# From Pillar to Post

## Voluntary and Forced Return of Migrants in a European Context

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*The work I have submitted is my own effort. I certify that all the material in the Dissertation which is not my own work, has been identified and acknowledged. No materials are included for which a degree has been previously conferred upon me*

# CONTENTS

*An examination of the European asylum system, with particular focus on voluntary and non-voluntary repatriation schemes. The 1951 UN Convention on Refugees prohibits the return of refugees and migrants to their countries where they have a "well founded fear of persecution", this principle of* non-refoulment *has acted as a barrier to many states ability to return individuals to their home countries. Using qualitative research methodologies the author seeks to argue that since the late 2000s, European states have been complicit in forced repatriation through the removal of aid, harshening of asylum procedures and through distancing migrants from asylum processes . A case study on the United Kingdom Border Agency's Assisted Voluntary Return Programme highlights member states ability to promote schemes that may not necessarily fit within the framework of the UNHCR voluntary return guidelines. It is also argued that temporary protection status is used by states as a pretext for the premature removal of individuals from EU territory.*

# GLOSSARY

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| Assisted Voluntary Return | A method of return for migrants which is voluntary and is assisted financially and operationally by a government or organisation |
| Convention Refugee | An individual granted refugee status as they fit the description of the 1951 Refugee Convention |
| ECHR | European Convention on Human Rights and Fundamental Freedoms |
| ECtHR | European Court of Human Rights |
| ECRE | European Council on Refugees and Exiles |
| EEA | European Economic Area |
| EU | European Union |
| EU27 | The 27 member states of the European Union |
| *gastarbeiter* | Guest workers |
| Geneva Convention | The 1951 Convention on the Status Relating to Refugees and 1961 Protocol |
| Refugee Convention | The 1951 Convention on the Status Relating to Refugees and 1961 Protocol |
| Repatriation | Forced removal of a migrant from a host state |
| Statutory Refugee | An individual granted refugee status as they fit the description of the 1951 Refugee Convention |
| Temporary Protection | Status given by States in the event of a mass influx of displaced persons |
| UKBA | United Kingdom Border Agency |
| UN | United Nations |
| UNHCR | United Nations High Commissioner for Refugees |
| Voluntary Return | A method of return which is marketed as voluntary |

# INTRODUCTION

Every year in excess of one million people are in receipt of refugee status in Europe. (UN Population Division, 2011). In 2010, migrants accounted for almost ten percent of Europe's population. (UN Population Division, 2011). The influx of migrants is arguably a drain on states resources and can result in efficacious right-wing xenophobia accelerating to the forefront of policy making agendas (Boswell, 2003). Research shows that the burden on less developed countries is disproportionately larger than that of the more developed nations (UNHCR, 2010). Despite this disparity of protection between the least and most economically advanced nations, since 2008 western European states have been devising programmes to assist voluntary repatriation to home countries for asylum seekers and refugees.

Whilst one million refugees may seem like a staggering amount, it pales into insignificance when compared to the ten million refugees and forty million displaced people in the world today (UNHCR, 2010). It is fair to argue that the EU has not been forthcoming in its protection of individuals fleeing conflict and persecution. By all accounts the 1951 Convention on the Status of Refugees and its 1961 Protocol (Refugee Convention, 1951 Convention, Geneva Convention hereafter) is limiting in its definition[1] of a refugee[2]. Already, by 1969, the then Organisation of African Unity (OAU), had established its own

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[1] The text of the Refugee Convention defines a refugee as "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country ; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." (UN General Assembly, 1951, Art. 1). Leading Refugee Lawyer and scholar Goodwinn-Gill describes refugees as "include[ing] not only those who can, on a case-by-case basis, be determined to have a well founded fear of persecution on certain grounds (the so called "statutory refugees"); but also other often large groups of persons who can be determined or presumed to be without, or unable to avail themselves of, the protection of the government of their state of origin (now often referred as "displaced persons" or "persons of concern"). In each case, it is essential that the persons in question should have crossed an international frontier and that in the case of the latter group, the reason for flight should be traceable to conflicts, or radical political, social or economic changes in their country" (Goodwin-Gill, 1996, p. 29).

[2] The legal definition of a refugee within international law has remained the same since 1961. The Geneva Convention and its Protocol do not include factors such as environmental and natural disasters, famine, internal conflict and financial insecurity as factors contributing towards the displacement of people from their homes and countries. For further information on the inadequacy of the international definition of a refugee in modern times see, Fitpatrick's (1996) *Revitalising the 1951 Refugee Convention* and Foster's (2002) *Causation In Context: Interpreting The Nexus Clause In The Refugee Convention.*

regional Refugee Convention to widen the scope of the refugee definition (Cooley and Rutter, 2007). The international community is still awaiting one of the most economically stable regional organisations to follow suit and establish its own wider definition of a refugee. Instead of refugee status, individuals seeking protection in Europe who do not conform to the traditional Statutory Refugee description are granted time-limited temporary protection (Cooley and Rutter, 2007).

There can be no doubt that violent conflicts continue unabated, whilst the number of violent conflicts worldwide has dropped in a post-Cold War context, the number still remains high in comparison to the post Second World War period (Cooley and Rutter, 2007). In spite of the continuing number of violent conflicts, worldwide asylum applications to the EU have decreased since 2003. This paper seeks to examine how the EU has received fewer asylum claims despite maintained instability, through the use of legislative mechanisms to separate individuals from asylum systems.

International law enshrines the right of individuals to flee their countries and seek asylum in a safe country[3] (UDHR, 1948, Art. 14). The provision of asylum to individuals fleeing persecution and conflict is derived from western tradition. Medieval times saw asylum taking the form of protecting those who sought sanctuary in a church or other religious building. Today, processes have been formulated to streamline the claim for asylum by individuals. Noll argues that asylum theory can be underpinned by an axiomatic dialectic of which there are two schools of thought: universalism and particularism. Universalism favours the obligation of the global community to protect individuals excluded from the protection of their nation state: "the existential interest of the individual [is] prior to that of a potential host community" (Noll, 2000, p.75). Immanuel Kant agrees, stating that "cosmopolitan law shall be restricted to condition of hospitality[4]" (Kant, 1795 cited by Noll, 2000, p.76).

Particularism, conversely, promotes the right of states to remain sovereign, arguing that a claim for asylum is a claim for resources and thus states have right to assess and reject these claims. The spatial constraints of this paper do not allow for a deep evaluation of protection

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[3] Whilst the European Convention on Human Rights and Fundamental Freedoms does not contain an explicit reference to the right to seek and enjoy asylum as with other international legal instruments, scholars contend that the all encompassing characteristic of the ECHR and indeed, given the greater enforceability of the ECHR due to its Court some have argued that the ECHR has become as equally effective as the Geneva Convention in the protection of asylum seekers in Europe. (Mole, 2009).
[4] "Das Weltbürgerrecht soll auf Bedinungen der allgemeinen Hospitalität eingeschränk sein" [Original in German]

theories[5]; however this dissertation highlights the preference of European states to a particularism approach to protection.

The 1951 UN Convention on the Status Relating to Refugees maintains that the safe return of a migrant to his or her home country is the primary aim of both host and home nations (UN General Assembly, 1951). The convention is the product of efforts from many of the EU27 to provide international recognition and protection of those most in need. This can be attributed to the monstrous violations of human rights committed during the Hitler era (Guild, 2006). Indeed the refugee agency of the UN, the UN High Commissioner for Refugees (UNHCR) places great emphasis on the safe return of migrants to their home countries (UNHCR, 2011). The UNHCR handbook on voluntary return of migrants outlines the conditions[6] necessary for legitimate "voluntary return" (UNHCR, 1996); literature suggests that the UK Border Agency (UKBA) Assisted Voluntary Return programmes fall short of these criteria.

Numerous scholars agree that the principle aim of host nations as regards refugees is to safely return the refugee to their country of origin when it is feasible. The principle of *non-refoulment* (UN General Assembly, 1951, art. 33) is intended to prohibit states from returning refugees to a country where they have a "well founded fear of persecution", there is great dispute as to how this well-founded fear can be manifested and is a subjective problem that must be assessed on a case-by-case basis. It is for this reason that this paper does not seek to argue whether the UN Convention provides enough protection for refugees. Instead it seeks to ascertain whether European states are complicit in forced repatriation.

With the central aim of successful refugee protection being the return of refugees to their home countries and a growing fear from the right of foreigners, Europe has turned to voluntary schemes to assist refugees to return to their native countries. The principle of *non-refoulment* not only prohibits the unsafe return of a refugee, but also places a duty on the host nation to properly ensure that the conditions for return are met before encouraging a refugee to return home.

European voluntary return schemes have advanced to the front of the global stage since 2010, when French President Nicholas Sarkosy was criticised for his controversial "voluntary"

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[5] For further information on asylum theories see Noll's (2000) *Negotiating Asylum.*
[6] For further information on conditions established for voluntary return by the UNHCR see the *Handbook on Voluntary Repatriation: International Protection* (1996).

scheme to remove large numbers of Roma citizens from France[7](Webber, 2010: Hannan, 2010). As EU citizens the Roma are entitled to freedom of movement and habitation in any of the EU Member States and the EU justice commissioner compared the bulldozing of over one hundred Roma encampments to Nazi deportations. Whilst the French case was controversial in itself, it also raised serious questions about the legitimacy of other European schemes.

Voluntary return schemes have been utilised within Europe since the 1970s in a bid to rid Europe from *gastarbeiter*, who helped to rebuild Europe after the devastation of World War Two.

> The Dutch government introduced a scheme in 1974 to 'reintegrate' guest workers from Turkey, Tunisia and Morocco in their home countries, and similar schemes were introduced in France in 1977 and in Germany in 1983. (Webber, 2010).

Despite the apparent good intentions of European governments to 'reintegrate' migrants in their home countries, there was little success and many of the schemes were discontinued. European voluntary return schemes returned in 2008, the Spanish government reintroduced a voluntary return scheme in a bid to encourage Latin American migrant workers to return home.

For the purposes of this paper the term migrant will be used to describe individuals who arrive into the EU from a third party state. Europe is referred to throughout this dissertation to signify the European Union. Occasionally this paper makes reference to the EU's neutral partners: Norway and Switzerland. Both these states are members of the European Economic Area (EEA). For clarity the use of the terms Europe and the EU throughout this paper refer explicitly to the regional body of the 27 member states of the EU.

