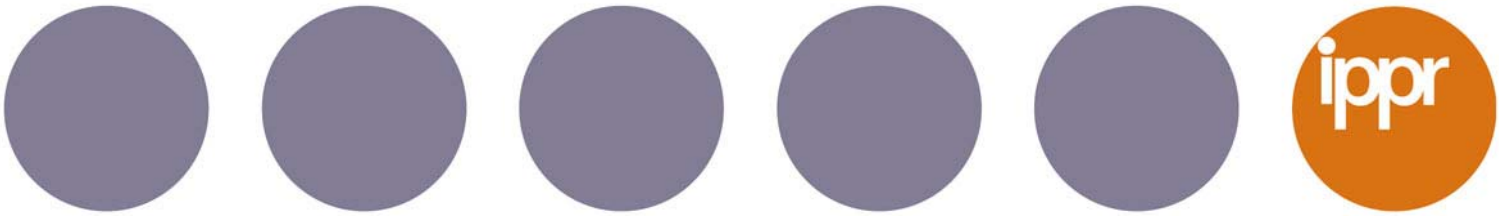

From Rome to The Hague

European Union policy-making on asylum

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Contents

Executive summary

This paper aims to inform and analyse the process and implications of recent developments on EU asylum policy. The paper reviews, in particular, some of the most significant EU legal and policy advances since ratification of the Amsterdam Treaty, and discusses their main policy resonance and effects both EU-wide and, where appropriate, in the United Kingdom. It further explores some of the key perspectives of the future EU Constitution and other forthcoming institutional developments in this policy area, including the recently adopted Hague Programme.

The paper shows that the evolution of EU asylum and immigration policy and legislation from ratification of the Treaty of Rome in 1957 to the adoption of the Hague Programme in December 2004, has been marked, significantly, by a series of constraining antagonisms. Most of these continue to define on-going EU asylum policy developments and they include:

- An almost inextricable conflict of sovereignty between Member States and the EU regarding the formation of binding EU asylum legislation;

- the increased effect of internal free movement within the EU on the need to strengthen and harmonise the Union's external borders;

- growing societal pressure to guarantee fair treatment of, and to develop appropriate integration measures for third country nationals who reside legally on the territory of the Member States, while at the same time addressing growing misconceptions within the EU media and public opinion about immigration; and

- a need to provide quick, fair decisions for, and appropriate assistance to refugees and others in need of international protection, while at the same time ensuring that necessary controls of immigration are maintained – this at a time when distinctions between refugees and economic migrants have become less clear and have impelled more refined policy responses.

The paper further points to the fact that for a common EU asylum policy to be finalised and prove effective and operational, there will be a need for a proper burden sharing mechanism within the Union, particularly bearing in mind that none of the ten new Member States that joined the EU in May 2004 can be considered as a traditional country of asylum. On the other hand, with asylum figures falling in most Member States, and with increased demographic and skill shortages affecting the majority of EU societies, there is an emerging shift in EU policy priorities towards a more rational and integrated approach to the management of economic migration. This includes the need to review the implications which an economic migration strategy, and a common Union framework, could have on EU competitiveness and, therefore, on fulfilment of the Lisbon objectives.

Against this background, the paper's policy recommendations highlight, in particular that:

- *Migration management* need not be *crisis management.*

- By re-focusing on refugee policy more broadly, particularly as regards access to durable solutions, the European Union could strengthen its essential role in global refugee protection and help to clarify debate across the continent for the benefit of the public, politicians and policy makers, as well as for refugees.

- The forthcoming adoption, by all the Member States, of a single asylum procedure should be an important step forward in the development of an efficient and fair

protection determination system. However, whilst such a procedure is designed to reduce the length and costs of the multiple procedure and appeal systems still in force in several Member States, it is by no means conceived as a system enabling dilution of the rationale and grounds for full Geneva Convention protection.

- Securing agreement to, and transposition into national law of EU directives and other legal instruments, may be time-consuming and require competing political, policy, financial and operational considerations to be balanced. While such agreements are essential, much may also be achieved by means of practical cooperation, including more systematic exchanges of information and expertise, among national public administrations responsible for day-to-day asylum policy.

- The EU should decide, with UNHCR and the NGO community, whether and how the processing of asylum applications outside the borders of the Union could be feasible. The worst situation is the current lack of decision making on this issue. There is also an urgent need to push ahead with an increase in re-settlement programmes for refugees. Currently, only nine Member States, including the United Kingdom, participate in such schemes. Account must also be taken of the fact that 75% of the world's refugees are currently in developing nations close to their countries of origin.

- A programme to increase employer awareness and to assist employers in the legitimate employment of foreign nationals merits full support. This would enable employers to cooperate more closely with authorities seeking people who are working without appropriate documentation, and should be linked to more rigorous sanctions against employers when breaches of the law are identified.

- Voluntary return assistance programmes for all failed asylum seekers, including practical, financial, vocational and travel assistance, should always be on offer. Such programmes can enhance the sustainability of returns.

- EU governments need to enforce the law relating to traffickers and smugglers with tough sentences for abuse and protection measures for their victims. It is also essential to integrate the new and future Member States into an effective border guard system.

- The ideas contained in UNHCR's *Convention Plus* should be translated into international practice. If it is considered that the Geneva Convention needs revision, then the Global Commission on International Migration (due to report to the UN Secretary General in the summer of 2005) should have the courage to say so.

- The key to this discussion, however, remains the notion of *effective protection*. This means fair and consistent procedures for ensuring the integrity of the Convention. If the Convention is not legally applicable, then subsidiary protection instruments should always be considered, as defined in the recent EU Qualification Directive defining who is entitled to protection and providing for fair living standards pending the application and thereafter, if successful. To this should be added that the integrity of the system must be protected by the right of Member States to remove persons from their territory should they not qualify for any status, albeit in a humane and, if at all possible, voluntary manner.

Introduction

Europe has long become a pole of attraction for third-country nationals, whether they seek employment, family reunion or protection from persecution under the 1951 Geneva Convention on the Status of Refugees and its 1967 Protocol, or other instruments. In the last fifteen years of the previous millennium some five million asylum applications were lodged in the European Union, in addition to a net inflow of roughly eight million non-EU workers. However, even with illegal immigration, estimated to be as high as half a million a year, though controversial to measure and causing anguish in the media, the total number of migrants into Europe does not make a dent in low birth rates and a declining population. If, as the United Nations predicts (UN Population Division 2003), Europe's population declines by roughly 50 million people by the mid-point of the twenty-first century, there would need to be a net inflow of approximately 12 million immigrants annually of whatever category, just to maintain a status quo. The implications for the economic strength of Europe, to say nothing of the tax and social security base, are considerable.

The Secretary General of the United Nations, Kofi Annan, has also joined the debate specifically in relation to Europe. In a speech to the European Parliament on 29 January 2004 he said:

' One of the biggest tests for the enlarged European Union, in the years and decades to come, will be how it manages the challenge of immigration. If European societies rise to this challenge, immigration will enrich and strengthen them. If they fail to do so, the result may be declining living standards and social division…..All countries have the right to decide whether to admit voluntary migrants (as opposed to bona fide refugees who have the right to protection under international law). But Europeans would be unwise to close their doors… It would drive more and more people to come in the through the back door…. All who are committed to Europe's future, and to human dignity, should therefore take a stand against the tendency to make migrants the scapegoats for social problems. The vast majority of immigrants are industrious, courageous and determined… In this twenty-first century, migrants need Europe. But Europe also needs migrants. A closed Europe would be a meaner, poorer, weaker, older Europe. An open Europe will be a fairer, richer, stronger, younger Europe – provided Europe manages migration well.'

The former President of the European Commission, Romano Prodi, has stated that the management of migration into the EU is a matter of political will. It is not sufficient to take a laissez-faire attitude. As has been stressed at a political level on a number of occasions, and notably at the special European Council in Tampere, Finland in October 1999, the notion of *management of migration* is crucial. If, as is argued in this paper, the EU is or is becoming one space for free movement of persons, then there need to be common rules and a common system of sharing the burden of welcoming refugees, receiving and training migrants and ensuring that they become productive members of their host societies, able to use the skills that they have acquired. Put another way, there is a critical need for efficient and effective managed migration policies and practices. Luxembourg's migrants make up 31.5% of the national population, France's 10.4%, Ireland's 9.3%, Belgium's 9.0%, whilst the proportion in the United Kingdom is 6.5 %. These uneven flows, however, do not always reflect accurately the needs in each Member State for labour, nor their capacity to deal with migration.

The task becomes even greater with the advent of the enlarged EU, with further Member States due to join. The total coastline of the EU is 89,000 km; two of the longest coastlines are Greece (13,600 km) and the U.K. (12,400 km). It is clearly impossible to police this length of coast simply by increasing controls at the main ports of entry. There needs to be an assertive approach to the prevention of abuses of the asylum system and other forms of illegal migration, by tackling these closer to source, through effective visa regimes, Carriers' Liability legislation,

the use of liaison/intelligence officers, and through a high degree of co-operation and information sharing, all of which require further development. There is a need, too, to ensure that border control staff, throughout the enlarged EU, have detection devices and other technology available to them, and that they are properly trained in its use.

Since the mid-1990s, and in particular since the European Council in Tampere in October 1999, the EU institutions have been active in developing a relatively comprehensive set of principles and rules, including binding directives, to harmonise approaches and regulations in the field of asylum policy in the European Union. This has embraced the full asylum/immigration policy spectrum, from common definitions of a refugee and common status determination procedures and reception conditions, to legislation on third-country nationals, a common readmission policy, and harmonised sanctions on human traffickers and smugglers. Many of these measures were developed under the policy umbrella of the so-called Common European Asylum System (CEAS). Their aim is to provide comprehensive norms to be followed by all Member States for protection under the Geneva Convention 1951. However, many commentators have been critical of the EU's approach . Their judgement is that, although there are now common standards, in order to reach consensus, standards have fallen to the lowest common denominator. Instead of access for the oppressed, ways and means have been found to exclude as many asylum applicants as possible. The argument is that it is not enough for government to highlight abuses of the asylum system but that fair and open decision making must be applied at all levels.

This is a harsh judgement and was certainly not the aim of the legislator. However, the reality is that in the absence of qualified majority voting (qmv) compromises to reach consensus had to be made. Since January 1st 2005 qmv and co-decision with the European Parliament have been applied with the exception of legal (economic) migration. This should make for more coherent and democratically accountable decision making in this field.[1] Democratic control, especially by the liberally inclined Civil Liberties Committee of the European Parliament, has been an important factor in the debate over asylum with human rights organisations.

With asylum figures falling throughout the EU, including in major host countries such as the United Kingdom, and the establishment of a common set of rules on asylum now complete (without so far actually achieving a common asylum status throughout the EU), emphasis is increasingly being placed on the management of legal migrants and on the development of pro-active migration policies that address issues of demographic imbalance and skill gaps in a growing number of sectors of the EU's economy. For example, in the United Kingdom, a 'points system' for those coming to work or study was announced as part of a Five-Year Strategy for Immigration and Asylum, on 7 February 2005. In addition to the consolidation and transposition into national law of recent EU directives and regulations, the policy priorities for the coming years will thus be linked increasingly to issues of migration management, especially through increased cooperation with source countries, encompassing both increased development cooperation aid and the negotiation of EU readmission[2] and resettlement[3] schemes.

Since May 2004, the European Commission has had exclusive right of legislative initiative in the field of asylum, meaning that the role and influence of EU national governments in the formation of new policy and legislative instruments in this field have been reduced accordingly. Furthermore, under the Council decision cited above, with one exception asylum and immigration policy are now decided by qualified majority voting. This means that it is easier to

[1] COUNCIL DECISION 2004/927/EC OF DECEMBER 22ND 2004 OFFICIAL JOURNAL L396/45 OF 31.12.2004

2 READMISSION IN THIS CONTEXT MEANS THE NEGOTIATION BETWEEN A MEMBER STATE OF THE EU OR THE EU ITSELF OF AN AGREEMENT WITH A THIRD COUNTRY TO FACILITATE THE RETURN OF A PERSON HAVING THE RIGHT TO RESIDE IN THAT THIRD COUNTRY AND WHO HAS NO RIGHT TO RESIDE ON THE TERRITORY OF THE MEMBER STATE OR THE EU AS A WHOLE.

