornano le deportazioni in Libia* Available at http://www.unita.it/ricerca.asp (accessed 23 March 2005)

Verdirame, Guglielmo & Harrell-Bond, Barbara. 2005 *Rights in Exile: Janus-Faced Humanitarianism* Oxford, Berghahn

Vitorino, Antonio. 2004 'The Future of the European Union Agenda on Asylum, Migration and Borders'. Speech to the Conference of the European Policy Center and King Baudouin Foundation, Brussels, 4 October 2004

Wijnen, Friso. 2004 senior policy advisor, Department of Persons, Migration and Alien Affairs, Ministry of Foreign Affairs, the Netherlands, from his presentation to the Oxfam Conference on the International Dimension of EU Asylum, 19 October 2004, Brussels.