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[7] "Following a spate of violence in July involving French police and some Roma and traveler individuals, French President Nicolas Sarkozy announced a crackdown on unauthorized settlements... French police dismantled numerous settlements, primarily occupied by Roma from Bulgaria and Romania, and the French government expelled more than 1,000 of their inhabitants between July and September, sending them back to their home countries...Sarkozy also characterized the deportations as voluntary, because a significant number of the Roma Bulgarian and Romanian citizens were given 300 euros..in exchange for their cooperation in the return process...[The European Commission] called France's actions toward the Roma and their settlements discriminatory and threatened punitive action against France for breaching EU antidiscrimination law, as well as failing to ensure the right to freedom of movement for EU citizens." (Severance, 2010, para. 15).

This dissertation seeks to argue that member states of the European Union do not place individuals at the centre of their asylum policies. It will be argued that asylum seekers and refugees are viewed as burdensome entities for European governments and that policies are designed towards removing migrants from EU territory and distancing individuals from asylum processes and settled life in the EU. Evidence within this paper shows that EU law punishes states for allowing asylum seekers onto EU territory by giving the state sole responsibility for determining their claim. Moreover, it is demonstrated that governments continue to forcibly remove migrants to countries where it has been deemed unsafe for individuals to return. It is also argued the lack of monitoring of returnees to their countries of origin by the host states promotes a worrying setting for the return of migrants. This paper makes frequent references to the UNHCR's position on return but for reasons of space and because this text is specifically about European return, those references are brief and thus perforce incomplete.

Primarily utilising secondary sources, this project seeks to be a piece of investigative research highlighting the deficiencies of the European asylum system. Due to the time constraints of this paper the research method adopts a deductive approach; that the European system is complicit in forced repatriation. For the purposes of this paper the use of primary research is not appropriate for a variety of reasons. Firstly, the ethics involving the interviewing of participants in return schemes are highly contentious. It may be inappropriate for individuals to be requested to give their opinions of policy when they are faced with return to their country of origin. Furthermore it may problematic for one to gain access to these individuals, based on the fact that they are within a process and are shortly due to leave the country. Thirdly, the time and spatial constraints of this dissertation do not allow for the in-depth interviewing required to justify primary research in the first instance. It may be appropriate for a less constrained paper to interview participants; however this piece would provide an incomplete analysis of the data and therefore potentially cause unnecessary emotional harm to participants without enhancing the quality of this paper.

The sources consulted for this paper reflect journalistic, academic, community, non-governmental and governmental views in an attempt to remain panoptic. A number of primary sources have been utilised in the form of opinions from UKBA representatives. It is of course necessary to highlight the potential for a number of these sources to be biased in favour of the authors' opinion. Governmental sources have been utilised stringently, as well

as sources deriving from non-governmental organisations. Academic books and journal articles are favoured, because they are widely reviewed by other experts in the field and are often less subjective than journalistic, non-governmental and governmental data.

This dissertation will take a country and thematic specific focus. The second chapter will offer as the country specific focus of return in the form of a case study of the UK's voluntary and forced removal mechanisms. Chapter two will outline the UK's policy of assisted voluntary return as the EU's preferred means of migrant removal. This chapter will assess the merits and the criticisms of the voluntary schemes, such as the extent to which voluntary schemes are truly voluntary and dignified, as well as evaluate the means of forced removal utilised by the UK.

Acting as the thematic focus, the third chapter deals with the contentious problem of temporary protection within Europe; an issue that has evolved in legality and practicability significantly in the last two decades. This chapter will briefly examine how temporary protection can conflict with the Geneva Convention, and in addition to this, it will seek to examine how the granting of rights or lack thereof plays a significant role in encouraging individuals to return to their countries of origin. This chapter will also evaluate how temporary protection as a specific tool has been utilised to distance individuals and groups from traditional asylum procedures and therefore lead to premature repatriation of displaced persons.

Nevertheless in order to effectively analyse these issues within Europe, it is first necessary to provide a theoretical and contextual framework within which these issues can be expanded. Therefore the purpose of the first chapter is to give a brief history of asylum policy in the European Union, moving from the Maastricht Treaty of 1991 to the notorious Returns Directive of 1998. The first chapter will also provide a theoretical framework of returns and look at burden sharing in Europe, as well as examining wider returns policies within Europe of voluntary and forced return.

# CHAPTER ONE

## European Politics of Repatriation and Return

It is fair to state that European asylum policy has had a difficult beginning. Claims for asylum hit an all time high during the early 2000's (Pearce, 2011) and as will be illustrated throughout the course of this dissertation, European States have adopted varying strategies to cope with large scale migration. As previously described, the primary objective for the UNHCR is the safe return of migrants to their countries of origin; a welcome opportunity for European states to initiate return schemes.

This first chapter is charged with giving a detailed yet succinct history of asylum policy in the EU. It will analyse some of the shortcomings of the EU *aquis* in an attempt to provide a background to the later chapters of this dissertation. It will be argued that EU asylum policy does not place the individual at the centre of the asylum seeking process, that instead policies focus on distancing individuals from asylum processes and on their swift removal. The beginnings of EU law and how this has affected asylum policy will be analysed. Auditing the many documents amending the functions of the EU this chapter will highlight how these amendments restricted migrants from accessing EU territory and asylum systems. It will also briefly examine the concept of burden-sharing in Europe, in particular the establishment of a European Return Fund. Finally this chapter will give a brief account of the two returns methods utilised by the EU: voluntary and forced return. Nevertheless, in order for this paper to accurately analyse returns policy in Europe, it is first necessary to explore the theoretical framework of repatriation.

## Theories of Repatriation

There exists great debate on the value of return as a solution to migration problems. Many scholars concur that the return of migrants is paramount to the reestablishment of a "natural order" (Malkki, 1992). It is thought that the long-term displacement of people from their countries is not only unfortunate and burdensome but that it is also perverse (Black and Gent, 2006). Hammond goes so far as to state that there is an assumption that the return of migrants is intrinsic to allowing individuals and communities their moral, cultural, economic and spiritual growth (Hammond, 1999). The World Bank is a conformer of this view, stating that "there can be no hope of normalcy until the majority of those displaced are able to reintegrate

themselves into their societies" (UNHCR, 1997, p. 9). Despite this, Hammond also draws attention to the dangers of attaching individuals to locations and defining them as belonging in a particular country (Hammond, 1999). The experience of returning 'home'[8] can often be as traumatic if not more so than exile from one's 'home'. The Sorensen concurs that "for the refugees who had received assistance in exile...the return could be more difficult than the experience of exile itself." (Sorensen, 1996 cited by UNHCR, 1997, p. 6).

Rosand (1998, cited by Black and Gent, 2006) contends that the right to leave and return to a country of origin for individuals is founded on natural law. The Universal Declaration on Human Rights (UDHR) states in article 13 that "everyone has the right to leave any country, including his own, and to return to his country" (UN General Assembly, 1948, Art. 13). Despite the clear universalist assertion of an individual's right to flee their home country, in practice, governments are afforded a particularistic degree of sovereignty in deciding which cases warrant protection in the form of refugee status, temporary protection status or humanitarian protection in a host country (Black and Gent, 2006). There can be no doubt that the premature return of individuals to their countries of origin infringes upon their right to seek asylum, as well as potentially harming their right to life, freedom from torture and discrimination to name a few. It is therefore clear that return theories are highly controversial and this paper does not wish to dwell on contentious theory, favouring instead an *a posteriori* view of returns from Europe. This chapter will hereon focus on how European states as a collective and individuals create immigration policy.

## European Asylum Policy

The European Union officially holds two functions; the establishment of a Common Market and an Economic and Monetary Union (Guild, 2006). In order to function effectively it is presupposed that states will relinquish aspects of sovereignty and cooperate within a regional union. As a result of this multilateral weakening of state sovereignty, subsequent and more recent development in European Union (EU) law have placed greater emphasis on human rights. Indeed, the Treaty of Maastricht of 1991 which established the EU referred to the principles of the European Convention on Human Rights (ECHR) as created by the Council

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[8] The notion of 'home' is highly contested among epistomic communities. Scholars adduce that 'home' constitutes the region from which a migrant hailed. Conversely, others find that refugees and asylum seekers may find themselves more at 'home' in their country of refuge in comparison with their country of origin (Black and Gent, 2006). This particular viewpoint is especially pertinent when considering the length of time those seeking asylum may be required to wait before receiving a decision on their asylum claim – a theme which is further discussed in chapters two and three.

of Europe in 1953 (European Union, 1953, Article 6). The respect and promotion of human rights thus became an additional function of the EU.

Initially refugees, asylum seekers and their rights were not at the crux of EU policy making; quite deliberately so. Guild describes the omission of asylum policy from early EU *acquis communitaire*, stating that "they are the objects of increasing efforts to render them invisible in practice by ensuring they are not physically present" (Guild, 2006, p. 633). Indeed, it could be argued that the antipathy for migrants within Europe is characterised in current EU legislation. Third country[9] nationals lawfully residing within a member state for five years are afforded the right to freedom of movement within the EU. Such luxuries have not been provided to refugees, despite the commissions promises to do so (Guild, 2006).

There can be no doubt that the EU's functions require a weakening of territoriality of its member states. A Common Market and the Single European Act call for the abolition of border controls at intra member state borders. The freedom of movement of people and goods are the foundation of these two legislative documents: "The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty." (European Union, 1986, Article 13). Therefore, shared borders between member states were weakened and great efforts were taken to coordinate manufacturing standards across the region to allow a free flow of goods and people within the EU (Guild, 2006). As regards refugees and asylum seekers, the EU could rely on the Geneva Convention to harmonise the minimal standards of European Asylum Policy (UN General Assembly, 1951).

It was not until the ratification of both the Schengen Implementing Agreement (Schengen Agreement) in 1990 and the Dublin Convention that irregular migrants such as refugees and asylum seekers were expressly referred to in EU law. The two treaties defined intra member state borders in order to determine which member state held responsibility for the individual and their asylum claim (Guild, 2006). Upon its ratification in 1997 the Dublin Convention superseded the asylum portion of the Schengen Agreement. Nevertheless Guild argues that both treaties give three principles for asylum policy. Firstly, that member states may share their responsibilities in the rejection of asylum claims. Secondly, member states have the sovereignty to decide the refugee status of applicants within their own territory. Thirdly, that this sovereignty and responsibility is "treated in both treaties as a burden and a punishment

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[9] A third country refers to a nation outside of the EU.

for the member state which permitted the individual to arrive in the Union"[10] (Guild, 2006, p. 637).