[3] RESETTLEMENT IN THIS CONTEXT MEANS THE SELECTION OF REFUGEES (USUALLY WITH THE ASSISTANCE OF UNHCR) WHO ARE EITHER PARTICULARLY NEEDY OR SKILLED FOR RELOCATION TO A DEVELOPED COUNTRY WILLING TO ADMIT THEM.

make and implement decisions.. It is the view of present and past EU officials that such procedural changes are a springboard for further substantial progress in this field.

Tazreiter (2004) states that asylum policy, especially 'unannounced refugee arrivals (asylum seekers), present receiving states with significant dilemmas in applying international norms to local contexts'. She says that there are a number of factors and actors to be addressed. These are:

- Why do asylum seekers come to the EU or elsewhere?
- Who should process their claim?
- Where should this be done?
- What are the consequences of 'why, who, where'?

These questions need to be applied to: the future single asylum policy and procedure, and a uniform status, as foreseen in the Hague Programme; immigration policy and the asylum migration nexus (that is the causal link between asylum seekers and economic migrants); resettlement of refugees; voluntary return for failed asylum seekers; and a sound policy of integrating new migrants and refugees into European societies. These issues are complex and inextricably related. It is almost impossible to pigeon-hole them into brief, neat answers.

This paper aims to address all of these issues by informing and analysing the process and implications of recent developments on EU asylum policy. The paper reviews, in particular, some of the most significant EU legal and policy advances since ratification of the Amsterdam Treaty, and discusses their main policy resonance and effects both EU-wide and, where appropriate, in the United Kingdom. It further explores some of the key perspectives of the future EU Constitution and other forthcoming institutional developments in this policy area. Finally, the paper outlines some key political priorities and the authors' recommendations for the development of a more pro-active, effective and realistic asylum and immigration policy in the EU.

1 Levels and main features of asylum applications in the EU

Uneven flows, uneven burden

The nature and scale of asylum phenomena still vary greatly across the European Union. Both the levels of asylum applications and the rates of recognition continue to be distributed unevenly within the EU, thus explaining the European Commission's repeated calls and initiatives for greater burden sharing among Member States.

Statistics provided in Annex I of this paper indicate that, from 1999 to 2002 inclusive, slightly fewer than 400,000 asylum applications were lodged in the European Union each year, and by 2003 the figure (excluding Italy) had fallen to less than 300,000. In the majority of the Member States, the levels of asylum applications have remained stable, or have started to decline, as from the end of the 1990s. However, while asylum figures are in decline throughout the European Union, three-quarters of the applications continue to be lodged in only five Member States (the United Kingdom, Germany, France, the Netherlands and Sweden). While in recent years the United Kingdom had been the most popular country of destination for asylum applicants in the EU, recent figures published by UNHCR for the period January to June 2004 indicate that it has fallen into second place after France.

Another indicator of the sub-optimal distribution of burden among EU Member States relates to recognition rates under the Geneva Convention criteria, which still vary greatly according to Member State, ranging between 1% and 25% on average. Recognition rates, what is more, have decreased in the majority of the Member States as from the late 1990s.

These figures are all indicative of two major policy trends that, amongst others, are discussed in this paper. First, they point to the fact that no common EU asylum policy can be finalised, or prove effective and operational, in the absence of a proper burden sharing mechanism within the Union. This is particularly true when considering the position in the new Member States: with the exception, to some extent, of Poland, the Czech Republic, Hungary and Slovakia, none of the ten new Member States that joined the EU in May 2004 can be considered as a traditional country of asylum. Overall, the ten new Member States together account for less than 10% of the total number of asylum applications lodged in the enlarged European Union.

Secondly, with asylum figures falling throughout the EU, and with increased demographic imperatives and skill shortages affecting the majority of the EU societies, these figures point to the need for a shift in the EU's policy priorities towards a more rational and integrated approach to the management of economic migration. Whilst not impinging on the obligations of the Member States in the field of asylum policy, as derived in particular from the 1951 United Nations Geneva Convention on the Status of Refugees and its 1967 Protocol, which must remain a distinctive policy area, this shift in priorities has originated from the need to review the implications which an economic migration strategy could have on EU competitiveness and, therefore, on fulfilment of the revised Lisbon objectives. An initial illustration of this shift was provided in January 2005 with the publication of the EC Green Paper on an EU Approach to Managing Economic Migration[4], which resulted from a process of in-depth discussions among the EU institutions, the Member States and the civil society on the possible added value of adopting a common EU framework for admitting economic migrants. The original draft Directive[5] proposed by the Commission in 2001 on admitting migrants for employment and self employment has been abandoned after several years' fruitless discussion in the Council of Ministers.

2 The formation of EU policy and legislation on asylum

[4] (COM(2004) 811 FINAL

5 COM (2001) 386 FINAL

The countries of the European Union have a long tradition of offering asylum to people who have had to flee their homeland because of persecution or other serious harm. The right to asylum is today guaranteed by the Charter of Fundamental Rights of the European Union, with due respect to the rules of the 1951 United Nations Geneva Convention on the Status of Refugees and its 1967 Protocol, and in accordance with the Treaty establishing the European Community.

However, the evolution of EU asylum and immigration policy and legislation from ratification of the Treaty of Rome in 1957 to the adoption of the Hague Programme in December 2004, has rarely been frictionless and well-ordered. Amongst many other antagonisms that are discussed in this paper, and which to a large extent continue to define the formation of EU asylum policy, the following are particularly worthy of mention:

- the enduring conflict of sovereignty between Member States and the EU, and the gradual progression from soft, non-binding law to the granting, in May 2004, of exclusive right of legislative initiative to the European Commission;

- the issue of increased internal free movement within the EU having led to an ever more pressing need to strengthen and harmonise external border controls;

- the need to guarantee fair treatment of, and to develop appropriate integration measures for third country nationals who reside legally on the territory of the Member States, while at the same time addressing growing misconceptions within the EU media and public opinion about immigration; and

- the increased complexity of contemporary migration dynamics, resulting in what has commonly been termed the asylum-migration nexus, whereby distinctions between refugees and economic migrants have become less clear, while at the same time revealing the need for more rational migration management policies that incorporate a range of additional criteria such as demographic and skill imbalances in the EU host societies.

On the origins of EU asylum policy

The genesis of the European Union policy area that has come to be known as Justice and Home Affairs[6], of which immigration and asylum policy became a crucial part, can be found buried in the Treaty of Rome. Article 3 refers to the 'abolition of obstacles to freedom of movement for persons, services and capital'. The notion of the free movement of *persons* thus became one of the cornerstones of the creation of a common market. Behind this concept was the assumption that common economic goals required labour mobility and that this mobility would bring, in its wake, a host of other requirements relating to the transfer of social security rights and the protection of those who moved from one Member State to another. The idea that this would also bring issues of cross-border crime control and, in the ultimate analysis, common frontier control, in every sense of that expression, was far into the future.

In the meantime, immigration and asylum policies continued to evolve within each Member State's legal system, punctuated mainly by the publication in 1994 of the Commission Communication to the Council and the European Parliament on Immigration, which examined many of the themes in this field that later proved controversial. Various aspects of the field

[6] THE TERM JUSTICE AND HOME AFFAIRS, OR JHA, HAS BEEN USED THROUGHOUT THIS PAPER. HOWEVER, THE COMMISSION'S DIRECTORATE GENERAL WAS RENAMED IN NOVEMBER 2004 AS "JUSTICE, FREEDOM AND SECURITY", THUS REFLECTING MORE ACCURATELY THE WORDING OF THE TREATIES.

were the subject of 'soft law', that is non-binding instruments or recommendations, and later, under the provisions of the Treaty of Maastricht, 'joint actions' to allow project financing prior to the initial creation of the European Refugee Fund in 2000. But a framework for common legislative action did not emerge until the Treaty of Amsterdam in 1999, specifically under article 63. Amsterdam was a response to a general concern that opening *frontiers,* allowing goods and persons to pass freely in the post-Schengen agreement era without passport, customs or tax checks at national borders, opened the way to abuse that had to be controlled in some way. At the same time, Commission officials came to the conclusion that free movement of goods *within* the EU had given birth to the notion of external, as opposed to internal, frontiers and that this had implications for people moving across internal frontiers.

Additionally, there was a reluctance on the part of the Member States to loosen their grip on a policy area which goes to the heart of sovereignty, namely who should be allowed on their territory and on what grounds. By logical extension, if free movement of lorry drivers, holiday makers, and business people were to be allowed within the Union, then admitting an individual and his or her chattels to one Member State meant admitting them to all. Some Member States, Denmark, the United Kingdom and largely for historical reasons due to its ties to its closest geographical neighbour (and the existence of a 'common travel area' between their territories), Ireland, were indeed so reticent that they opted out of a number of the arrangements that ensued.

EU asylum policy and legislation since the Treaty of Amsterdam

May 1999 saw the entry into force of the Treaty of Amsterdam and with it the transformation of the Task Force on Justice and Home Affairs (JHA) into a fully-fledged Directorate-General of the European Commission. The establishment of the new department was amply justified by the scope of the new Treaty. Amsterdam recognised that the model for JHA should not be a carbon copy of the other intergovernmental arm of the Union, the Common Foreign and Security Policy (CFSP). For the new policy area to be effective it would need different instruments in the form of directives or framework decisions, and not simply the joint actions that had been a feature of both policy areas in the Maastricht framework.

The overarching objectives in article 61 of the Treaty remained what they always were from the Treaty of Rome, namely 'measures aimed at ensuring the free movement of persons', adding that this should be in conjunction with 'flanking measures with respect to external border controls, asylum and immigration…'. Article 63 relating to immigration and asylum indicated a five-year timetable within which measures should be taken. There were thus clear distinctions of procedure and objectives, with an enhanced role for the Commission in policy formulation. Asylum and immigration, as subjects constantly in the headlines, were singled out. However, in this instance, attention was, in addition, diverted away from purely domestic concerns to dealing with issues that affected third countries from whence migrants came. More intellectual and human resources were, in future, to be expended by the EU institutions in coordinating development policies and external relations aspects (brain drain, remittances, human rights/security) than they had in the past. A special section D of the conclusions of the European Council was devoted to the need to use additional resources of the Union on external issues. Thus the public discourse on the relationship between migration and development (to be the subject of a second Commission Communication to the Council and the European Parliament later in 2005) was brought to the fore. There has been increasing recognition of the problems relating to the root causes of asylum applications and economic migration (human rights abuse and poverty to name but two) and issues such as brain-drain and the need to act on them in policy making.

Since the Treaty of Amsterdam entered into force on 1 May 1999, there has thus been an array of new policy initiatives (*Communications*) and legal instruments (*EU Directives*) to harmonise

approaches and procedures in the field of EU asylum and other forms of international protection. Most of these actions were initiated as a result of, and under the policy mandate of, the so-called Tampere agenda.

The Tampere agenda: the EU's first comprehensive road map on Justice and Home affairs

At the European Council in Tampere (Finland) in October 1999, the Heads of State and Government of the European Union set out a political strategy, and a five-year programme, covering all key areas of justice and home affairs. In the fields of asylum and immigration, the Tampere conclusions identified six major areas for priority legislative and policy action:

1. *The development of an EU comprehensive approach to migration, addressing political, human rights and development issues in countries and regions of origin and transit.* This was to entail combating poverty, improving living conditions and job opportunities, preventing conflicts, consolidating democratic states and ensuring respect for human rights, in particular rights of minorities, women and children. To that end, the European Union as well as the Member States were to contribute, within their respective competence under the Treaties, to a greater coherence of internal and external policies of the EU, as well as to the development of partnerships with third countries, with a view to promoting co-development.

2. *The establishment of a Common European Asylum System, based on the full and inclusive application of the 1951 Geneva Convention on the Status of Refugees and its 1967 Protocol, particularly as regards the principle of non-refoulement, defined as the right of an asylum seeker not to be sent back a country in which he or she would be persecuted.* This system was to include, in the short term, a clear and workable determination of the state responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It was also to incorporate measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection which was not covered by the Geneva Convention or Protocol. In the longer term, Community rules were to lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union.

3. *A common approach to issues of temporary protection for displaced persons on the basis of solidarity between Member States.* This was to include the establishment of a financial reserve to be made available in situations of mass influx of refugees for temporary protection.

4. *The establishment of a system for the identification of asylum seekers, through completion of the EU fingerprints database*, the so-called Eurodac system.