It is clear that the weakening of border controls within the EU in order to support the treasured main functions of the EU does not exist in the case of asylum. Noll argues that the EU states have used a particularistic interpretation of the Geneva Convention to deflect the arrival of asylum seekers from EU territories (Noll, 2003). The interpretation provides that the Geneva Convention only prohibits the return of a migrant to the country of origin, not another safe country. Thus the community places the responsibility on the asylum seeker to claim asylum in the first country they arrive in, not their chosen host state. The EU regard the arrival of an asylum seeker from another safe third country as "manifestly unfounded" (Guild, 2000, p.58) that by travelling through a safe third country the individual did not require the protection of the European community but could be returned to the first safe country in which he or she landed.  In these instances the community found that there required no substantive determination of the individual's asylum case (Noll, 2003). In simplistic terms, EU residents and nationals may travel within the EU without undue paperwork or delay; those within the asylum system may not. In theory explosives and arms manufactured within the EU may travel freely around the member states; third country nationals fleeing conflict and persecution may not seek asylum in the state of their choice.

The exclusion of migrants from the freedom of movement within the EU and the burdening of states to discourage the permitting of aliens into EU territory continued within the text of the Treaty of Amsterdam in 1997 (Guild, 2006). The EU continued its integration in a manner of territorial exceptionalism. Nevertheless integration and the Common Market suffered as a result of the internal border controls designed to distance asylum seekers from other member states. At this point the "exception of refugees would have to be dealt with" (Guild, 2006, p. 641)

It became clear that there were two options for the European community as regards the abolition of border controls at the internal frontiers. First, and by all accounts the preferred route according to NGOs and activists, to dissolute the Dublin Convention's exclusionist

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[10] Article 30 of the Schengen Agreement states that "The Contracting Party which granted an alien the status of refugee and right of residence shall be obliged to take responsibility for processing any application for asylum made by a member of the alien's family provided that the persons concerned agree." (European Union, 1985, p.8). Thus forcing member states which have allowed individuals into the EU territory to also handle any further claims from family members of that individual.

principles allowing those within national asylum systems to travel within the EU. Second the EU must "reconcile the removal of asylum seekers from the territory of the EU very rapidly before their presence could disturb the internal market" (Guild, 2006, p.641). The second option prevailed and the Treaty of Amsterdam called for the EU to develop measures to forcibly remove illegal migrants within five years (European Union, 1997, Art. 63.3). It is no surprise that extraterritorial processing[11] soon became a preferred policy route for asylum claims. Having examined the developments in asylum policy in the EU during the past two decades, this chapter will continue to examine how The Hague Programme of 2004 is influential in determining current European asylum policies. Nevertheless the issues of return and temporary protection will be revisited below and in chapters two and three.

## The Hague Programme

November 2004 saw the second[12] programme of action in freedom, security and justice published by the EU. The establishment of the Hague Programme was met with criticism from civil body organisations and the UNHCR (UNHCR, 2004). In its recommendations to the community the UNHCR "strongly encourage[d] the European Council to reaffirm its commitment to develop future asylum and migration policy based on the full and inclusive application of the 1951 Convention and other relevant human rights instruments" (UNHCR, 2004, p.1). It is clear from the language of the recommendations that the UNHCR was concerned about the risk that the Hague Programme could induce breaches of international law. Indeed, the UNHCR called upon the community to amend particularistic policies to provide stronger minimum standards set out in EU law to "reflect higher standards in line with international law and best practice" (UNHCR, 2004, p.1).

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[11] "It was intended for [Transit Processing Centres]TPCs to be located in countries close to the external borders of the European Union (EU). Asylum seekers arriving in the UK, or any other EU country, would be sent to these processing centres and detained while their claim was decided. It was also possible that asylum seekers intercepted en route would be sent to the centres. Successful applicants would be resettled within the EU on a 'burden-sharing basis'. Unsuccessful claimants would be either returned to their country of origin or given temporary protection until repatriation was possible". (ICAR, 2004, p. 5).

[12] The first programme of action in freedom, security and justice was established in Tampere in 1999, where member "states set themselves the goal of establishing a common EU policy on immigration and asylum. Member states began by setting out to establish minimum standards to which all countries must conform in order to reduce the disparity between the different countries' policies" (Refugee Council, 2011, para. 2). Parties to the document would accept the judgements of other parties without question, meaning that member states could not challenge decisions taken by other member states in the area of asylum policy (Guild, 2006).

The UN Refugee Agency also expressed concern over the exclusionist nature of *aquis communitaire,* that individuals seeking asylum must not be prevented from accessing EU territory and asylum procedures, as is the case with extraterritorial processing. The UNHCR also advises a re-examination of the 'safe third country' concept, that member states should not place individuals arriving through safe third countries at a disadvantage in their claim for asylum (UNHCR, 2004). Furthermore, the seventeenth recommendation encourages the community to assist with the capacity building of neighbouring states in the processing and reception of asylum seekers, "it further calls on the EU and Member States to support neighbours in providing access to durable solutions, including through resettlement in the EU" (UNHCR, 2004, p.3).

A further contention of the Hague Programme is the proposal of a concept of 'safe countries of origin'. The community proposed to compile a list of countries which were deemed safe enough for asylum claims from these nations to be rejected without substantive determination of the individuals' case and the individual returned to that country (Statewatch, 2004). The countries on this list included Benin, Botswana, Cape Verde, Chile, Costa Rica, Ghana, Mali, Mauritius, Senegal and Uruguay (Statewatch, 2004). The UNHCR urged caution over this proposal stating that "due to insufficient safeguards or vague terminology, these could lead to asylum-seekers being summarily sent back to non-EU countries without any guarantee that their asylum claim will be properly dealt with there."(UNHCR, 2003, para 4). Fortunately, this proposal has not been implemented due to disagreement between member states over the true 'safety' of the named countries.

Directives issued by the European community focus heavily on the concept of burden-sharing between member states. In order for the EU to successfully continue its main functions it is necessary for states to share their responsibilities and resources as regards the reception and return of migrants. The 1997 Treaty of Amsterdam clearly states that member states have a responsibility to promote "a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons" (European Union, 1997). Noll claims that there are three methods of burden-sharing, the first is policy sharing, the second is physical burden-sharing of people and third is resource sharing: the sharing of finance (Noll, 1997). Thielemann argues that fiscal burden-sharing has been "the institutionally most advanced burden-sharing initiative in this area" (Thielemann, 2005, p.815).

The European Return Fund (ERF) originated in the Council meeting of justice and home affairs ministers in 1999, which sought to afford temporary protection for a potential mass influx of asylum-seekers. The ERF has been hailed to be "the first step towards a common asylum system" (European Commission, 2004, cited by, Thielemann, 2005, p.816). Scholars have contended that the European Refugee Fund is purely a figurative aspect of European politics (Thielemann, 2005), the fund has allocated EU resources proportionately to the burden on each member state according to the number of irregular migrants it receives (Thielemann, 2005). The fact that the EU's primary concern is the protection of resources not individual's rights to seek asylum is salient. This chapter will assess return as a concept to rid Europe of its burdening protection responsibilities, it will act as a useful overview of wider return policies in Europe, dealing with the issues that will be addressed in chapters two and three.

## Voluntary Assisted Return in Europe

Assisted voluntary return (AVR) is the removal of migrants on a voluntary basis, usually facilitated by the offering of payment in cash or kind and the provision of services in the country of origin. The Chr. Michelsen Institute argues that "Voluntary assisted return is by far the preferred option. It is much less costly than forced returns – only around a quarter of the expense – and is more dignified and politically acceptable. The early 2000s saw Europeans move towards voluntary return programmes, inspired by political or social change in the countries of origin. The return of Bosnians to their country prompted European governments to extend these programmes to other migrants, specifically failed asylum seekers. The extension of such programmes is problematic on a number of levels, not least because the very voluntariness of the programmes is called into question. Furthermore, governments may be complicit in using voluntary return as a means to aid the redevelopment of a society shattered by conflict despite the issues that this creates, as outlined in the study of return theories at the beginning of this chapter and in chapter two (Black and Gent, 2006).

Despite these concerns, there can be no doubt that the return of refugees and migrants to their home countries has significantly augmented, assisted voluntary return has increased "five-fold in ten years from four [country programmes] to more than twenty" (Black and Gent, 2006, p.17). The reasons behind this growth is explained below. Indeed the only European state not to offer an assisted voluntary programme is Estonia; the EU's closely associated albeit neutral neighbours Norway and Switzerland also offer assisted return packages in

common with the EU. Nevertheless, Assisted Voluntary Return is fiercely controversial in that its voluntariness is disputed: "in some cases, 'voluntary' can be taken simply to mean an absence of force in removal, but the refugee is effectively given no choice at all." (Black and Gent, 2006, p. 19). The spatial constraints of this paper do not allow for a detailed analysis of the many Assisted Voluntary Return programmes in the EU, instead chapter two will evaluate the voluntariness and problems of a case study voluntary return programme initiated by the UK.

## Forced Return in Europe

In 2008, the European Community set out the rules for the repatriation of migrants; the Returns Directive. This directive had a difficult birth with proposals moving to and from the legislative and administrative powers of the EU: the Parliament and the Council. The directive focuses heavily on the voluntary return of illegally staying third-country nationals. It was recognised that, should individuals not return home voluntarily, a set of minimum standards needed to be established for the forced removal of these individuals (European Union, 2008).

Article seven of the Returns Directive states that return decisions must allow for a period where the individual may return voluntarily (European Union, 2008). The pressure on member states to voluntarily return migrants from the EU and the wider UN acted as a catalyst for member states to reintroduce voluntary return programmes. Article eight stresses the legality of the use of force in the returns processes where proportionate and appropriate (European Union, 2008). Nevertheless, despite the criteria that the directive sets out for a dignified return, critics argue that the eighteen month limit on detention of returnees as set out in the directive is "unjustifiable" (Statewatch, 2008, p. 5) and that many of the provisions "would potentially violate human rights standards" (Statewatch, 2008, p. 5).

Furthermore, by far the greatest contention of the Returns Directive is that it is empty rhetoric, not a genuine commitment to dignity, fairness and human rights. This viewpoint is justified when taking into account the fact that not all member states have opted into the directive. The document outlines some minimal standards for the fulfilment of basic human rights in removal; the fact that some states have not opted-in to these basic rules sets a worrying scene for removals from the EU. The UK and Ireland are the principle culprits of this non-compliance (European Parliament, 2008). The UK bases its argument that the Return

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Directive does not deliver the strong returns regime required for the EU. It argues "that the Directive makes returning illegally staying third country nationals actually more difficult and more bureaucratic" (European Parliament, 2008, para.12). The returns policies of the UK without the restrictions of EU law will therefore be evaluated in the second chapter.

## Conclusion

There is a clear theme throughout these developments in EU *aquis* that "solidarity among sovereign states is privileged over the reality of rights protection of the individual" (Guild, 2006, p. 643). This chapter has demonstrated that the EU has made some dramatic improvements in its law on asylum in the last three decades moving from exclusionist dogma in the treaties of Maastricht, Amsterdam and the Dublin Convention to specific documents outlining minimum standards for the treatment of migrants in removals in the form of the Returns Directive. Despite these improvements it is salient that universalism is not the preferred approach and that the community relies on individual states to ratify, opt-in and implement these provisions. Therefore "the failure of any state to act in accordance...becomes an act of challenge in itself against the trust and confidence that is the objective of the exercise" (Guild, 2006, p. 643). It may be fair to observe that, if states do not implement and agree to the principles of particularistic EU law, then the documents themselves are rendered palliative at best.

It has been found that voluntary return is by far the preferred method of migrant removal. It is the least politically sensitive, costly and undignified means for a country to remove its 'burdensome' migrant population. This chapter has examined in detail the emerging of a Common Asylum Policy, from the creation of the EU to the creation of a unified Return Fund. It has aided in giving a concise background to the issues and obstacles faced in asylum policy in the EU. Chapter two will focus on return issues on a country specific basis.

# CHAPTER TWO

## A British Example

In 2002 the UK abolished "Exceptional Leave to Remain" status for those who did not fit the criteria established by the 1951 Convention, but who could not be returned to their conflict-rife home countries. (Blitz, Sales & Marzano, 2005). This has coincided with harsher asylum procedures as well as a strengthening of the "temporary" nature of protection (Sales, 2002), an issue which will be further developed in the third chapter. It would seem that the British government is restricting its protective activities and seeking to rid their territory of burden-heavy immigrants: "Returns are portrayed as a means of relieving the burden on welfare services, and placating an increasingly anti-immigrant public opinion" (Blitz, Sales & Marzano, 2005, p.182).

Taking a focused view, this chapter seeks to examine, in detail, voluntary removal schemes as the most "dignified" policy of removal. This chapter will look at voluntary schemes as a purposed durable and dignified means of migrant removal. The UK provides a suitable candidate for a case study, as it receives a relatively small number of asylum applications and returns a high number of individuals. This chapter seeks to evaluate the merits of the UKBA Assisted Voluntary Return Programmes and to what extent these programmes are truly voluntary and indeed, humane and dignified, placing the individual at the centre of the return in a universalist manner. Firstly, it is necessary to highlight staggering number of forced returns instigated by the UK and in what way forced return differs to voluntary return.

### Forced Repatriation from the UK

Between January and December 2010 the UKBA forcibly repatriated the largest number of migrants to their countries of origin in the EU; over 15,000 migrants (MRF Brussels, 2010). The nearest challenger to this title was the Netherlands with just 4,000 forced repatriations (MRF Brussels, 2010). These figures demonstrate that the overwhelming majority[13] of migrants leaving the UK in 2010 were forcibly removed. One may question how an affluent country with relatively minor asylum concerns is permitted to forcibly remove large quantities of people from its boarders? Furthermore what is the motivation behind these

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[13] As compared to the 4549 individuals who left the UK under the assisted voluntary return programmes (MRF Brussels, 2010).

costly[14] forced removals of migrants? It may be fair to explain the large proportion of these forced repatriations as the eventual return of failed asylum seekers who have refused to utilise assisted return schemes. Nevertheless this remains an extra-ordinarily large figure compared to its European neighbours. UKBA representatives explain these figures by stating that other European states do not include border controlled refusals or entry in their figures and that the UK is transparent in its documentation of removals compared to other EU states[15].

It is interesting to note that whilst the UK has forcibly removed huge numbers of migrants, it has a significantly lower number of asylum applications per year compared its affluent European neighbours (MRF Brussels, 2010). Indeed the number of asylum applications rejected by the UK is not proportionate when compared to other European counterparts. For example in 2010 the UK received 13,160 asylum claims, it rejected 90.3 percent of these claims (MRF Brussels, 2010). Germany[16] by comparison received 44,857 asylum claims and rejected 61 percent of its asylum claims (MRF Brussels, 2010). In short, the UK receives a small proportion of asylum claims in the EU; it rejects the vast majority of these claims and is responsible for 46 percent of forced returns for the whole 27 member state EU (MRF Brussels, 2010).

In order for an individual or family[17] to be forcibly removed from the UK there is a multi-step process. Upon receiving the decision denying the individual leave to remain in the UK, the individual is given the right to appeal to the Asylum and Immigration Tribunal (UKBA, n.d.a, Arts. 395A-F). The steps to departure are three-fold. Firstly, the individual receives a decision. Secondly, if their subsequent appeals are rejected, individuals are offered assisted return. Finally, if this offer is rejected by the applicant, the UKBA will issue a required return

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[14] The enforced removal of an individual from the UK can cost between £4,000 and £30,000. Figures offered by a UKBA representative at an NGO training day (22nd July, 2011).

[15] Statement offered by a UKBA representative at an NGO training day regarding forced removal of families and children from the UK (22nd July, 2011).

[16] Germany is used as a comparative as it had the largest number of asylum claims in the EU during 2010 (MRF Brussels, 2010). Germany also serves as a suitable comparative country due to its similar political and economic situation (BBC, 2011).

[17] The returns process varies slightly for families. Families are offered "self check-in" returns where they are provided with a ticket to their country of origin and are required to leave the UK at that time. However, if a family fails to leave through self check-in, they will be arrested at their home and brought to a 'pre-departure accommodation' centre, where they will await the next available flight home. Families will not be able to stay in the accommodation for more than 72 hours in order to comply with the coalition government's promises to end child detention for immigration purposes (Watt, 2011: UKBA, 2011). In a controversial move children's charity Barnardo's have been funded to provide social and welfare services to families and children during their stay at the pre-departure accommodation (Watt, 2011).

notice, informing the applicant that they will be removed within 72 hours (UKBA, n.d.a, Arts. 395A-F). All too often ensured return is utilised and migrants are located by immigration teams and immediately sent to a detention centre, where the migrant will await departure on the next available flight, subject to the individual holding the relevant travel documents (Mind, 2009a). Individuals may be detained for longer than 72 hours before they are issued an ensured return notice (UKBA, n.d.a, Arts. 395A-F).

One cannot undermine the effect that detention can have on an individual's mental health. As a vital part of the immigration and removal process, individuals and to a lesser extent families may be detained in removal centres and immigration detention centres for long periods of time. "At any one time around 3,000 people…are held in the 11 removal centres across the UK…Currently, there is no time limit on detention in the UK and some people have been held for years at a time without knowing when they might be released." (Mind, 2009a, p. 7). It is clear that the unnecessarily excessive periods held in detention can seriously impact on an individual's mental health[18], and that detention should be used as a last resort, not a stop gap between receiving a decision and being removed.

Furthermore research also highlights that the UKBA have made the access to legal aid for asylum claims more stringent: "earlier all asylum cases were entitled to legal aid, but now, only 5% of the cases are granted. The conduct of an asylum case is impossible without at least £5,000" (European Council on Refugees and Exiles, 2005, p. 21) and "the interpretation service relating to asylum determination is hopeless. In many circumstances, interpreters translate the statements of asylum seekers incorrectly, leading to the rejection of the application or appeal" (European Council on Refugees and Exiles, 2005, p. 22). It is therefore clear that the UKBA has not facilitated asylum seekers in obtaining refugee status, by removing legal aid and introducing a language barrier. An already stressful situation has been exacerbated as a number of asylum seekers have been subjected to illegal treatment; sleep deprivation, ill-treatment and harassment to name a few[19] (European Council on Refugees and Exiles, 2005). An area for concern as regards forced departure is the insecurity faced by returnees.

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[18] "Detained asylum seekers are exposed to an increased array of adverse events as a result of the detention process itself…these include loss of liberty, uncertainty regarding return to country of origin, social isolation, abuse from staff, exposure to the forceful removal of detainees, riots, hunger strikes and self-harm" (Robjant, Robbins and Senior, 2009, p. 276).

[19] "In 2004 the Medical Foundation examined 14 cases of alleged abuse by staff; in 12 of the cases gratuitous or excessive force was used" (Independent Asylum Commission, 2007, p. 12).

The European Council on Refugees and Exiles maintained that:

> In 2005 two European countries, Poland and the United
> Kingdom, forcibly returned Iraqi asylum seekers whose
> applications had been rejected to Iraq... The ECRE believes that
> the current situation in Iraq is such that the mandatory or forced
> return of Iraqis is unacceptable, and recommends a continued
> ban on forced return to any part of the country (European
> Council on Refugees and Exiles, 2006, p. 453).

Furthermore, evidence shows that often migrants have been illegally smuggled into the host country. The speedy deportation of these migrants may result in individuals returning to their country of origin indebted to their smuggler, leaving them in a precarious and vulnerable situation (Koser, 2005). It is also argued that forced removal or deportation is unsustainable; those who return in debt have an incentive to leave the country again.

It is clear that forced removal of migrants is neither humane nor sustainable. Forced repatriation is costly (National Audit Office, 2009). Involuntary return does not always encourage migrants to remain in their country of origin and many organisations have serious doubts about how enforced removal is a violation of individual's rights and freedoms. Despite these concerns, to allay public fears and for international migration systems to work effectively, most would agree that those whose claims are rejected and fail to leave the host state of their own volition must be humanely deported (Robinson, 2003, cited by Koser, 2005, p.22).  Nevertheless, Gibney and Hansen argue that "...deportation is, from the state's point of view, both ineffectual and essential" (Gibney and Hansen, 2003, p.2). Repatriation "must be maintained for three reasons: to assuage public opinion, as a disincentive for other potential migrants and to allow pressure to be applied on voluntary return" (Koser, 2005). There can be no doubt that voluntary return is the preferable means of removing migrants from a state's territory.