5. *Fair treatment of third country nationals who reside legally on the territory of the Member States.* This Tampere objective included the development of a more vigorous integration policy aimed at granting third country nationals rights and obligations comparable to those of EU citizens. It also aimed to enhance non-discrimination practices in economic, social and cultural life and to develop measures against racism and xenophobia. To this end, the Tampere Conclusions called for the approximation of national legislation on the conditions for admission and residence of third country nationals, based on a shared assessment of the economic and demographic developments within the Union, as well as the situation in the countries of origin. The legal status of third country nationals was also to be approximated to that of Member States' nationals, implying

that a third country national who had resided legally in a Member State for a period of time to be determined, and who held a long-term residence permit, should be granted in that Member State a set of rights which are as near as possible to those enjoyed by EU citizens. This would include the right to reside, receive education, and work as an employee or self-employed person, as well as the principle of non-discrimination vis-à-vis the citizens of the State of residence.

6. *More efficient management of migration flows at all their stages*. This major policy aim was to include the development, in close co-operation with the countries of origin and transit, of information campaigns on the possibilities for legal immigration, and the prevention of all forms of trafficking in human beings. It also entailed a common active policy on visas and false documents, including closer co-operation among EU consulates in third countries and, where necessary, the establishment of common EU visa issuing offices. This Tampere objective further called for the adoption of legislation, foreseeing severe sanctions against those who engage in trafficking in human beings and economic exploitation of migrants. To this end, there was to be closer co-operation and mutual technical assistance among the Member States' border control services, such as exchange programmes and technology transfer, especially on maritime borders, and for the rapid inclusion of the applicant States in this co-operation. Assistance was also to be provided to countries of origin and transit in order to promote voluntary return as well as to help the authorities of these countries to strengthen their ability to combat effectively trafficking in human beings.

The EU's emerging policy framework and key directives in the field of asylum and immigration

May 2004 was the deadline established by the Amsterdam Treaty, and the Tampere Conclusions, for completion of the first stage in the creation of a 'European area of freedom, security and justice'. Of equal importance is the fact that since May 2004 the European Commission has had exclusive right of legislative initiative with regard to measures under Title IV of the EC Treaty (immigration, asylum, visas and borders), whereas such right was previously shared with the Member States under the inter-governmental coordination procedure.

Although, according to some, the EU's track record in the field of Community asylum policy post-Tampere has remained largely anaemic, there is little doubt that the European institutions have achieved more in the five years following the Tampere Council than in almost five decades consequent to the Treaties establishing the European Community.

In the field of asylum and immigration, twelve major 'Communications' (i.e. comprehensive policy papers issued by the European Commission to set the policy agenda, and prepare for new actions and legal instruments, in all fields of Community competence), and nine directives, were approved between 2000 and 2004.[7]

The overarching objective of all EU policy and legislative initiatives on asylum since the Amsterdam Treaty and the Tampere European Council has been the definition and establishment of a Common European Asylum System (CEAS). This system was to include, in the short-term, a clear and workable determination of the Member State responsible for the

[7] AS ALREADY INDICATED, HOWEVER, MENTION SHOULD BE MADE OF THE EC COMMUNICATION OF 24 FEBRUARY 1994 ON 'IMMIGRATION AND ASYLUM POLICIES' , WHICH HAD ALREADY OUTLINED SOME OF THE KEY ELEMENTS OF A GLOBAL APPROACH TO SUCH ISSUES. THESE INCLUDED MEASURES TO REDUCE MIGRATORY PRESSURES IN THE SOURCE COUNTRIES, NOTABLY THROUGH COOPERATION WITH THE MAIN COUNTRIES OF ORIGIN (INCLUDING THROUGH THE DEVELOPMENT OF HUMAN RIGHTS INTERVENTIONS, TRADE, DEVELOPMENT AND COOPERATION POLICIES, DEMOGRAPHIC POLICIES AND SAFETY POLICY); THE DEVELOPMENT OF MIGRATION CONTROL MEASURES; AND THE STRENGTHENING OF INTEGRATION POLICIES FOR THE BENEFIT OF LEGAL IMMIGRANTS.

examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It was also to be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection. In the longer term, Community rules were to lead to a common asylum procedure and a uniform status for those who are granted asylum.

EC Communications on Asylum and Immigration	
ASYLUM	• Communication on 'A common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum' (COM(2000)755 • Communication on 'Common asylum policy and agenda for protection', COM (2003)152 • Communication on 'More accessible, equitable and managed asylum systems', COM(2003) 315 • Communication on 'International protection and the enhancement of the protection capacity of the regions of origin – Improving access to durable solutions', COM(2004) 410
IMMIGRATION	• Communication on 'Community immigration policy', COM(2000)757 • Communication on 'Common policy on illegal immigration', COM(2001)672 • Communication on 'An open method of coordination for the Community immigration policy', COM(2001)387) • Communication on 'A Community Return policy on Illegal Residents', COM(2002) 564 • Communication on 'Integrating migration issues into the EU's external relations', COM (2002)703 • Communication on 'Immigration, integration and employment' , COM (2003)336 • Communication on 'Development of a common policy on illegal migration, smuggling and trafficking of human beings, external borders and the return of illegal residents', COM(2003) 323 • Communication on 'The links between legal and illegal migration', COM(2004) 412

EU Directives on Asylum and Immigration	
ASYLUM	• Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between EU Member States in receiving such persons. • Directive of 13 December 2002 on minimum standards for the reception of asylum seekers in the Member States of the European Union • Directive of 29 April 2004 on 'Minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection' • Directive on 'Common minimum standards on procedures for granting or withdrawing refugee status' (2004)
IMMIGRATION	• Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals • Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence • Directive 2003/86/EC of 22 September 2003 on the right to family reunification • Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

Source: Prepared by Eurasylum Ltd (September 2004)

3 Main implications of recent EU policy & legislative reforms

This paper has highlighted some of the most important initiatives in the development of EU asylum policy during the first phase of the Amsterdam and Tampere timetable. It has shown that the development of a common European asylum system has gradually become a much less chimerical notion than some had predicted or inferred at the beginning of the process of 'communitarisation' of asylum/immigration policy at the end of the 1990s. The recent adoption of the 'Qualification' and 'Reception Conditions' directives, the forthcoming adoption of the 'Procedures' directive and the establishment of a common asylum procedure and a uniform status for those granted asylum, including the adoption of a single asylum procedure, have particularly contributed to this perception.

The European Commission has conducted its own evaluation of the implications of the recent burgeoning flow of legislative instruments and policy initiatives.[8] The general assessment was that achievements since the Tampere European Council have been 'undeniable and tangible'. Whilst this is true, one might ask whether the instruments have been effective. This paper does not purport to make that judgement. It is arguable, however, that since some of the directives passed have yet to be transposed into national law and that since many of the Commission's drafts were watered down by discussions in the Council, the jury is still out.

However reluctant the Member States may be to relinquish control over such a sensitive field as immigration and asylum, there seems to be a relentless logic and momentum in favour of dealing with the issues at a European level. There is thus a psychological barrier to be broken in Member States' governments, who realise that the problems transcend national borders, but who continue, more often than not, to act first and consult afterwards. A number of the larger Member States – France, Germany and the UK, for example – have enacted their own asylum and immigration legislation whilst negotiations were stagnating in the Council. A standstill on national legislation, or at least an acknowledgement by Member States that such legislation would reflect fully EU immigration and asylum policy, would be a positive contribution to European policy making.

Amongst the main 'asylum practitioners', most notably UNHCR and ECRE, reactions to the recent EU policy and legislative advances in this policy area have been mixed.[9] The UNHCR has commended those EU directive provisions relating, *inter alia*, to the requirement for all Member States to grant subsidiary forms of protection, to recognise non-state actors of persecution, to establish minimum standards to help raise protection conditions in the less experienced 'old' and 'new' Member States, and to regulate access to health care and education, and to identity documents. On the other hand, it has been significantly more critical of the scope for exceptions and adaptations by the Member States allowed by most of the recent directives. In particular, UNHCR has pointed to the major drawback of the decision by the EU Member States not to harmonise the very diverging national policies and practices regarding access of asylum seekers to employment, particularly when many states are concerned about the costs of supporting asylum seekers through a sometimes lengthy asylum process. Particular criticism has been reserved for the Procedures Directive which is deemed not to have created common procedures at all and is deficient regarding judicial review of individual cases. It has also expressed strong reservations about the criteria and use of the 'safe third country' concept, and issues of removal and appeals, pointing to the lack of safeguards to ensure that anyone seeking asylum cannot be sent to a country where they may face persecution, and therefore to a possible breach of the Member States' non-refoulement obligations under international law. As was suggested by the

[8] COMMISSION STAFF WORKING PAPER : ANNEX TO THE COMMUNICATION FROM THE COMMISSION ON AN AREA OF FREEDOM, SECURITY AND JUSTICE SEC (2004)693 AND COM (2004) 401 FINAL OF 2.6.2004

[9] SEE, IN PARTICULAR, ECRE: BROKEN PROMISES- FORGOTTEN PRINCIPLES. AN ECRE EVALUATION OF THE DEVELOPMENT OF EU MINIMUM STANDARDS FOR REFUGEE PROTECTION - TAMPERE 1999 – BRUSSELS 2004, LONDON: ECRE, JUNE 2004

then UN High Commissioner Ruud Lubbers, 'the cumulative effect of these proposed measures is that the EU will greatly increase the chances of real refugees being forced back to their home countries'.[10]

The EU Constitution, should it see the light of day, should respond, at in least in part, to some of the reservations expressed, for different motives, by Member States' governments and the refugee practitioners community. Chapter IV of the draft Constitution is far more comprehensive in scope than its predecessor Treaties, assimilating as it does immigration and asylum to First Pillar mechanisms.[11]

Interior and Justice Ministers, however, are prone to take a narrow view of events and to set aside wider considerations such as foreign policy, trade and development matters. Policy makers primarily, but also the media and the public, need to understand that the complex interlocking factors relating to migratory flows have a knock-on effect on each other. Asylum and economic migration flows are often mixed, not just because of those who seek to abuse the asylum system, but because of the restrictive view of legal economic migration taken by most Member States.[12] These issues need to be understood and the measures taken must reflect the interests of both the EU and its Member States as well as the source countries of migrants.

Financing EU action and information systems

The Commission has proposed for the new 'Financial Perspectives' – the EU's long-term budgetary requirements under discussion in 2004/2005 – substantial increases in financial resources. The budget relating to the source countries of migration has already been increased to €250 million over the next five years and the European Refugee Fund and other smaller funds relating to reception, integration and voluntary repatriation of refugees are also due for substantial increases.

In addition, the Commission has marshalled the financial resources for three major data systems. These will:

- help prevent the misuse of the asylum system, and to assist in resolving issues under the Dublin II Regulation, by finger printing all applicants (through 'Eurodac');

- provide modifications to and expansion of the SIS (to become SIS II), taking into account, amongst other things, the need to establish a system that will allow for the integration of new Member States (SIS I has capacity to deal with only 18 participating States), and provide new functionalities, including an ability to access and search data on identity documents which have been lost, stolen or misappropriated, and the addition of new alerts, and the inter-linking of alerts; and

- develop the Visa Information System (VIS), on which the European Commission adopted a proposal for a Regulation, aimed at defining the purpose, functionalities and responsibilities for this future facility.[13]

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[10] UNHCR PRESS RELEASE: LUBBERS CALLS FOR EU ASYLUM LAWS NOT TO CONTRAVENE INTERNATIONAL LAW, 29 MARCH 2004

[11] THE COMMISSION DID, HOWEVER, ACQUIRE THE SOLE RIGHT OF INITIATIVE ON MAY 1 2004.

[12] ALTHOUGH THE UNITED KINGDOM WOULD NOW CLAIM THAT IT DOES NOT FALL INTO THIS CATEGORY. ONE OF THE IMMIGRATION AND NATIONALITY DIRECTORATE'S PUBLISHED AIMS IS: 'TO PROVIDE AN EFFICIENT AND EFFECTIVE WORK PERMIT SYSTEM TO MEET ECONOMIC AND SKILLS REQUIREMENTS'.

13 SEE HTTP://EUROPA.EU.INT/IDABC/EN/DOCUMENT/3762/194

All of these will require increased human and financial resources. This whole policy area has become highly technology-based and will continue to be so with the inevitable use and development of biometrics.