## Assisted Voluntary Return from the UK

Voluntary return has three primary advantages. Firstly as an important facet of the UNHCR durable solutions of return. Secondly, migrants have the opportunity to participate in their own migration matters. Thirdly, scholars argue that the voluntary return of migrants can be

highly positive to the country of origin; migrants may return with new skills and their return can assist with the physical, cultural and social reconstruction of a country or region (Black and Gent, 2006).

Voluntary Assisted Return and Reintegration Programme (VARRP)[20] in the UK has been funded by the European Refugee Fund and since 1999 has been assisting refugees to voluntarily return to their countries of origin (Webber, 2011). Applicants are required to leave the UK within three months of their application being approved (Webber, 2011).

Since early 2011, Refugee Action has facilitated the Assisted Voluntary Return (AVR) scheme on behalf of the UKBA. The involvement of Refugee Action in the AVR scheme has been generally well received (Parliament, 2011). Individuals contemplating participation in AVR are invited to an interview with Refugee Action who gives impartial and confidential advice to the migrant specific to their situation, and as to whether AVR is suitable. This recent inclusion of civil society in the AVR process assists with keeping the individual at the centre of the decision making process.

Failed asylum seekers, those granted exceptional or discretional leave to remain, or those with an outstanding asylum claim, are all eligible to participate in AVR programmes. In conjunction with Refugee Action, the IOM and the UKBA, those who choose to participate in AVR have substantial freedom to participate in creating their reintegration package. Individuals may request particular arrangements for return. For example returnees from the UK to Pakistan were offered assistance in setting up a business upon return to Pakistan (Home Office, 2010).

Advantages of a referral to Refugee Action are plural. An individual will benefit from specialised expertise in issues facing returnees in a particular regional and country context. The UKBA benefits from passing on the responsibility of ensuring the mental, physical and emotional security of the migrants prior to return. The constant privatisation of UKBA services is symptomatic of harsh government spending cuts and it is arguably not entirely

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[20] The UKBA offer VARRP to "those who have sought asylum and those with certain forms of related temporary status in the UK. Returnees receive support in acquiring travel documentation, flight to country of origin and onward domestic transport, airport assistance at departure and arrival airports and up to £1500 worth of reintegration assistance per person including a £500 relocation grant on departure for immediate resettlement needs and, once home, a range of reintegration options. The majority of returnees use their reintegration assistance in income generation activities." (Parliament, 2011).

erroneous. Many of the contracts awarded by the UKBA have been to charitable organisations. It could be argued that the welfare of individuals within the asylum process may be better cared for by organisations that place the individual at the centre of the issue, rather than passing individuals through a bureaucratic state process.

## Assisted Voluntary Return from the UK:
### A Vanguard for Return or Harbinger of Repatriation

Despite efforts to ensure that individuals are given an opportunity to participate in their own return, applicants are "warned that they may be subject to a re-entry ban to the UK for up to five years. They have to sign an indemnity declaring that IOM is not liable for personal injury or death during and/or after their participation in the IOM programme" (Webber, 2010, para. 3). Despite their substantial efforts to induce volunteers, the IOM do not guarantee the safety of voluntary returnees, and returnees are required to sign a declaration clearing the IOM of any potential wrong-doing, thus raises concern over the motivation for return. Returnees are often faced with a variety of obstacles to reintegration upon their return to their country of origin. Often, the authorities and the local community can be hostile to returnees, particularly if they are from ethnic minorities: "seeking asylum abroad may be seen as akin to disloyalty" (Webber, 2010, para. 10), inviting institutional suspicion and racism. One particular example is the return of Russians where:

> The Russian government has a negative attitude towards returnees as they believe that the returnees have damaged their image. They hold that those who have sought asylum in another country, have put the Russian Federation in a bad light…The Russian government takes no initiative in the reception and support of returnees. (European Council on Refugees and Exiles, 2005, p. 39).

Moreover, there is evidence to highlight that a number of Kurdish individuals from the UK to Iraq were not permitted to re-enter Iraq upon arrival; authorities refused to accept these returnees citing that the Kurds will be at physical risk in Baghdad. Webber continues arguing that "it seems wholly unrealistic to expect any Kurd to volunteer for a return to such conditions, yet the government's efforts to induce Iraqi Kurds to return to central Iraq continue unabated." (Webber, 2011, p. 102: Green, 2011).

An additional factor in the decision making process for those choosing to leave voluntarily is that asylum seekers had to wait excessive periods before their immigration status was determined. It is for this reason that a minority of migrants chose to voluntarily return home before receiving the UKBA's final decision. Furthermore having to uphold strict reporting requirements and not having the right to work in the UK distanced individuals from settling in the UK and is a barrier to integrating into society, "a minority...chose to return...before receiving the final decision on their asylum application. This group stated that the uncertainty and passivity of prolonged waiting in asylum centres was the main reason for returning" (CMI, 2008, p. vi). In 2006, 74 percent of cases received a decision within six months, nevertheless the backlog of legacy cases still move incredibly slowly (Black & Gent, 2004).

The UKBA programme is marketed as a justice based programme[21], designed to allow immigrants the discretion to return to their country of origin during peacetime. Nevertheless it is argued by many that a

> major issue is that most refugees never actually return to their
> previous home, since post-conflict societies remain divided.
> Returnees, many of whom have lost essential documents during
> periods of conflict, are often subject to the same constraints as new
> arrivals and must re-establish themselves in their home country
> (Blitz, Sales & Marzano, 2005, p. 185: Webber, 2010).

Furthermore once an applicant has been returned to their home country they are no longer monitored. The IOM "acknowledges that it does not monitor voluntary returnees…The governments which fund the voluntary return programmes do not monitor returnees' reintegration and success either." (Webber, 2010, para. 9). Interestingly a study of forty-eight Sri Lankan returnees had some staggering results:

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[21] Interestingly, Blitz, Sales & Marzano have found that there are:
> three discourses of return (Sales and Blitz, 2003): firstly justice-based
> arguments, under which returns are seen as a means of resolving conflicts
> and restoring social order. Secondly, the human capital argument is based
> on the notion that returnees bring skills that can help in reconstruction.
> Thirdly, the burden-relieving argument based on the notion that large
> numbers of refugees can cause social and political problems in the
> country of exile. We argue that, while voluntary return programmes were
> promoted using the first two of these discourses, in reality the primary
> focus of British policy has been on burden-relieving (Blitz, Sales &
> Marzano, 2005, p.183).

...four returnees reported that they had experienced human rights abuses at the hands of Sri Lankan authorities since they had returned home. In addition, virtually all of the Tamil returnees reported incidents of racial harassment, typically at the hands of Sri Lankan law enforcement or other government officials. A total of 44 of the 48 returnees had opened …only four business owners reported that businesses generated a profit above subsistence levels and 20 businesses had closed completely…Four returnees had no security of accommodation and were dependent on nightly rented accommodation or other arrangements. (Development Research Centre on Migration, Globalization & Poverty, 2009 p. 2).

One could also argue that the assisted voluntary return programmes offered by the IOM are not sustainable measures. The same study of the Sri Lanka returnees found that "A total of 45 returnees, meanwhile, indicated that they hoped to emigrate again." (Development Research Centre on Migration, Globalization & Poverty, 2009 p. 2).

## How Voluntary is Voluntary Return?

A further contention as regards voluntary repatriation programmes is that they are not genuinely voluntary. Webber argues that none of the programmes offered by the UK are voluntary: "Voluntary return is frequently offered as a less painful alternative to continued destitution followed by (inevitable) compulsory return, and it is generally impossible for the returnee to have an informed choice about the country they are returning to." (Webber, 2010, para 13). Although Refugee Action is commissioned to provide applicants with the necessary information to make an informed decision, the source of information comes from the UKBA and the IOM which is "likely to be viewed as suspect" (Webber, 2010, para. 18).

Indeed, in a similar scheme operated by the Norwegian government to encourage migrants to return home, there were a number of interesting findings. It became clear that the offering of a return package including cash and access to training programmes was not the primary motivation for migrants to participate in AVR. The main cause of returning through AVR was to avoid forced deportation which, it was argued, did not preserve dignity. The UNHCR argues that: "Voluntariness of repatriation being a basic tenet of UNHCR protection mandate, States are urged not to resort to forced returns of refugees, which could amount to a violation

of the fundamental principle of non-refoulment" (UNHCR, n.d. p. 4). However, "When prompted none of the informants said that the cash payment or reintegration support had been a factor in the decision to return home" (CMI, 2008, p. 6). Furthermore, there are few favourable alternatives for failed asylum seekers. Refugees have the choice to remain in the host country legally; failed asylum seekers and illegal migrants are not afforded this luxury and therefore the voluntariness of these schemes is strained.

The UNHCR has criteria which must be fulfilled for a programme to legitimately be 'voluntary' one such criterion is that the choice to leave is genuine and not induced. The UNHCR holds that:

> One of the most important elements in the verification of voluntariness is the legal status of the refugees in the country of asylum. If refugees are legally recognized as such, their rights are protected and if they are allowed to settle, their choice to repatriate is likely to be truly free and voluntary. If, however, their rights are not recognized, if they are subjected to pressures and restrictions and confined to closed camps, they may choose to return, but this is not an act of free will. (UNHCR, 1996, p. 10).

It is therefore clear that repatriation cannot be "voluntary" if the alternative is destitution with no legal status.

> the ... Home Office has consistently and for many years resorted to measures that force asylum seekers to agree for voluntary repatriation ...These include taking away legal rights and welfare payments or denying basic facilities (European Council on Refugees and Exiles, 2005, p. 39).

## Conclusion

The methods to remove migrants from the UK are plural. This chapter has established that voluntary return is favourable over forced removal. Forced removal is identified as a non-sustainable and costly method of migrant removal as well as having undignified aspects. Voluntary return, by contrast is found to be a more dignified, cheaper and sustainable method of removal. Despite the merits of voluntary return the criticisms are multiple; that many voluntary return schemes are not truly voluntary; merely paying individuals to return home,

indeed one Afghani respondent claimed "It is as if our lives are being bought for £600. If the situation improves, we will not need £600 to go back." (Blitz, Sales & Marzano, 2005, cited in Webber, 2010, p.105).

This chapter argues that the UK has forcibly removed large numbers of individuals and evidence from the ECRE shows that the UK is complicit in the premature repatriation of migrants. It is fair to state that, in order to encourage voluntary departure, individuals must be aware of the realities of continuing to remain in the UK and rejecting Assisted Voluntary Return. Forced removal acts in the UK as an incentive for migrants to participate in Assisted Voluntary Return. However, one might argue that the UK has adopted a particularistic approach and is not fulfilling its duty to protect those fleeing persecution or war, particularly in regions where it is partly responsible for displacement.

> It is countries that were not involved in the 2003 invasion of Iraq, such as Sweden, that are hosting Iraqi refugees. In 2006 Sweden received almost 9,000 asylum applications from Iraqis, and extended some form of protection to 90 per cent of these...By contrast the UK received 1,300 applications and offered protection to just 12 per cent. (Cooley & Rutter, 2007, p. 178).

Nevertheless, despite the fact that the UK has been heavily criticised for many of its efforts to return migrants, few critics have provided a solution to the dignified removal of migrants. Many would describe assisted voluntary return as a "very short term and piecemeal" policy to remove unwanted migrants (Webber, 2010, p. 101). In many cases the EU nations have adopted more extreme measures to distance migrants from permanent settlement in Europe, denying them access to the asylum process in the first place. This paper will now examine one of these measures to ensure non-settlement of individuals: temporary protection.

# CHAPTER THREE

## Temporary Protection: A Paradigm for Eschewing Of State Responsibilities and Premature Return in Europe?

Chapter two indicated how states, in particular the UK, have placed a great emphasis on the removal of migrants from their territory. A costly initiative, states have turned to proactive policies to avoid the costs of removal of migrants, particularly in the case of mass influx.

Scholars argue that the numerous ad-hoc arrangements created by the European community to deal with mass influx of migrants have been palliative at best to protect the rights of those fleeing civil war (Thornburn, 1995). Thornburn (1995) argues that emergency procedures architected by the EU focused on return as the only goal for states, rather than the protection of life and liberty of individuals. The 1951 Convention has been utilised as a foundation for its appropriate definition of the term 'refugee'. Nevertheless, states have restricted eligibility in recent years; fleeing war has become, for many states, 'not good enough' to warrant refugee status (Thornburn, 1995). Protection from armed conflict is not encompassed in many state entry policies and asylum procedures. It is for this reason that the status of temporary protection was created for large numbers of people fleeing armed conflict.

During the 1990s, the EU was inundated with large numbers of asylum seekers, largely from Eastern Europe (Koser, Walsh and Black, 1998). This chapter aims to analyse European government usage of temporary protection mechanism in a bid to assess whether temporary protection is abused by states to protect their interests; placing premature return at the centre of the temporary protection paradigm. To this end, it will first be necessary to examine the history of temporary protection along with its past and present legal status within Europe. This study of temporary protection as a tool to induce forced repatriation will also benefit from an examination of a number of cases where individuals or groups have been granted temporary protection. Finally this chapter will evaluate whether the status of temporary protection is indeed a method to distance certain migrants from national asylum systems and on occasions forcibly remove migrants, or whether it is a pragmatic tool to assist with the large and overwhelming administrative procedures surrounding mass human displacement.

## Temporary Protection Within The International Legal Framework Pre-2001

In order to establish the legal status and consequence of temporary protection it is first necessary to contextualise temporary status as an instrument within the existing refugee system. The 1951 Convention on Refugees enshrines the rights and duties for refugees and states, it does not make reference to temporary protection; a phenomenon which emerged in the 1990s.

The UNHCR has outlined three "durable solutions" within the realm of refugee protection; the safe repatriation of immigrants to their country of origin, the integration of refugees into the local community and the resettlement of immigrants in a third state (UNHCR, 2011). Maximising on these guidelines, states place the return of migrants at the centre of asylum policies, nevertheless, the 1951 Refugee Convention prohibits the forced repatriation of refugees (UN General Assembly, 1951, Art. 33). Therefore, the principle of *non-refoulment* as established in article 33 of the 1951 Convention is something of a barrier to states wishing to remove its migrant populations. Conversely the nature of temporary protection permits states to return its temporary protection populations to their countries of origin as soon as conflict has ended (Koser, Walsh and Black, 1998).

The issue of temporary protection is pertinent especially within Europe as an emerging body of law. However the Refugee Convention is silent on the issue of temporary protection (UN General Assembly, 1951). More worrying still, it is argued that there is even less research on the return of peoples under its status (Koser, Walsh and Black, 1998).

## Understanding Temporary Protection

The European Council on Refugees and Exiles defines temporary protection as:

> Temporary protection is a procedure of an exceptional character
> during an emergency situation that involves a mass influx of
> displaced persons. Individual refugee status determination is not
> immediately practicable in such a situation, because of the time and
> evidence required to do a full and fair evaluation of protection
> needs. (European Council on Refugees and Exiles, n.d.a).

Temporary protection refers to the status given to asylum seekers during times of great instability, to safeguard potential host states from being overwhelmed by mass movement[22] (Koser, Walsh and Black, 1998). Temporary protection affords governments with more leniencies as regards asylum procedures; states may circumvent or suspend their usual practices (European Council on Refugees and Exiles, n.d.a). Those permitted to remain in the host country are also granted fewer rights (Koser, Walsh and Black, 1998). The most poignant difference between those granted temporary protection and those granted leave to remain is that temporary status is just as the title suggests – temporary. Fitzpatrick argues that the granting of temporary protection was under a perception of "grace rather than a legal obligation" (2000, p. 284).

Scholars contend that temporary protection conflicts directly with many provisions of the 1951 Refugee Convention (Akram & Rempel, 2004). Firstly it is argued that the duration of temporary protection status is not determined on the severity of the situation in the country of origin, rather it is determined on the desirable period of protection a state is willing to provide. This "contrasts markedly with non-refoulment under the 1951 Convention, which must be non-discriminatory on nationality grounds and is tied to the persistence of danger rather than artificial time constraints" (Fitzpatrick, 2000, p. 285). Indeed Fitzpatrick also argues that temporary protection has been used as a method to dilute protection for those eligible for refugee status under the 1951 Convention (Fitzpatrick, 2000). Dennis MacNamara, Director for International Protection at the UNHCR agrees, that in some states "large numbers of people, including genuine refugees, are left to languish in a kind of legal limbo, traumatised and separated from their families, while conflicts drag on for months or years" (MacNamara & Goodwin-Gill, 1999, p. 7).

Finally, there is agreement that the regional homogenisation of the temporary protection procedures is incompatible with the aims and purposes of the Refugee Convention. This conflict can be best explained in the example below. During the late 1980s amidst the sabre-rattling between the East and West, European states favoured, and gave preference[23] to refugees from former communist states. This dealt "an ideological blow to the communist

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[22] "With over half a million people seeking asylum in the early 1990s in western Europe, there was concern both from governments and UNHCR that the system of granting asylum could be overwhelmed by the number of claims." (Koser, Walsh & Black, 1998).

[23] This favouritism is termed presumptive refugee status; that migrants from certain countries are presumed refugees without substantive determination; this could be described as a universalist approach to protection.

countries by stigmatising them as persecutors, while simultaneously promoting western liberal values" (Collinson, 1993, p. 66). However, following the fall of Communism in the East, Europe closed its borders to Eastern European migrants, finding that there was little to gain from the 'trophy refugee' (Fitzpatrick, 1995). It is clear from this example that regional systems of asylum and temporary protection providence can be influenced by political opinions of the origin state. Article three of the Refugee Convention explicitly prohibits the discriminiation of individuals to refugee status on the basis of nationality (UN General Assembly, 1951, Art. 3). Nonetheless it is evident that there exists favouritism during certain periods of history, towards specific groups of refugees being granted asylum or temporary protection status.

Indeed, the nature of temporary protection and its politicisation provides that states must discriminate that all individuals from a certain country will automatically be provided with temporary protection, conversely, individuals from a different country of origin may not be fortunate to receive the same protection (MacNamara & Goodwin-Gill, 1999). The UNHCR attempts to placate this blatant abuse of the Refugee Convention, stating that:

> Too often, efforts to stop large flows of illegal migrants also deny asylum-seekers access to protection mechanisms...States have a sovereign right to protect their borders; but they also have a responsibility to deal fairly with the related problems of asylum and immigration. (MacNamara & Goodwin-Gill, 1999, p. 8).

The importance given to political stability and state sovereignty by the UNHCR clearly undermines the international obligations of member states to the Refugee Convention. This chapter investigates and attempts to analyse how the European system has attempted to balance state sovereignty with equitable protection within the existing legal framework.

## The European Directive on Temporary Protection

In 2001 the European Community established the minimum standards for member states in providing temporary protection in the event of mass influx of displaced persons (European Union, 2001, Art. 20) (hereafter the European Directive). These minimum standards came in the form of a European Council Directive; an instrument which sets out the objectives of the community in a particular area (Refugee Council, 2011). Unlike regulations, directives are not automatically incorporated into domestic law, and member states are given the autonomy

to implement the principles of the directive as best fits their state; member states do not have to amend existing laws and policies unless they are in direct conflict with the principles of the directive. Under the auspices of creating a homogenous asylum system within Europe, the 2001 EC Directive came after a number of proposals submitted by the Commission[24] (Kerber, 2002). This particular document gives great emphasis on the principle of burden sharing in Europe, referring often to the preparation of a common policy on asylum, indeed article 20 states:

> Provision should be made for a solidarity mechanism intended to contribute to the attainment of a balance of effort between Member States in receiving and bearing the consequences of receiving displaced persons in the event of a mass influx. The mechanism should consist of two components. The first is financial and the second concerns the actual reception of persons in the Member States (European Union, 2001, art. 20).

The directive has been praised for its commitment to creating a unified system of temporary protection. The European Council on Refugees and Exiles welcomes the directive's attempt to introduce an upper limit to the period of temporary protection. Article four prohibits the granting of temporary protection for a period longer than one year (European Union, 2001, art. 4). It is important to note that the introduction of an upper limit to the duration of temporary protection means that states may not grant temporary protection status where they are aware that the individual will not be able to return to their country of origin within one year. In many European states, temporary protection and the asylum system are mutually exclusive and individuals may not apply for asylum whilst in receipt of temporary protection; creating a disincentive for the individual to apply for asylum (UKBA, n.d.b, Art. 335G). Thus creating a conundrum where if an individual gambles on applying for asylum they also sacrifice their right to temporary protection; alternatively individuals may be barred by the state from applying for asylum whilst in receipt of temporary protection.