Public attitudes and the media in the EU

One difficulty increasingly facing the policy maker in relation to any reform and EU-wide harmonisation of asylum and immigration policy relates to the media. On occasions, near hysteria prevails regarding the immigration, asylum, anti-terrorism and anti-racism debates. On all these issues the best is the enemy of the good, since no instrument in this complex field will meet all actors' concerns. The media have to be encouraged to raise the tone of the discourse and reflect the facts. If the media sensationalise complex issues then additional votes will be cast for manifestly racist political groups or pressure will be put on governments to take measures that tilt the balance away from human rights based instruments, or measures that are at the margins of freely undertaken obligations such as the 1951 Geneva Convention on the Status of Refugees and its 1967 Protocol. This also explains the recent call by ECRE that the European Council be encouraged to prioritise a policy of supporting public information in all the EU Member States with a view to promoting a more balanced understanding by the general public of issues relating to forced migration and asylum.[14]

On the other hand, it is noteworthy that EU-wide public opinion polls do not always reflect attitudes and positions conveyed by the generalist media. According to a Eurobarometer survey conducted in December 2003, for example, 56% of the EU population recognised the economic needs for immigration and 66% were in favour of immigrants enjoying equal rights as EU nationals. At the same time, 80% of the EU population supported the strengthening of checks on persons from third countries at external borders and 71% considered that EU joint decisions and joint actions offered the best way of preventing and fighting organised crime in the European Union.[15]

The asylum-migration nexus

These opinion polls are particularly encouraging bearing in mind that, because of the gradual decline in asylum figures throughout the EU, and increased demographic imbalance and skill shortages in most of the Member States, the EU's policy priorities have increasingly shifted towards a more rational and pro-active management of labour immigration. Inflows of third country nationals admitted for employment purposes have increased markedly since the mid-1990s, with a growth of around 20% in Denmark, Sweden and the United Kingdom.

One of the major issues that influences public opinion and exercises politicians is the perception that 'bogus asylum seekers' are attempting to enter the EU Member States whilst in reality they are only seeking employment. There is undoubtedly some truth in this perception. The question then arises whether a more liberal approach to economic migration at EU level would contribute to a drop in asylum figures. The European Commission analysed this conundrum in a Communication in 2004.[16] The Communication's conclusion was that whilst 'there is a link between legal and illegal migration, the relationship is complex and certainly not a direct one since a variety of different factors has to be taken into consideration'.

14 SEE: '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)
15 FIGURES QUOTED IN: EC COMMUNICATION ON 'AREA OF FREEDOM, SECURITY AND JUSTICE: ASSESSMENT OF THE TAMPERE PROGRAMME AND FUTURE ORIENTATIONS' COM (2004) 4002 FINAL (2.6.2004)
16 COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS: STUDY ON THE LINKS BETWEEN LEGAL AND ILLEGAL MIGRATION COM (2004) 412 FINAL.

Various systems of annual quotas have been used in experiments by several Member States through the negotiation of bilateral agreements with source countries, in consultation with employers and trade unions. For example, the United Kingdom's Highly Skilled Migrant Programme, launched in January 2002, established an admission route based on a points system relating to five main areas (educational qualifications; work experience; past earnings; achievements in the applicant's chosen profession; and the skills and achievements of the applicant's partner). In addition, as noted above, the United Kingdom's Five-Year Strategy, announced on 7 February 2005, includes a points system for those coming for employment or studies. This is intended to sweep away the complexities of the present system, and allow 'points' to be adjusted, to respond to changes in the labour market, thus giving the system flexibility and control.

In Germany, a 'Green Card' scheme was launched in August 2000, which, following a survey of IT employers and employment projections, allows for the recruitment of up to 20,000 IT specialists between 2000 and 2005. Such schemes can only partially contribute to a reduction in illegal immigration which, linked usually to the so-called '3 D' jobs[17], is largely governed by pull factors falling outside the remit of any quota system. However, they are clearly a positive step forward in the development of a more realistic and integrated approach to contemporary migration dynamics. As was recently stated by the European Commission[18], 'the economic and demographic evolution of our continent will require the adoption of a strategy based on a balanced way on legal admission for employment purposes and the promotion of integration and the fight against illegal immigration and trafficking in human beings. The need here is for a realistic approach that respects the subsidiarity principle but also a fair approach guaranteeing the fair treatment of legal migrants'.

At the EU level, the draft Directive on economic migration published in 2001[19] after meticulous preparation and public consultation has been abandoned after three years of fruitless discussion in the Council. A further Green Paper for discussion on the issue of economic migration was published by the European Commission[20] in January 2005, which aims to stimulate debate amongst the principal stakeholders. It does not tackle specifically the migration-asylum nexus but, based on experience in the EU and other countries attracting inward labour, there are almost certainly benefits to be gained by linking the two elements in the policy debate.

17 'DIRTY, DANGEROUS AND DEMANDING'.
18 COMMISSION STAFF WORKING DOCUMENT 'AREA OF FREEDOM, SECURITY AND JUSTICE: ASSESSMENT OF THE TAMPERE PROGRAMME AND FUTURE ORIENTATIONS' SEC(2004)693, P.5
19 PROPOSAL FOR A COUNCIL DIRECTIVE ON THE CONDITIONS OF ENTRY AND RESIDENCE OF THIRD COUNTRY NATIONALS FOR THE PURPOSE OF PAID EMPLOYMENT AND SELF-EMPLOYED ECONOMIC ACTIVITIES COM (2001) 386
20 GREEN PAPER ON AN EU APPROACH TO MANAGING ECONOMIC MIGRATION COM (2004) 811 FINAL

4 The United Kingdom's Position

In 1988 the UK received just 4,000 applications for asylum.[21] However, during the subsequent three years, there were substantial increases, and despite decreases in 1992 and 1993, the figures continued to rise substantially up to and including 1995. One of the main causes was the conflict in former Yugosalvia.

Applications fell back in 1996, due partly to legislative changes, but rose again in each of the years 1997 to 2002 inclusive, when the figure reached over 84,000. There was then a substantial decrease to 49,400 in 2003, following a commitment by the Prime Minister in February 2003 to halve, by September 2003, the number of asylum applicants, as compared with October 2002. The provisional figures for the first three quarters of 2004 have also shown substantial falls over those recorded in 2003, to 8,940 in the first quarter, 7,920 in the second, and 8,605 in the third. [22]

There is no single reason for the fall in asylum applications. However, there can be little doubt that the closure (in December 2002) of the French Red Cross facility at Sangatte, near the entrance to the Channel Tunnel, has played an important part in this, as have enhanced use of detection technology for use on vehicles, the cessation of in-country appeals for nationals of designated safe third countries, and the introduction of juxtaposed immigration controls. In particular, these allow UK immigration officers to operate on French, and more recently Belgian soil, following conclusion of an agreement reached on 1 October 2004.

In addition, legislative changes, enacted under the Asylum and Immigration (Treatment of Claimants) Act 2004, make it an offence to arrive without documents, or to fail to cooperate with re-documentation; there are also provisions intended to speed up the appeals process. These measures are designed to increase the proportion of failed asylum seekers being removed. The number of failed asylum seekers removed in 2003 was just over 13,000 – the highest recorded figure – but this fell way below Ministers' declared (but subsequently abandoned) target of 30,000 such removals. The number of failed asylum seekers removed in the third quarter of 2004 was only 3,085, 2% less than in the previous quarter, but 15% less than in the third quarter of 2003. The fall in removals was attributed primarily, in the Home Office Statistics Bulletin[23], to fewer removals of principal applicants recorded as being nationals of the ten countries that joined the EU on 1 May 2004.

From 1993 onwards, the UK Government, both the present one and its predecessors, has been seeking, through legislation, to restrict unfounded applications for asylum, and it is clear from the Strategy announced on 7 February 2005 that removing a greater proportion of failed asylum seekers remains a matter of real concern to the Government. The need to control the costs of asylum, to various government departments, is made clear in a document - 'Asylum Seeker Support – Estimates of Public Expenditure', covering the period 1998 to 2003, which was prepared by the Research Development and Statistics Directorate of the Home Office, in conjunction with the Immigration and Nationality Directorate, the Department for Education and Employment, the Department of Health and the Department of Social Security. The costs of asylum are also noted in the IPPR FactFile –referred to in endnote 23.

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21 THIS AND OTHER ASYLUM FIGURES QUOTED FOR THE UK IN THIS SECTION ARE FOR PRINCIPAL APPLICANTS, AND THUS EXCLUDE DEPENDANTS.

22 THE HOME OFFICE RESEARCH STUDY 259 – AN ASSESSMENT OF THE IMPACT OF ASYLUM POLICIES IN EUROPE – 1990-2000, PRODUCED BY PROFESSOR ROGER ZETTER, DR DAVID GRIFFITHS, MS SILVA FERETTI AND MR MARTYN PEARL, AND PUBLISHED BY THE HOME OFFICE, RESEARCH, DEVELOPMENT AND STATISTICS DIRECTORATE, IN JUNE 2003, PROVIDES FURTHER STATISTICAL INFORMATION ABOUT ASYLUM APPLICATIONS IN THE UK, AND A REVIEW OF FACTORS INFLUENCING THE LEVELS OF APPLICATIONS (HTTP://WWW.HOMEOFFICE.GOV.UK/RDS/PDFS2/HORS259.PDF). IN ADDITION, AN IPPR FACTFILE – "ASYLUM IN THE UK", PUBLISHED IN NOVEMBER 2004, PROVIDES, AMONGST OTHER THINGS, STATISTICAL INFORMATION, DETAILS OF LEGISLATIVE CHANGES AND MATERIAL ON KEY QUESTIONS IN THE ASYLUM DEBATE (HTTP://WWW.IPPR.ORG/MIGRATION.)

23 HOME OFFICE – ASYLUM STATISTICS: 3RD QUARTER 2004 – (HTTP://WWW.HOMEOFFICE.GOV.UK/RDS/PDFS04/ASYLUMQ304.PDF).

The difficulties in coping with the problems posed by asylum are demonstrated in the UK by the range of legislation in recent years, starting with the Asylum and Immigration Appeals Act 1993, and now including the Asylum and Immigration Act 1996, the Immigration and Asylum Act 1999, the Nationality, Immigration and Asylum Act 2002 and the Asylum and Immigration (Treatment of Claimants etc.) Act 2004.

These various statutes have introduced, amongst other things:

- Compulsory fingerprinting of all asylum seekers (now linked to the EU's Eurodac system), and identity cards introduced for asylum seekers;
- Curtailment of and changes to various categories of benefit payments for asylum seekers - benefit claimants required to report regularly;
- Fines on carriers who bring passengers to the UK without valid travel documents (replacing the Immigration (Carriers Liability) Act 1987);
- An offence of knowingly assisting someone to gain entry to the UK, who is an asylum seeker or an illegal entrant;
- 'Safe country of origin' list - non-suspensive appeals introduced for nationals of countries named on the list;
- Creation of a new offence to deal with those arriving without a valid immigration document, and who cannot show that they have a reasonable excuse;
- Revised criteria for the provision of accommodation;
- Requirement on carriers to provide a full or partial copy of any document relating to a passenger and containing information relating to him/her;
- Unification of the immigration and asylum appeals system into a single tier of appeal with limited onward review.

The IPPR FactFile referred to in endnote 23 provides further details of legislative changes.

This plethora of domestic legislation and practical initiatives in recent years has not made adoption of some EU initiatives by the UK any easier. However, despite its position under its Frontiers Protocol, the UK has cooperated with its EU partners on a number of EU-wide developments. Shortly after the entry into force of the Amsterdam Treaty, the UK decided to participate in certain areas of the incorporated Schengen *acquis*. It expressed particular interest in Schengen provisions on law enforcement and criminal judicial co-operation, as well as in the Schengen Information System (SIS). It also declared that it would seek to develop co-operation with its EU partners on asylum and immigration policy 'where it does not conflict with our frontiers-based system of control'.[24] The UK has also made clear that it would cooperate fully with its EU partners in the fight against illegal migration.

On the other hand, the UK has expressed some reservations about the EU's Common Visa Policy. It views its present ability to act quickly to impose visa requirements when the operational need arises as very important, and considers that it would lose desirable domestic flexibility on this issue under qmv. However, the UK is understood to be watching closely

[24] SEE THE STATEMENT BY THE (THEN) HOME SECRETARY AT THE JUSTICE AND HOME AFFAIRS COMMITTEE ON 12 MARCH 1999.

moves towards a Visa Information System (VIS), referred to above, and to support fully the exchanges of information and the creation of a unified database that the VIS would bring.

The UK has played a full part in the implementation of the major aims and principles agreed at Tampere in October 1999, including on steps to develop a common asylum policy and a common European asylum system. It has assisted in formulation of the Minimum Standards package, pressed for its implementation, and signed up to the directive of 27 January 2003.[25] In In 2004 the UK also supported:

- The Asylum Procedures Directive, which will ensure that all EU procedures are subject to the same minimum standards, while maintaining consistency with international obligations in the field. The directive seeks to harmonise as much as possible national measures to speed up examination of asylum applications; and

- The Qualification Directive, relating to the minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as other persons in need of international protection.

It is also noteworthy that the UK played an important part in development of the European Council Conclusions agreed in Seville in June 2002. It supported the speeding up of implementation of the programme adopted in Tampere, and the Prime Minister took a lead on proposals to introduce coordinated, integrated management of external borders, which are designed, amongst other things, to bring greater control of migration flows. Since Seville, the UK has adopted some 75% of the measures introduced at the EU level on border management.

The UK was instrumental, together with Denmark and the Netherlands, in submission of proposals for Zones of Protection, which were discussed at Thessaloniki in March 2003. Whilst these proposals generated mixed reactions among several Member States, and were highly criticised by certain human rights bodies, they were followed by a request to the Commission to explore the ideas further, in the light of which a Communication entitled 'Towards More Accessible, Equitable and Managed Asylum Systems', of June 2003[26], and subsequently by the Communication: 'Improving Access to Durable Solutions' on 4 June 2004.[27]

The concept of external processing of asylum seekers is still the subject of criticism by non-governmental organisations.[28] The criticisms are centred on the legal issue as to who has jurisdiction over such zones and the possibility that asylum applicants might conceivably be sent back to 'camps' with all the physical and legal dangers that the journey might entail. The view has been expressed that removing persons possibly against their will would entail detention and thus prejudice the rights of the applicant and that there is real doubt about the compatability of such proposals with international law for example articles 3 and 8 of the European Convention on Human Rights and Fundamental Freedoms. Set against that, it could be argued that asylum seekers might be able to reach 'zones of protection' more easily. Either way, limited use of external processing is already being made by Italy and the reality is that further, probably scatttered, use of such schemes, might well be made in the future.

Comparable criticism is also levelled at re-settlement schemes in which certain Member States,including the UK, are already involved. The fear is that states will 'cherry pick' the highly skilled but leave out the most vulnerable. A judicious misture of gboth might be the solution.

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[25] DIRECTIVE 2003 /9/EC

[26] COM(2003) 315 FINAL

[27] COM(2004) 410 FINAL

[28] FURTHER COMMENTS ON THIS TOPIC ARE CONTAINED IN THE SECTION ON THE POSITION OF INTERNATIONAL INSTITUTIONS.

Furthermore, critics of re-settlement fear that spontaneous arrivals will be discouraged thus once again disadvantaging the most vulnerable.

The UK has also been able to take a lead position in support of a single asylum procedure (the so-called 'One-Stop' shop), given the procedures it already operates in this respect. Other initiatives supported have included the development of Dublin II (the instrument for determining the Member State of first asylum) , and the introduction in January 2003 of Eurodac. Indeed, there were arrangements in place in the UK, prior to introduction of Eurodac, under which all asylum applicants were fingerprinted. Eurodac, however, now enables *EU-wide* comparison of fingerprints, which can be an essential factor in determining the country with responsibility for considering asylum claims.

In addition, the UK has cooperated fully (through the Immigration and Nationality Directorate Intelligence Service) to the 'Common Integrated Risk Analysis Model', a project directed by Finland. This has led to the establishment, in April 2003, of the Risk Analysis Centre in Helsinki, to carry out integrated risk assessments, and thus contribute more fully to intelligence-led combating of illegal migration. It has also contributed fully to meetings of the 'External Border Practitioners Common Unit' – a monthly meeting in Brussels of experts with operational responsibilities. However, although supportive of its principles, the UK is excluded from the planned Border Agency, because of its 'Schengen building' nature. This is unfortunate, since it appears to represent a significant step forward in attempts to control entry into the EU, given its planned role of overseeing all land, sea and air controls and surveillance measures, and its potential contribution to the training of border control staff. However, the UK will have 'Observer' status on the Border Agency, and will thus be able to cooperate on operational issues.

The UK has supported enlargement of the EU, and indeed supports further enlargement that is under consideration, including the entry negotiations with Turkey. On a bilateral level, it has also extended practical cooperation to a number of the 'new' EU States, including Poland, Hungary and Slovakia. It is, however, very conscious of the huge, and potentially unsupervised, sea and 'green' borders that this will give to the EU. In terms of policy development, there is a belief that without qmv the enlarged EU would be quite unable to make the quick and flexible decisions which would allow for real progress on important immigration control and asylum issues. Yet, as indicated above in relation to the Common Visa Policy, domestic flexibility may be impaired by the use of qmv on immigration and asylum issues.

The UK's firm view, as presented to the authors, is that much may be achieved within the EU by practical cooperation, and in particular by the sharing of best practices, for example on the Single Procedure, and on border management systems. There is also a belief that by cutting abuse, for example through effective visa regimes, the use of Carriers Liability legislation and the appointment of Airline Liaison Officers, public confidence in immigration and asylum policies can be secured. This also entails balancing measures against abuse with policies relating to legal migration.

Looking to the future, there is a perception in the UK that in the short to medium term there will be a need for a period of evaluation and consolidation, following the major initiatives of recent times. The role of EU Re-Admission agreements negotiated at an EU level, in particular, is acknowledged as having the support and strength of a unified approach by all Member States. The UK believes, however, that these should not stand in the way of bi-lateral agreements, where these can be negotiated more readily.

On the other hand, discussion by the authors with officials in the UK and in international bodies, and with academics, suggests that much can be achieved through extended practical cooperation within the EU and by identification of areas in which Member States can learn from each other, and work together constructively for the development of a more robust asylum and

immigration system. Putting emphasis on practical issues, in this way, can frequently achieve concrete results, without tortuous discussions, sometimes concerned more with form than substance, and without difficult political stances being taken. Furthermore, in view of the relatively limited resources available – i.e. currently only 1% of the EC budget is devoted to Justice and Home Affairs issues, resulting in substantial pressures on the Commission in this area – there will be a need to agree and then focus on the most pressing priorities. This will mean a greater concentration on practical measures, likely to secure concrete progress towards more efficient and effective immigration and asylum controls, and in particular improvements in the fight against illegal migration.

5 Looking ahead: the EU constitution and beyond

Recent prominent events such as the establishment and dismantling of the Red Cross facility at Sangatte, and immigration-related issues arising out of the 9/11 attacks, produced more pressure for action at European level. Nevertheless, the Commission was powerless to stop Member States legislating on issues that have a high political profile, such as asylum and immigration, on which it had been attempting to steer EU measures through the Council. Most notably the United Kingdom and Germany (as indicated above) have enacted major legislation in these fields in recent years. One example is the controversial German legislation on immigration, in response to the declining population and the need for skilled migrants which finally obtained political agreement on 17 June 2004.[29] Many of the concepts to be found in the German legislation or commentaries on it, notably the need for better integration of migrants and the needs of the labour market, can be found in Commission documents from 2000 and thereafter.

There are difficult hurdles to be jumped before the Constitutional Treaty sees the light of day, not least the referenda that are to be held in at least twelve Member States. It may be premature to look at what the Intergovernmental Conference has achieved, but a glimpse into the future will assist in understanding the issues of the present.

Like the previous treaties, the Constitutional Treaty reiterates the basic principle of free movement of persons, including the absence of border controls on both Union and non-Union citizens at internal frontiers. In addition, the Treaty speaks of the gradual introduction of integrated border management. In other words, there is a counterpart to the cementing of free movement into the Constitution, in that the EU's external borders need to be 'managed', not merely 'reinforced'. There is certainly work to be done in this regard as a result of enlargement to the east.

One of the great fears relating to enlargement is that it may result in easier access from the former Soviet countries and the facilitation of illegal migration, particularly through trafficking rings, and other organised crime activity. The Treaty calls in no uncertain terms for a Union immigration policy aiming to combat such phenomena. Given the enormous difficulty faced by the Commission regarding the failure to pass the draft directive on Admission of Migrants for Employment and Self-Employment[30], this will be no easy task. After initially supporting the draft Constitution, some major Member States, such as Germany, now believe it would be too early to initiate a common immigration policy and, as a result, have called for appropriate changes in the text.

The Constitutional Treaty is yet a further confirmation of the reality on the ground that the problems with which the Member States are confronted in this policy area are simply too daunting to be overcome without recourse to the Community method. Even the United Kingdom and Ireland, which have shown a marked Treaty based reluctance to participate in instruments relating to external borders[31], immigration and less so on asylum, have used opt-in provisions when they considered that there were political, policy or operational reasons to do so.

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[29] THE PROPOSAL ON CONTROLLED IMMIGRATION BY CHANCELLOR SCHRÖDER WAS MADE IN 2000

[30] PROPOSAL FOR A COUNCIL DIRECTIVE ON THE CONDITIONS OF ENTRY AND RESIDENCE OF THIRD COUNTRY NATIONALS FOR THE PURPOSE OF PAID EMPLOYMENT AND SELF-EMPLOYED ECONOMIC ACTIVITIES COM (2001) 386 FINAL.

[31] THIS WAS REAFFIRMED IN THE PROTOCOL ON THE POSITION OF THE UNITED KINGDOM AND IRELAND, ANNEX 18 TO DOCUMENT CIG 85/04 OF THE CONFERENCE OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES

In June 2004 the Commission published a Communication[32] setting out its assessment of achievements and problems in the run up to the fifth anniversary of the Tampere European Council. The Commission's assessment was that JHA was now firmly established as one of the Union's priority policy areas, and also had the support of the public, as shown in opinion polls. This is undoubtedly correct. Insecurity, immigration and asylum, crime and drugs (especially as they affect young people) are high on the list of public concerns, together with the standard of living. Success in tackling these issues goes together with purchasing power and public services in health, transport and education to ensure a quality of life.

The Communication lists certain policy areas to which attention must be paid in the coming period. These include:

- A genuine common policy of management of migratory flows including the facilitation of legal immigrants;
- A common European asylum system and a common status. The Commission laid out its ideas for this second stage of its asylum policy in a further recent Communication on asylum policy;[33]
- Resolute external action in relation to third countries;
- Financial solidarity and burden sharing between the European institutions and the Member States.

The timetable of the Dutch presidency brought the issue of immigration and asylum to a climax in the autumn of 2004. At the informal Justice and Home Affairs Council on 29 and 30 September, the outlines of a 'Tampere II' programme[34] were discussed.

In the view of EU officials, emphasis should no longer be on the mollification of hard line opinion regarding asylum, since the Union is already committed to a second stage common asylum or 'one stop shop' policy, but more on the management of legal migrants. These now number 1.2 million a year, a figure which poses considerable organisational questions, such as the optimum absorbable number, how and for what reasons they are admitted, where and with what rights. There also has to be a link with employment and integration policies. Rainer Munz and Thomas Straubhaar (2004) write that:

'Given the high levels of employment reached by skilled EU nationals, recruitment of migrants from third countries appears as one of the primary options for responding to the growing demand for medium and high skilled labour. For (these) demographic and economic reasons, during the 21st century, all present EU and EEA member states and accession countries will either remain or become immigration countries. After 2010, burgeoning demographic and economic needs may force many countries to develop pro-active migration policies. For a relatively short period of time, European east-west migration will continue to play a role in balancing labour and skill gaps'.[35]

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[32] COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND EUROPEAN PARLIAMENT ON AN AREA OF FREEDOM, SECURITY AND JUSTICE: ASSESSMENT OF THE TAMPERE PROGRAMME AND FUTURE ORIENTATIONS COM (2004) 401 FINAL OF JUNE 2ND 2004. THE COMMISSION STAFF WORKING DOCUMENT SEC (2004) 680 CONTAINS A LIST OF THE MOST IMPORTANT INSTRUMENTS ADOPTED IN THE TAMPERE FRAMEWORK.