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[24] This was the third time that this proposal was submitted, however this proposal was successfully adopted as a result of "the European Union's new competence in the field of asylum under the EC Treaty, as amended by the Treaty of Amsterdam" (European Council on Refugees and Exiles, 2001, p.1).

Prior to the directive, states have been extending the period of temporary protection in a bid to distance the individual from the asylum system. Given that a major function of temporary protection is to assist member states with the administration of a mass influx of migrants it seems appropriate that, "once immediate temporary protection has been provided, the normal status determination procedure should begin to deal steadily with applications as soon as possible" (European Council on Refugees and Exiles, 2001, p.10) and that the potential expulsion of individuals in receipt of temporary protection from the domestic asylum process is "both logically and administratively incoherent." (European Council on Refugees and Exiles, 2001, p.11) .

It is clear that the 2001 directive aimed to create a unified system within Europe in administering a mass influx of migrants, indeed the directive must be applauded for its commitment to the voluntary return of individuals with temporary protection status. Article 21 states that:

> "The Member State shall ensure that the decision of those persons
> to return is taken in full knowledge of the facts. The Member States
> may provide for exploratory visits." (European Union, 2001, art.
> 21).

Whilst the ECRE is supportive of many of the provisions within the directive it notes a number of concerns with the document. Primarily the largest area of contention is that the directive does not contain a provision on procedures. States are required to implement policies in line with the directive, however the directive does not offer regulations as to how member states should do this. It is clear that the directive had a difficult birth, and therefore through its continual politicisation, the strength of the directive has been diluted.

The weakness of the European community to follow through the provisions of the Council's directive is made clearer by the fact that both Ireland and Denmark have opted out of the directive to secure minimum standards for those in receipt of temporary protection (Cooley & Rutter, 2007). The futile implementation of this directive, and wider temporary protection issues, is particularly salient in the case of the UK as addressed below.

## Eschewing of State Responsibilities or a Pragmatic Tool?

It can be seen through the case of Bosnian migrants that the usual procedure as regards asylum applications is altered in the case of temporary protection. Based on the fact that they

have a well founded fear of persecution on the grounds nationality, ethnicity and religion, Kjaerum argues that the majority of migrants from Bosnia-Herzogovina in western Europe would have been granted refugee status if processed under traditional methods (Kjaerum, 1994). Nevertheless, European states ability to grant temporary protection status was determined by the sheer volume of people moving into western European territories. That is not to say that states are legally or even morally incorrect for granting temporary protection over refugee status in emergency situations. The very benefit of temporary protection, for both sides, is that migrants can safely return to their country of origin as soon as it is safe to do so.

The majority of migrants do not want to remain in their host country indefinitely. The questions of contention are three fold; where individuals or groups are granted temporary protection over refugee status in a non-emergency context, where individuals or groups are not safely repatriated and where domestic policy give those in receipt of temporary protection restricted rights compared to those with refugee status. Prior to the 2001 directive, Spain and Hungary granted their temporarily protected populations full rights to work and family reunification (Kjaerum, 1994). Conversely Denmark, the Netherlands and Germany differentiated the restrictions on the right to work and access to primary education from other foreign nationals (Kjaerum, 1994).

Moreover, until 2005, the UK granted "exceptional leave to remain" to its temporarily protected populations. Those granted exceptional leave to remain were only permitted to apply for family reunification after four years (Kjaerum, 1994). Article seventeen of the ICCPR and article eight of the ECHR denote that individuals have a right to private and family life. Article sixteen of the UDHR expresses that "the family is a natural and fundamental unit of society". Case law from the ECtHR highlights that placing barriers to family reunification is a violation of article eight, the right to private and family life. Kjaerum concludes that "unless it is certain that the person will be able to return home within a very limited time, for example, 6-12 months, family reunification should be granted with no delay." (Kjaerum, 1994, p.452).

Further to the right to private and family life, prior to the 2001 directive, in countries such as Germany and the Netherlands those in receipt of temporary protection status were, like asylum seekers, not granted work permits (Kjaerum, 1994). Whilst this may seem like equitable treatment for all foreigners it must be noted that upon receipt of temporary

protection, individual asylum claims are "frozen" meaning that these individuals had no prospect of working for the duration of their stay in the host country. This is not an inconsequential point, the right to work can be crucial to the preservation of human dignity[25] (Murphy and Athanason, 1999:Mind, 2009b); the opportunity to work facilitates the integration of migrants into their new communities, if only for a short period. Allowing migrants the right to work can ease social tensions, particularly in areas where they are viewed as a burden. It is of course important to take into account the there may be severe ramifications for the labour market from a sudden influx of temporarily protected persons. Nevertheless, this should not be the basis upon which governments forbid the right to work for migrants who have no control over their own immigration status, and who may have to wait months or even years before they can return home or file a claim for asylum. It may be agreeable for governments to issue limits and restrictions to individuals' right to work during times of political or economic instability; this, however, does not condone a blanket ban on the right to work of individuals.

Furthermore it would appear from the above that prior to 2001 some European governments attempted to distance migrants from basic social needs. Without the reunification of family members or employment, migrants may not feel secure and content in their host country. It could be argued that the disassociation of temporarily protected peoples from a dignified existence may make it easier for governments to initiate removal procedures. It is preferable, and indeed considerably cheaper, to repatriate an individual on a voluntary basis and without the fulfilment of basic needs, partially because migrants are more willing to return. It is therefore clear that the harshening of asylum procedures and the non-fulfilment of basic rights is utilised as a means to encourage the voluntary return of certain migrants prior to the 2001 directive.

## Temporary Protection, its Directive and the UK

Temporary protection within the UK has been a problematic entity. Following an EU-wide governmental questionnaire posed by Denmark in 1998, it became apparent that prior to the introduction of the European Directive, the UK among others, did not have a legal definition for temporary or subsidiary protection. The UK preferred instead to implement ad-hoc

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[25] "We often look to our job for a sense of identity and…If work provides a sense of achievement, pride in expertise and an assured social position in the workplace…unemployment can take this away." (Mind, 2009b, p.19)

mechanisms to compliment the Refugee Convention (McAdam, 2005). Secretary of State for Immigration, Damien Green affirmed this stance in May 2011 stating that "We remain strongly of the view that the criteria for invocation of the Temporary Protection Directive are a long way from being met; and that relocating migrants within the EU simply creates incentives for increased illegal immigration." (Green, 2011, para. 60).

The European Council has attempted to unify policy on temporary protection; nevertheless the minimal and non-pragmatic quality of the 2001 directive has not been successful in enforcing a unilateral system of temporary protection provision. The fact that the UK did not adopt many of the 2001 directive provisions until 2005 is evidence that the European community as a whole have been lax in their implementation of this legally binding instrument. As with so many other issues in the regional and international *fora*, political concerns and inter-state benevolence have been allowed to reign supreme over the protection of individuals. McAdam argues that

> The Directive should not be viewed as an example of
> complementary protection for universal adoption. Much of its
> content has been determined by regional conditions and concerns,
> and its scope is far narrower than protection principles under
> international human rights law, humanitarian law and international
> criminal law provide. (McAdam, 2007, p.516).

In this respect European States have established a new status of 'temporary protection' to allow themselves the right to forcibly remove migrants; in granting a victim of conflict temporary protection over refugee status the State has protected itself from the principle of *non-refoulment*.

## Conclusion

It is clear that the European Council has attempted to unify policy on temporary protection, nevertheless the minimal and non-pragmatic quality of the 2001 directive teamed with a particularistic attitude to protection, has resulted in unsuccessful enforcement of a unilateral system of temporary protection provision. "Increasingly, victims of conflict are forced to become irregular migrants, as asylum overstayers or those who overstay forms of temporary protection" (Cooley and Rutter, 2007, p. 176). Moreover, the fact that the UK did not adopt many of the 2001 directive provisions until 2005 is evidence that, as with so many other

issues in regional and international cooperation, political concerns and international peace have been placed at the fore; Fitzpatick highlights this point, stating:

> Many states with developed systems for refugee determination and substantial absorptive capacity now channel certain asylum-seekers into schemes for temporary protection, with the avowed aim for facilitating their eventual repatriation by preventing them from developing the links that transform refugees into permanent immigrants. The circumstance of arriving as part of a mass influx, rather that the cause of flight now frequently determines whether asylum or temporary protection will be offered. (Fitzpatrick, 1995, p. 16).

# CONCLUSION

The number of asylum applications lodged and processed in the EU has been on a steady decrease since 2003 (Cooley and Rutter, 2007), yet violent conflict, persecution and the denial of basic human rights by states continues unabated. It is problematic to justify the particularistic attempts of the EU to prematurely remove individuals from its territory. Especially when compared with the monumental efforts by resource poor countries to receive, process and host individuals fleeing their countries. As one of the richest continents on the planet (Forbes, 2009) the international community looks to the EU to share the burden of those displaced by war and persecution, nevertheless this paper has demonstrated that burden sharing is high on the agenda within the EU but not outside.

Many of the EU 27 were involved with the drafting of the United Nations Refugee Convention in 1951. Their involvement in defining rights for refugees at this time is symptomatic of a post-war camaraderie. The European contingent of the UN explicitly called for a strong document to outline international responsibility in the reception and hosting of those fleeing war and persecution (Guild, 2006). The desire to protect and respect the rights of displaced individuals was underpinned by the political will of governments to assist victims of communist repression and persecution (Ogata, 1992). Nevertheless it is clear from the evidence provided by this dissertation that this commitment to the right to flee one's country has become weakened in favour of territorial sovereignty in recent decades.

As one of the three durable solutions proposed by the UNHCR as regards immigration and asylum, return has been placed at the forefront of policy making world-wide. The then UN High Commissioner for Refugees, Mrs Ogata, predicted that from 1992 there would be a "decade of repatriation" (Ogata, 1992, para. 16). The EU is by no means an exception to this. The theory of returns highlights the controversy in prematurely returning individuals to broken communities. The argument that returnees can assist in the rebuilding of communities is juxtaposed with the fact that returnees often face extreme personal instability upon return. Despite this fact, repatriation of individuals to unstable regions remains the norm, as is displayed in the case of Kurdish returnees to Iraq.