[33] COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT ON A MORE EFFICIENT EUROPEAN ASYLUM SYSTEM: THE SINGLE PROCEDURE AS THE NEXT STEP COM (2004) 503 FINAL OF JULY 15TH 2004

[34] NOW KNOWN AS THE HAGUE PROGRAMME

[35] THE PRESIDENCY CONFERENCE ON FUTURE EUROPEAN UNION COOPERATION IN THE FIELD OF ASYLUM, MIGRATION AND FRONTIERS, AMSTERDAM, 31ST AUGUST TO 3RD SEPTEMBER 2004: POLICY BRIEF ON REGULAR AND IRREGULAR MIGRATION AND THE EUROPEAN LABOUR MARKET.

Unless these questions are faced, there is a risk that EU achievements such as the Schengen *acquis* and the concept of free movement may start to be eroded. The flip side of this coin is that robust but humane measures on illegal immigration are as urgent as ever. The reasons are linked to public confidence in the legal immigration system, a factor that can compromise acceptance of the system by the EU institutions or national authorities if it is believed that it can be easily bypassed.

There is an additional concern that Munz and Straubaahr (2004) also highlight but which cannot be emphasised enough. This relates to the issue of competition to Europe not only from the industrialised world, but also from middle-income countries. China is already shaping up to be included in that category and in fifty years, when the demographic deficit in Europe might be at its most vulnerable, one can only speculate about the industrial clout that China, India, Brazil and other countries might wield. The skills that the EU can either generate or import will then be vital if Europe is to keep any competitive edge. The spill over effect into other policy areas is striking. Not only will employment and industrial policies be affected in Europe, but matters far outside the scope of this paper will need to be brought into play. Trade negotiations are certainly one such area and it may well be that, by 2050, Europeans will be pleading for concessions from China and India in the WTO, rather than the other way round. The other key question is whether European educational prowess can meet the challenges of the next half-century. The United States already imports about 40% of its trained scientists, including many from Europe. They are better paid and are offered more generously funded and equipped research facilities. Any European government that does not take this issue seriously and link it to migration management will probably be condemning its coming generations to a stagnant, if not declining, standard of living.

Pastore et al (2004) discuss the concept of 'recoupling' migration and foreign policy. The United Kingdom's Commonwealth Immigrants Act 1962, which caused so much soul searching and drew the fire of liberal thought on the subject, is a case in point. It was the direct result of a policy that encouraged immigration to fill post-war labour shortages. When the Act initiated restrictions, relations with the 'new' Commonwealth were never quite the same. However, Pastore is right to urge a renewed engagement with source countries with a view to 'broadening the policy process by involving actors beyond the JHA policy community'. The question is how. Creating new institutions is not necessarily a way forward. They generally exist both at Member State and EU levels. Many source countries already benefit from co-operation agreements with the EU that are guided by joint committees with co-chairs from each side. These should be easily adaptable to the needs in this field. In the international arena, the International Organization for Migration (IOM), UNHCR and other UN mechanisms are available. It remains to be seen how the Global Commission on International Migration (GCIM), set up by the Secretary General of the UN late in 2003, will react to the institutional challenge.

The climax of the recent Dutch Presidency of the EU came at the European Council held on November 4th and 5th 2004 and which covered all aspects of Justice and Home Affairs.[36] The jargon 'Tampere 2' was replaced by the term 'Hague Programme'.[37] The Hague Programme largely repeats the Commission's recommendations mentioned in this paper and in particular calls for the establishment of 'a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection' to be based on the 'full and inclusive procedures of the Geneva Convention'. The Commission was also asked to establish in 2005 appropriate structures involving the national asylum services of the Member States with a view to 'practical and collaborative cooperation'. When the common asylum procedure is established, this cooperation would be gradually transformed into a European support office for all forms of

[36] THE TERM "JUSTICE AND HOME AFFAIRS" WAS SUPERSEDED WHEN THE NEW EUROPEAN COMMISSION TOOK OFFICE IN NOVEMBER 2004. THE TERM NOW USED IS "JUSTICE FREEDOM AND SECURITY" IN LINE WITH THE DRAFT CONSTITUTION.

[37] SEE ANNEX 1 OF THE PRESIDENCY CONCLUSIONS OF THE EUROPEAN COUNCIL "STRENGTHENING FREEDOM, SECURITY AND JUSTICE IN THE EUROPEAN UNION" . COUNCIL DOCUMENT 14292/04

cooperation relating to the Common Asylum System. Finally, the Hague Programme commits the Commission to regular update and review through the 'scoreboard' system, especially prior to the proposed entry into force of the Constitutional treaty on November 1st 2006.

The messages in terms of immigration and asylum policy are clear. The Constitution and a packed schedule of initiatives present many challenges. However, of major importance for the EU will be the need to secure the right balance between efficient and effective controls, of both immigration and asylum, and fully considered managed migration policies. It is arguable that an increase in legal migration may benefit both third country nationals and the host countries' economy and demography. Legal migration can have a beneficial effect by removing the attraction of illegal migration. It can also help to tackle the evils of human trafficking and the exploitation of illegal migrants that accompanies it. But in addition, by reducing the numbers of asylum applications that are bound to fail, the authorities can give greater priority to the genuine cases. Thus with less effort and expenditure on handling asylum claims, more attention can be paid to the need to remove failed asylum seekers and illegal migrants apprehended, whether this is done forcibly or, preferably, under voluntary return programmes.

6 Conclusions and recommendations

The EU's role and the UK context

Since May 2004, the European Commission has had exclusive right of legislative initiative in the field of asylum. The role and influence of EU national governments in the formation of new policy and legislative instruments in this field have thus diminished accordingly.

However, the challenge of the Hague programme is to show that EU instruments and policies are capable of meeting the concerns of the Member States. If it is armed with the tools provided by the Constitutional Treaty, the Commission should be equipped to fulfil its obligations to citizens who, in the most recent opinion polls, have shown confidence in the institutions' ability to act (Eurobarometre 2004). JHA policies are highly visible. They are not concerned with arcane trade negotiations or agricultural policy but with peoples' rights. It is essential that the Commission, as the main architect of action in this field should bear in mind that failure in JHA might prejudice the public further against the achievements of the Union. Success would give the Union the positive attention it merits.

The European Commission has largely done its share of the job in the past five years. It has studied the problems and published Communications or discussion papers and/or held public debates before drafting legislation. Furthermore, it has achieved this with minimum staffing resources and largely within the Amsterdam schedule. Much of today's JHA subject matter can be traced back to compensatory measures for the removal of internal borders to safeguard the interests of the Member States whilst promoting the concept of free movement. It was relatively recently that an independent dynamic took hold of this policy area. In addition, the events of 9/11 created their own momentum in this field and the Commission acted with commendable speed to push through the European arrest warrant and a workable definition of terrorist acts. The risk is that zealous (or perhaps by some definitions over zealous) security measures will jeopardise human rights in general and asylum seekers' rights in particular.

The debate, both in the Member States and in the European institutions regarding asylum and immigration, continues. In the United Kingdom, the inflammatory nature of reports in the media about 'floods of asylum seekers' are at best unhelpful and at worst racially inspired, deliberate misinformation. The recent pronouncements of the Conservative opposition about a possible UK withdrawal from the Geneva Convention – an unprecedented and unhelpful initiative – have added fuel to the fire. Such a move would place Britain in the same position as the poorest or least democratic states in the world.

The vast majority of asylum seekers come from areas of conflict or severe civil disruption such as Afghanistan, Iraq, Somalia and Sri Lanka. There is no evidence that they come because of over-generous welfare state benefits or that they are more likely to commit crimes. In a recent report to the UK Home Office based on empirical research, Koser (2004) concludes that many of the asylum seekers in the UK did not decide on their destination, this decision having been made on their behalf either by smugglers or by family at home. Furthermore, some had been given little or sometimes misleading information, which was normally limited to only what was needed to get through immigration and remain for a time in the UK.

Far from being the EU country with the highest proportion of asylum seekers per head of population, the United Kingdom comes about half way down the list of Member States. Furthermore, the vast majority of refugees originate from developing countries. The European Commission's Communication to the Council and the European Parliament of March 2003 highlighted the crisis of public confidence in the asylum system. That crisis has to be addressed in three distinct interlocking ways: in international bodies, in the context of the EU, and in the

Member States individually following the principles enshrined in the 1951 Geneva Convention and its 1967 Protocol.

There are natural and justifiable concerns about abuse of the asylum system. There is certainly a causal link between economic hardship, the desire for a better life and asylum applications – the so-called 'mixed flows'. It is up to the state in which the application is lodged to determine whether it is justified, even if the EU is now applying a corpus of common standards within the Union that should make for more consistency in decision making.

The position of the international institutions

The salient point is that international legal norms create a right for individuals to seek asylum but, in effect, do not always extend that right to all citizens of states which abuse human rights. Very frequently these individuals have had the greatest difficulty in physically reaching a place where that application could be made without danger. Whilst the 'safe country' concept that proposes the processing of applications in the first 'safe' country reached may have superficial attractions, as being a practical solution, the contentious issue is the definition of which countries are safe and who determines it.

Furthermore, the notion of safety requires the practice and not just the law or Convention status of the 'safe' country, as well as its consent to hear the application. The UNHCR paper commenting on the Communication *Towards a Common European Asylum Policy* [38], notes that the dilemma lies in the principle of access to territory, which goes to the heart of sovereignty. The paper poses the question whether the international system of asylum claims has recognised that it can be unresponsive to the interests of States faced with substantial irregular migration. The problem lies in being able 'to reconcile the competing responsibilities between their duty to protect their common borders from unauthorised entry and their human rights and humanitarian commitments to refugees'. Like Tazreiter (2004), UNHCR identifies comparable key questions: *who* is in need of protection; *what* is the content of that protection; *how* to identify the beneficiaries of protection; and *where* the responsibility for protection is.

Since 2001, UNHCR has taken a hard look at the shortcomings of the Geneva Convention, which provided fuel for critics of its mechanisms. In December 2001 it approved a blueprint for building on the instrument called *An Agenda for Protection*, which addressed issues such as:

- Improving 'burden sharing' (i.e. a more equitable distribution of refugees and the financial strains they cause, especially in developing countries);
- Security related issues in the post 9/11 world;
- Finding better solutions to processing asylum applications and long-term solutions to refugee issues, such as the strategic use of re-settlement in countries seeking certain skills or labour; and
- Clarifying responsibilities of states in the event of secondary movements of refugees. This work is of course predicated on addressing the root cause of refugee flows such as war, relative poverty or human rights abuse, and better targeting of development assistance to support durable solutions for refugees. The *Agenda for Protection* also led onto measures dubbed *Convention Plus* by UNHCR, which are designed to supplement the 1951 commitments to refugees under the very different conditions that obtain today. The concept is to retain the Convention as the central document, but adding to it.

[38] UNHCR, GENEVA 2003

Where should asylum claims be processed?

The current debate in the international arena, including amongst the EU Member States, concerns the question *where* asylum claims should be handled, taking account of both the interests of the receiving state and the protection of the asylum seeker. Applications certainly cannot be made in countries of origin under the scrutiny of the authorities the applicant is purporting to escape. It is equally undesirable for receiving states to have to deal with unauthorised flows which are both dangerous for refugees and not infrequently lead to their deaths, play into the hands of traffickers and smugglers, and induce angst in the media. In a recent report, in the 'Guardian Weekly' (8-14 October 2004), it was estimated that at least 90 people had died attempting to reach the United Kingdom illegally as stowaways on planes, lorries, trains and boats in the past 15 years. It is further estimated that some 2,000 people die in the Mediterranean every year in an attempt to reach the EU's southern coast.

Whilst, as already indicated, some experts advocate creating safe havens or zones of protection in *the region of origin*, UNHCR's view is that *Convention Plus* is a global initiative and therefore does not regionalize the issues. It is not a question of containment of refugee flows, nor about 'burden shifting' as opposed to 'burden sharing'. Nor should it be forgotten that 75% of the world's refugees are in developing nations close to their countries of origin.

In the context of the European Union, the United Kingdom's proposal that there should be 'facilities' for asylum seekers to be processed outside the confines but close to the Union, as already stated, was received with only limited enthusiasm at the Thessaloniki European Council of heads of state and government in June 2003. However, the European Commission undertook to study the matter and ordered a report[39] from external consultants. The report highlighted the fact that 'externalisation of migration control is problematic. Unlike domestically applicable alien legislation, it usually does not differentiate between persons in need of protection and other categories of migrants. But access to the territory of a potential host state is a precious good for persons in need of protection.' The study suggests that 'the EU should consider protected entry procedures as of a comprehensive approach, complementary to existing territorial asylum systems' and proposes three different but interlinked approaches:

- Assistance to regional first countries of asylum to handle larger quantities of protection seekers in full compliance with international norms;
- Protected entry procedures offered by single Member States catering for individuals whose needs cannot be met by the first country of asylum;
- A resettlement quota offered by EU Member States through a central agency, for example the UNHCR.

As noted earlier in this paper, the debate has been moved forward through the EC Communication on 'International protection and the enhancement of the protection capacity of the regions of origin – Improving access to durable solutions'.[40]

[39] STUDY ON THE FEASIBILITY OF PROCESSING ASYLUM CLAIMS OUTSIDE THE EU AGAINST THE BACKGROUND OF THE COMMON EUROPEAN ASYLUM SYSTEM AND THE GOAL OF A COMMON ASYLUM PROCEDURE; EUROPEAN COMMISSION/DANISH CENTRE FOR HUMAN RIGHTS 2003

[40] COM (2004)410

In its 'three-pronged proposal'[41], UNHCR further suggests that all asylum seekers with 'manifestly unfounded cases'should be 'immediately transferred' to 'closed reception facilities' in Europe where their claims would be determined by a 'consortium of national asylum officers and second instance decision-makers, who would determine international protection needs… in a single procedure that follows international standards'. UNHCR, like the United Kingdom, suggests that the centres could be located within one or possibly more States close to the external borders of the enlarged EU. The issue that worries refugee groups and others in civil society, however, is that once external processing procedures in third countries are established, they will be likely to become the *preferre*d, and in time the *only* mechanism for refugees to seek asylum in Europe.

The key to this discussion is the notion of *effective protection*. This means the physical protection of the individual making the asylum application, and fair and consistent procedures for ensuring the integrity of the Convention. If the Convention is not legally applicable, then subsidiary protection should be considered, as defined in the Qualification directive defining who is entitled to protection and fair living standards pending the application and thereafter, if successful. To this should be added that the integrity of the system must be protected by the right of Member States to remove persons from their territory should they not qualify for any status, albeit in a humane and, if at all possible, voluntary manner. In addition, it is advantageous to all parties that re-admission agreements with Third Countries should be negotiated to facilitate returns where necessary.

Priority Action

What, then, are the key political priorities, and therefore the recommendations of this paper?

Why action is needed?

- Action is needed at three levels: international, EU and EU Member State. The issues that are raised in this paper are too complex for nation states to handle by themselves and the dismantling of borders at EU level, controversial though they are in the UK, create the need for action by the Union. With regard to UNHCR, the ideas in *Convention Plus* should be translated into international practice. If it is considered that the Geneva Convention needs revision, then the Global Commission on International Migration (due to report to the UN Secretary General in the summer of 2005) should have the courage to say so.

- Maintaining a consensus on refugee protection is a paramount humanitarian duty on the democratic, and especially the wealthy nations of the world. The Geneva Convention is the current instrument and its signatories need to live up to their obligations.

- The essential point is that *migration management* should not be and need not be *crisis management*. Indeed, with intelligent analysis of world events, it is not hard to predict where and when refugee cises might occur. More effort needs to be made in that direction.

- The tone of the debate, both inside the EU and in relation to source countries, needs to evolve. Asylum and immigration issues are both global and highly local because migrants come from a distant place and yet their impact is immediate and local. As was

[41] UNHCR: 'UNHCR'S THREE-PRONGED PROPOSAL', GENEVA: UNHCR, JUNE 2003

stressed by the Director of the Department of International Protection at UNHCR, Erika Feller, before the Standing Committee of June 2004, there are differences between refugee policy and asylum policy. Refugee policy is the 'umbrella' for global action. Asylum policy is the domestic mechanism through which some refugee protection takes place. In re-focusing on refugee policy more broadly, by encompassing access to durable solutions everywhere in its policy thinking, the European Union would strengthen its essential role in global refugee protection and would help to clarify debate across the continent for the benefit of the public, politicians and policy makers, as well as refugees (Van Selm 2004).

Who needs to take action?

- This paper makes clear that a combined effort at different levels of governance is required.

- The forthcoming adoption, by all the Member States,of a single asylum procedure[42], should be an important step forward in the development of an efficient and fair protection determination system. Whilst such a procedure is designed to reduce the length and costs of the multiple procedure and appeal systems still in force in several Member States, it is by no means conceived to be used as a system to dilute the rationale and grounds for full Convention protection. It would thus be key that a proper evaluation be conducted in future of the way in which the single asylum procedure is implemented throughout the Union, including in both the traditional host countries and the EU's new countries of asylum, to assess its specific effects on both efficiency and fairness gains.

- As indicated elsewhere in this paper, securing agreement to, and transposition into national law of directives and other legal instruments, may be time-consuming, and may require competing political, policy, financial and operational considerations to be balanced. Although consensus building of this sort is undoubtedly necessary, as the Hague Programme indicates, much may be achieved by practical cooperation, including exchanges of information and expertise. It is strongly recommended that scope for such cooperation should always be sought, sometimes as a 'quick win', even where, in the longer term, more formal agreements are considered necessary.

Where should action be taken?

- The greatest burdens, both financial and in terms of physical care of refugees, fall on some of the poorest countries of the world. The concept of burden sharing should not just be between the Member States of the EU, important though this is, but also between rich and poor countries. Poverty reduction through sound trade and aid policies would reduce push factors.

- The EU should decide, with UNHCR and the NGO community, whether and how the processing of asylum applications outside the borders of the Union is feasible. The worst situation is the current lack of decision making on this issue.

- There is an urgent need to push ahead with an increase in re-settlement programmes for refugees. Currently, only nine Member States participate in such schemes, including the United Kingdom. By making them more widespread, illegal migration pressure could also be reduced.

[42] AS ALREADY INDICATED, THE SINGLE ASYLUM PROCEDURE AIMS TO INTEGRATE, UNDER ONE PROCEDURE, ALL CLAIMS, AND SUBSEQUENT APPEALS, FOR CONVENTION AND SUBSIDIARY (FOR EXAMPLE HUMANITARIAN) PROTECTION. IT IS ALREADY APPLIED BY SOME MEMBER STATES AND WILL GRADUALLY BE EXTENDED TO THE REST OF THE EU UNDER THE HAGUE PROGRAMME.

- The media should be brought into the debate in a constructive manner so that inaccurate and often harmful information about asylum seekers is eliminated to the degree possible.

How and with what policy instruments should changes be made?

- Much has been achieved in integrating third country nationals into European societies with language and skills update, help with finding housing and other measures. But more resources and co-operation are needed. Policy makers need to extend their dialogue with migrants themselves and explore and understand their needs further. The European Commission recently published a booklet on this subject as a tool for practitioners and policy makers.

- A programme to increase employer awareness and to assist employers in the legitimate employment of foreign nationals would also deserve support. This would enable employers to cooperate more closely with authorities seeking people who are working without appropriate documentation, and should be linked to more rigorous sanctions against employers when breaches of the law are identified. This could reduce the scope (and the pull-factor) for people intending to enter or remain unlawfully, and in turn reduce the number of people who need to be removed when apprehended.

- Voluntary return assistance programmes for all failed asylum seekers, including practical, financial, vocational and travel assistance, should always be on offer. Such programmes can enhance the sustainability of returns. Issues relating to the nature and mode of delivery of financial assistance need to be addressed in specific return contexts. Provision of accurate information about country of origin conditions from a reliable source should always form part of such programmes, together with a balanced approach to psychological preparation for return, involving sensitive 'motivational' counselling throughout the process.

- EU governments need to enforce the law relating to traffickers and smugglers with tough sentences for abuse and protection measures for their victims. Integrating the new and future Member States into an effective border guard system is important. However, it is not the answer to illegal migration and its related activities, or to cross-border crime. Networks of information and intelligence, and a strong, clear message that those involved in trafficking, human smuggling and related offences, will be identified, prosecuted and, on conviction, imprisoned for a lengthy period, are more effective tools to combat such phenomena.

- The seriousness of a claim for protection, whether under the Geneva Convention and its 1967 Protocol, or on humanitarian grounds, is such that an independent review of the decision should always be available. However, rights of appeal should be exercised, and the appellate bodies should consider the case, as soon as possible after the initial decision. This is in the interests both of those whose appeals are allowed, and of the authorities seeking, in due course, to remove those whose appeals are dismissed. A means of securing this throughout the EU would be to unify immigration and asylum appeals into a single tier appeal system, with only a strictly limited onward review or appeal, for which provision has been made recently in the United Kingdom in the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.

- A common difficulty, not just within the EU, but elsewhere too, is the documentation of illegal migrants and failed asylum seekers who are liable to be removed, or who wish to make voluntary returns. Many will have entered without valid travel documents, or

will have destroyed them after entry. Difficulties in securing valid documents of identity and nationality or citizenship contribute significantly to delays in removal and in some cases to a complete inability to remove. The use of so-called 'one way documents' to allow return to the country of origin is a useful tool for Member States but has dangers if the applicant meets with subsequent risks on return to his or her country of origin.When confronted with delays in documentation, an option is to consider use of the 'EU Removal Document'. This is also a 'one-way document', the format of which was agreed in 1992 by all the Member States, which may be used in lieu of a national identity document, for a person being removed. It is of value when the person holds no valid travel document, and none can be obtained readily from the national authorities. Many countries accept this document, although a number of them (for example Algeria, China and India) have made clear that they will not accept it in lieu of a valid national identity document.

- Individual EU States, including the United Kingdom, have sought acceptance of this document by countries to which removal is intended, and there is reason to conclude that the United Kingdom has enjoyed much more success than its EU partners in this respect. Without removing the right of individual States to secure agreements bilaterally (and without prejudice to the value of Re-Admission Agreements in appropriate cases), this is considered to be an area in which the combined strength of the EU might be of particular value.

- Similarly, it is considered that there is additional scope for negotiation with third countries about removal, whether in connection with Voluntary Return Programmes, or when removal has to be enforced. This may fall short of a formal Re-Admission Agreement, and be particularly appropriate when long-term arrangements are not considered necessary, for example after an end to hostilities or a change of government in the country of origin. In such circumstances, 'on site' negotiations with the country concerned, whether by an EU Delegation or by the individual States concerned may prove of particular benefit.

References

- Commission Staff Working Paper (2004) Annex to the Communication from the Commission on 'An Area of Freedom, Security and Justice' SEC (2004)693 and COM (2004) 401 final of 2.6.2004.

- De Lobkowicz W (2002) L'Europe et la Securité Intérieure; Paris: Les Etudes de la Documentation Française

- EC Communication on 'A common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum' (COM(2000)755

- EC Communication on 'Community immigration policy', COM(2000)757

- EC Communication on 'Common policy on illegal immigration', COM(2001)672

- EC Communication on 'An open method of coordination for the Community immigration policy', COM(2001)387)

- EC Communication on 'A Community Return policy on Illegal Residents', COM(2002) 564

- EC Communication on 'Integrating migration issues into the EU's external relations', COM (2002)703

- EC Communication on 'Immigration, integration and employment' , COM (2003)336

- EC Communication on 'Common asylum policy and agenda for protection', COM (2003)152

- EC Communication on 'Development of a common policy on illegal migration, smuggling and trafficking of human beings, external borders and the return of illegal residents', COM(2003) 323

- EC Communication on 'More accessible, equitable and managed asylum systems', COM(2003) 315

- EC Communication on 'International protection and the enhancement of the protection capacity of the regions of origin – Improving access to durable solutions', COM(2004) 410

- EC Communication on 'The links between legal and illegal migration', COM(2004) 412

- EC Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between EU Member States in receiving such persons.

- EC Directive of 13 December 2002 on minimum standards for the reception of asylum seekers in the Member States of the European Union

- EC Directive of 29 April 2004 on 'Minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection'

- EC Directive on 'Common minimum standards on procedures for granting or withdrawing refugee status' (2004)

- EC Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals

- EC Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence

- EC Directive 2003/86/EC of 22 September 2003 on the right to family reunification

- EC Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

- EC Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities (2004)

- EC Green Paper on 'An EU Approach to Managing Economic Migration' (COM(2004) 811 final)

- ECRE (2004) 'Broken Promises- Forgotten Principles'. An ECRE Evaluation of the Development of EU Minimum Standards for Refugee Protection - Tampere 1999 – Brussels 2004, London: ECRE

- Eurasylum (2003) Comparative Study of International Policies and Practice on Removals of Rejected Asylum Seekers in Australia, Belgium, Denmark, France, Germany, Ireland, the Netherlands, Spain, Sweden and the United Kingdom, London: Immigration and Nationality Directorate - Immigration Research and Statistics Service, (internal, unpublished, report)

- Eurobarometer (2004) Brussels, European Commission

- European Commission/Danish Centre for Human Rights (2003) Study on the Feasibility of Processing Asylum Claims Outside the EU Against the Background of the Common European Asylum System and the Goal of a Common Asylum Procedure, Brussels: European Commission

- European Commission (2003) 'Mid-term Evaluation of the European Refugee Fund - Final Report', Brussels, European Commission (DG Justice and Home Affairs)

- IPPR (2003) Fact file on 'Asylum in the UK', London: ippr

- Koser K (2004) Report to the U.K. Home Office on how asylum seekers received, evaluated and used information about the U.K while in their countries of origin and/or transit; London: Migration Research Unit, UCL

- Migration Policy Institute (with the assistance of Patrick Weil)(2004) 'Managing Irregular Migration, Dutch EU Presidency Conference on 'Future European Union Cooperation in the Field of Asylum, Migration and Frontiers' (Amsterdam, 31 August - 3 September, 2004).

- Münz R and Straubhaar T (2004) 'Migrants and the European Labour Market, Dutch EU Presidency Conference on 'Future European Union Cooperation in the Field of Asylum, Migration and Frontiers' (Amsterdam, 31 August - 3 September, 2004).

- Pastore F and Migration Policy Institute (2004) 'Cooperation with Sending and Transit Countries: Beyond Sticks and Carrots?', Dutch EU Presidency Conference on 'Future European Union Cooperation in the Field of Asylum, Migration and Frontiers' (Amsterdam, 31 August - 3 September, 2004).

- Tazreiter C (2004) Asylum Seekers and the State: The politics of Protection in a Security-Conscious World, Ashgate:Basingstoke

- UNHCR (2002) Agenda for Protection (EC/52/SC/CRP.9/Rev.1 of 26 June 2002).

- UNHCR (2003) Towards a Common European Asylum Policy, Geneva: UNHCR

- UNHCR (2003) 'UNHCR's three-pronged proposal', Geneva: UNHCR.

- UN Population Division (2003) 'World Population Prospects - the 2002 Revision', New York :United Nations, 26 February

- Van Selm J (2004) 'Access to Durable Solutions' Dutch EU Presidency Conference on 'Future European Union Cooperation in the Field of Asylum, Migration and Frontiers' (Amsterdam, 31 August - 3 September, 2004).

- World Bank (2004) Global Development Finance Washington: World Bank

Appendix 1: Key asylum & immigration statistics in the EU

Table 1: Asylum applications in the European Union 1999-2003

	1999	2000	2001	2002	2003
Austria	20,130	18,284	30,140	39,350	32,340
Belgium	35,777	42,691	24,550	18,810	16,940
Denmark	12,331	12,200	12,510	6,070	4,560
Finland	3,107	3,170	1,650	3,440	3,080
France	30,833	38,588	47,290	51,090	51,360
Germany	95,331	78,764	88,290	71,130	50,450
Greece	1,528	3,004	5,500	5,660	8,180
Ireland	7,724	10,920	10,330	11,630	7,900
Italy	33,000	15,564	9,620	7,280	-
Luxembourg	2,912	585	690	1,040	1,550
Netherlands	39,300	43,892	32,580	18,670	13,400
Portugal	307	202	230	250	110
Spain	8,405	7,037	9,490	6,310	5,770
Sweden	11,231	16,303	23,520	33,020	31,360
United Kingdom	91,200	98,900	91,600	103,080	61,050
European Union	393,116	390,104	387,990	376,830	288,050*

Source: Compiled on the basis of information provided in UNHCR: *Trends in asylum applications lodged in Europe, North America, Australia and New Zealand, 2001* (Geneva: UNHCR, January 2002); UNHCR: *Refugees and Others of Concern to UNHCR - 1999 Statistical Overview* (Geneva: UNHCR, July 2000); UK Home Office *Research Development Statistics on Asylum* (March 2002); and UNHCR:Asylum Levels and Trends: Europe and non-European Industrialized Countries, 2003 (24 February 2004) *Italy excluded

Table 2: Asylum applications in the enlarged EU from January to June 2004

Country	Number of applications
Austria	12,566
Belgium	7,398
Cyprus	3,221
Czech Republic	3,467
Denmark	1,621
Estonia	-
Finland	1,699
France	29,813
Germany	18,686
Greece	2,756
Hungary	745
Ireland	2,360
Italy	-
Latvia	-
Lithuania	-
Luxembourg	918
Malta	-
Netherlands	4,832
Poland	3,087
Portugal	46
Slovakia	6,366
Slovenia	621
Spain	2,707
Sweden	11,397
United Kingdom	19,795

Source: Compiled on the basis of information provided in UNHCR: Asylum levels and trends in industrialized countries, January to June 2004 (27 August 2004)

Table 3: Refugee recognition rates in the EU, 2000-2002

	2000	2001	2002
Austria	17%	23%	20%
Belgium	23%	27%	25%
Denmark	17%	21%	13%
Finland	1%	0%	1%
France	12%	12%	13%
Germany	15%	24%	7%
Greece	11%	11%	0%
Ireland	4%	9%	13%
Italy	7%	16%	_
Luxembourg	1%	5%	-
Netherlands	12%	1%	1%
Portugal	17%	15%	9%
Spain	15%	12%	10%
Sweden	2%	1%	1%
United Kingdom	14%	12%	13%

* Refugee recognition rate (RRR): Recognised divided by the total of recognised, humanitarian and rejected. In the case of Belgium, Denmark, Finland, Ireland, Netherlands, Sweden and the United Kingdom, figures refer to first instance procedures only.

Source: UNHCR: Asylum decisions in Europe, 2000-2002 (February 2004)

Table 4: Main countries of origin of asylum applicants in the EU, 1995-2002

	1995	1996	1997	1998	1999	2000	2001	2002	Total
Afghanistan	11,669	12,518	16,358	18,653	24,255	29,928	49,914	25,470	188,765
Iraq	18,231	26,293	40,436	40,829	35,130	42,244	47,538	50,058	300,759
Turkey	41,385	38,462	33,200	21,770	19,724	28,219	30,148	28,455	241,363
Yugoslavia, FR	51,759	38,451	48,402	98,270	121,333	47,193	28,012	32,656	466,076

Source: Annex C.6 and C.7 UNHCR Statistical Yearbook 2001 and UNHCR Asylum Applications Lodged in Industrialised Countries: Levels and Trends, 2000-2002

Table 5: Main countries of origin of asylum applicants, 2001

Country	Main Asylum-Seeker Nationalities in 2001		
Austria	Afghanistan	12,957	43%
	Iraq	2,115	7%
	Turkey	1,876	6.2%
Belgium	Russian Federation	2,451	10%
	Yugoslavia, FR	1,932	7.9%
	Algeria	1,709	7%
Denmark	Iraq	2,698	21.7%
	Afghanistan	2,667	21.5%
	Bosnia and Herzegovina	1,448	11.7%
Finland	Russian Federation	289	17.5%
	Ukraine	138	8.4%
	Iraq	103	6.2%
France	Turkey	5,344	11.3%
	Dem. Rep. of Congo	3,779	8%
	China	2,953	6.2%
Germany	Iraq	17,357	19.6%
	Turkey	10,887	12.3%
	Yugoslavia	7,842	8.9%
Greece	Iraq	1,972	35.9%
	Afghanistan	1,459	26.5%
	Turkey	800	14.5%
Ireland	Nigeria	3,461	33.5%
	Romania	1,347	13%
	Rep. Of Moldova	549	5.3%
Italy	Iraq	1,985	20.6%
	Turkey	1,690	17.6%
	Yugoslavia, FR	1,526	15.9%
Luxembourg	Yugoslavia, FR	206	29.9%
	Bosnia and Herzegovina	87	12.6%
	FYR Macedonia	68	9.9%
Netherlands	Angola	4,111	12.6%
	Afghanistan	3,614	11.1%
	Sierra Leone	2,405	7.4%
Portugal	Sierra Leone	39	20.3%
	Angola	29	15.1%
	Afghanistan	16	8.3%
Spain	Colombia	2,428	26.3%
	Cuba	2,372	25.7%
	Nigeria	1,349	14.6%
Sweden	Iraq	6,206	26.4%
	Yugoslavia, FR	3,102	13.2%
	Bosnia and Herzegovina	2,774	11.8%
United Kingdom	Afghanistan	9,095	12.9%
	Iraq	6,710	9.6%
	Somalia	6,415	9.1%
European Union	Iraq	39,146	10.6%
	Afghanistan	29,808	8.1%
	Yugoslavia, FR	14,608	3.9%

Source: Compiled on the basis of information provided in UNHCR: Trends in asylum applications lodged in Europe, North America, Australia and New Zealand, 2001 (Geneva: UNHCR, January 2002)

Table 6: Asylum applications lodged in the new EU Member States, 2000-2003

	2000	2001	2002	2003
Cyprus	651	1,620	956	4,410
Czech Republic	8,787	18,087	8,481	11,390
Estonia	3	12	9	10
Hungary	7,801	9,554	6,412	2,400
Latvia	4	14	30	10
Lithuania	199	256	294	180
Malta	71	116	474	570
Poland	4,589	4,506	5,153	6,920
Slovakia	1,556	8,151	9,739	10,320
Slovenia	9,244	1,511	702	1,100
Total new Member States	32,905	43,827	32,250	37,310
% Share of applications in the new Member States within EU-25	7.75%	10.14%	7.80%	-

Source: Compiled on the basis UNHCR Asylum Applications Lodged in Industrialised Countries: Levels and Trends, 2000-2002; and UNHCR: Asylum Levels and Trends: Europe and non-European Industrialized Countries, 2003

Appendix 2: List of acronyms and abbreviations

AENEAS	EU cooperation programme for financial and technical assistance to third countries in the area of migration and asylum.
CEAS	Common European Asylum System.
CFSP	Common Foreign and Security Policy.
COREPER	Committee of Permanent Representatives to the EU.
Dublin II	Dublin II Regulation 2003/343 amending the Dublin Convention on the State Responsible for Examining Applications for Asylum lodged in one of the Member States of the European Communities.
EC	European Commission.
ECRE	European Council on Refugees and Exiles (and umbrella organisation of 76 refugee-assisting agencies in 30 European countries).
ERF	European Refugee Fund.
EU	European Union.
EURODAC	European database system for the comparison of fingerprints for the effective application of the Dublin Convention.
First Pillar	Policy areas in which, under Treaty provisions, the European Commission has the sole right of initiative for new actions and legislation.
GCIM	Global Commission on International Migration.
Hague Programme	The EU's multi-annual programme in the field of justice and home affairs for 2004-2009, also referred to as the Tampere II agenda.
IOM	International Organization for Migration.
JHA	Justice and Home Affairs (also Directorate General for Justice and Home Affairs, to be renamed in the new Commission as Directorate General for Justice, Security and Freedom).
QMV	Qualified majority voting, i.e. voting in accordance with weighting determined by the population of each Member State.
SEA	Single European Act.
Second Pillar	Policy areas relating, under Treaty provisions, to Common Foreign and Security Policy (CFSP) and falling under the intergovernmental coordination procedure.

Tampere I	The EU's action plan on justice and home affairs for the period 1999-2004, agreed at the European Council in Tampere (Finland) in October 1999.
Tampere II	The EU's forthcoming action plan on justice and home affairs for the period 2004-2009, now referred to as the Hague Programme.
Third Pillar	Policy areas relating, under Treaty provisions, to police cooperation and cooperation in the area of criminal law, falling under the intergovernmental coordination procedure.
UNHCR	United Nations High Commissioner for Refugees.
VIS	Visa Information System.