The first chapter of this paper outlined the legal and theoretical framework of the receipt, protection and return of asylum seekers and refugees. It was found that the EU, bore exclusionist policies until the 1990s. The Amsterdam and Maastricht treaties made no

mention of the freedom of movement for refugees within EU territory. Exclusionism teamed with the restrictions of the Schengen Agreement and Dublin Convention of the 1990s has afforded irregular migrants in the EU with limited rights and opportunity to access asylum systems.

Chapter one demonstrated how the EU has interpreted the Geneva Convention to protect its territory from individuals seeking asylum, arguing that it is the obligation of individuals to claim asylum in the first safe country[26] they reach, regardless of the fact that they may have family relations or other ties to an EU member state. The Hague Programme of 2004 is also critiqued for the risk that it poses to infringement of the Geneva Convention with lists of safe countries of origin and its lack of support for neighbouring countries. Furthermore, chapter one examined burden-sharing as an EU initiative, with a particular focus on the most successful area: financial burden sharing. The European Return Fund is found to be an appropriate mechanism to assist EU member states in coping with the burden of irregular migrants. Nevertheless it could be argued that the use of the Fund to finance premature return of migrants is contentious. The *de facto* and *de jure* premature removal of migrants to their countries of origin should be financed solely by the host state, not the regional community, particularly taking into account the mutual recognition provisions of the Tampere Conclusions of 1999 which state that:

> The European Council therefore endorses the principle of mutual recognition...Such decisions would be automatically recognised throughout the Union without any intermediate proceedings or grounds for refusal of enforcement. (European Union, 1999, Arts. 32 & 33).

These provisions signify that the use of community funds for premature return without access to community judicial review are problematic at best and that member states sovereignty is at the apex of European priorities. Indeed the sovereignty of member states to repatriate of their own choosing and with the assistance of community funds is demonstrated in the case of the UK.

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[26] Simple geographical conditions often means that EU states are protected from the arrival of an immigrant without passing through a safe third country.

The case study on the UK highlights the failings of assisted voluntary return. Marketed as a long term and cost effective solution to the UK's asylum 'problem', assisted voluntary return it is deemed, is not sustainable, entirely humane or indeed voluntary. The sustainability of voluntary return is doubtful when it is considered that migrants are not monitored upon their return. The evidence showing that returnees face further persecution upon return is a worrying trend in itself. Non-monitoring of migrants does not allow for clear policy recommendations to be made; how can a government decide that a country of origin remains safe for returnees if it does not monitor the progress of previous participants? How is the dignity of returnees entirely preserved if individuals believe that their lives are being bought, as indicated by one Afghani respondent (see page 31)? Furthermore, it is unknown by host governments whether migrants emigrate again and evidence shows that many returnees through the assisted return schemes hope to do so. It is also unclear whether voluntary return can be voluntary when the alternative is certain destitution with no legal status.

The third chapter demonstrated the urge of the European community to distance migrants from asylum systems and basic rights guaranteed to regular asylum seekers. Mass exodus from the former Yugoslavia in the early 1990s triggered an ad-hoc response the large number of asylum seekers arriving in EU territory. The granting of temporary protection, it is argued, is purposeful in that it allows governments and their relevant agencies to handle asylum claims in an efficient and systematic manner, dedicating appropriate time and resources to each claim without the time constraints associated with large scale influx.

Nevertheless, it is doubted as to what extent temporary protection is legitimately granted, and indeed how temporary protection in Europe manifests, as a mechanism to ensure the premature departure of individuals. It may be fair to state that many whom have been granted temporary protection, would also be granted refugee status as per the definition of the 1951 convention.  Furthermore evidence shows that temporary protection has been used within Europe to deny rights such as work and family reunification to individuals, as well as delay the application for asylum. Despite the fact that the EU has attempted to reconcile this issues with the introduction of a Directive on Temporary Protection, evidence shows that states have been slow in implementing the principles and that the welfare and rights of individuals were not the primary concern of the drafters; the importance of state sovereignty, political stability and camaraderie between member states has reigned supreme in this instance.

A clear theme throughout this dissertation and indeed throughout international law in a wider sense, is the careful balancing of state sovereignty with the rights of individuals. In the case of returns in Europe it is evident that territorial and political sovereignty is the heavier weight on the scales. The numerous directives issued by the Council provide that the EU wishes to protect the rights of individuals seeking asylum to the extent that their territorial sovereignty is not compromised. In short, national governments cannot be trusted to have just and fair policies regarding return and temporary protection; the formulation of such policies would involve nation states abnegating some of their sovereignty in this issue and adopting a universalistic application of protection.

The 1950s saw a regional organization committed to the protection and hosting of those in need, nevertheless as conflict distances further from its territory, so does the commitment from the EU to receive and protect. Thus the return of individuals becomes paramount to host countries as a primary response to 'burdensome' migrants. Indeed, the European Council on Refugees and Exiles maintain that "while some measures within [European] instruments clearly aimed at improving standards, many others unfortunately allowed the lowest possible standards to prevail." (European Council on Refugees and Exiles, n.d.b., para. 4)

15,389 words

# BIBLIOGRAPHY

## INSTRUMENTS

Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms,* 4 September 1950. Available at: < http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>. [Accessed 10 April, 2011]

European Union, *Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, on the Gradual Abolition of Checks at their Common Borders ("Schengen Implementation Agreement")*, 19 June 1990, available at: <http://www.unhcr.org/refworld/docid/3ae6b38a20.html> [accessed 6 July, 2011]

European Union. *Single European Act*, 17 February 1986, 1987 Official Journal of the European Communities L 169/1; 25. Available at: <http://ec.europa.eu/economy_finance/emu_history/documents/treaties/singleuropeanact.pdf >. [Accessed 10 July, 2011]

European Union. *Treaty on European Union (Consolidated Version), Treaty of Maastricht* , 7 February 1992, Official Journal of the European Communities C 325/5; 24 December 2002, available at: <http://www.unhcr.org/refworld/docid/3ae6b39218.html>. [Accessed 6 July, 2011]

European Union, *Treaty on European Union, Treaty of Amsterdam*, 2 October 1997, Official Journal of the European Union available at: <http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/C_2002325EN.003301.html >. [Accessed 6 July, 2011]

European Union: Council of the European Union, *Presidency Conclusions, Tampere European Council, 15-16 October 1999*, 16 October 1999, available at: http://www.unhcr.org/refworld/docid/3ef2d2264.html [accessed 14 August 2011]

European Union: Council of the European Union, *Council 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 Member States in Receiving such Persons and Bearing the ConsequencesThereof*, 7 August 2001, OJ L.212-223 7.8.2001, 2001/55/EC, available at: http://www.unhcr.org/refworld/docid/3ddcee2e4.html [accessed 30 July, 2011]

European Union: Council of the European Union, *Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-County Nationals*, 16 December 2008. Official Journal of the European Union L348/98; 24 December 2008, available at: < http://eur-

lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>. [Accessed 6 August 2011].

UKBA. (n.d.a). *Immigration Rules: Part 13 – Deportation.* Available at: <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part13 />. [Accessed 15 August, 2011].

UKBA. (n.d.b). *Immigration Rules: Part 11A – Temporary Protection*. Available at: <http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part11 A/>. [Accessed 15 August, 2011]

UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <http://www.un.org/en/documents/udhr/>. [Accessed 1 June, 2011]

UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: http://www.unhcr.org/refworld/docid/3be01b964.html [accessed 6 April, 2011]

# COMMENTARY

Akram, S. M & Rempel, T. (2004). Temporary Protection As An Instrument For Implementing the Right of Return for Palestinian Refugees. *Boston University International Law Journal, 22*(1). Pp. 1-162.

BBC. (2011). *Eurozone Growth: Comparing the UK with Europe*. Available at <http://www.bbc.co.uk/news/business-your-money-13391090>. [Accessed June 20, 2011].

Black, R. & Gent, S. (2006). *Sustainable Return in Post-Conflict Context. International Migration, 44*(3). pp. 15-38.

Blitz, B. K., Sales, R. & Marzano, L. (2005). Non-Voluntary Return? The Politics of Return to Afghanistan. *Political Studies, 53*. pp. 182-200.

Boswell, C. (2003). Burden • ]Sharing in the European Union: Lessons from the German and UK Experience. *Journal of Refugee Studies, 16*(3). pp. 316-335.

CMI. (2008). *Return With Dignity: Return to What?* Available at: < http://www.cmi.no/publications/file/3055-return-with-dignity-return-to-what.pdf>. [Accessed 20 July, 2011]

Collinson, S. (1993). *Beyond Borders: Western European Migration Policy Towards The 21st Century.* London, Chatham House.

Cooley, L. & Rutter, J. (2007). Turned Away: Towards Better Protection for Refugees Fleeing Violent Conflict. *Public Policy Research 14*(3), pp. 176-180.

Development Research Centre on Migration, Globalisation and Poverty. (2009). Assisted Voluntary Return (AVR): An Opportunity for Development. *Policy Briefing 20*. Available at: <http://www.migrationdrc.org/publications/briefing_papers/BP20.pdf>. [Accessed 12 April 2011].

European Council on Refugees and Exiles. (n.d.a.). *Temporary Protection.* Available at: <http://www.ecre.org/topics/areas-of-work/protection-in-europe/81-temporary-protection.html>. [Accessed 28 June, 2011].

European Council on Refugees and Exiles. (n.d.b.) *Protection in Europe.* Available at: <http://www.ecre.org/topics/areas-of-work/protection-in-europe.html>. [Accessed 23 August, 2011].

European Council on Refugees and Exiles. (2001). *Observations of the European Council on Refugees and Exiles on the European Commission's Draft Directive on Temporary Protection and Responsibility Sharing.* Available at: < www.**ecre**.org/component/downloads/downloads/119.html >. [Accessed 17 July, 2011].

European Council on Refugees and Exiles. (2005). *Increasing Refugee Participation in the Field of Voluntary Return.* Available at: <http://www.ecre.org/files/ECRE%20Vol%20Ret%20Handbook%20051.pdf>. [Accessed 25 April, 2011].

European Council on Refugees and Exiles. (2006). Treatment of Iraqi Asylum Seekers. *International Journal of Refugee Law 18*(2). pp. 452-474.

European Parliament. (2008). *Parliament Adopts Directive on Return of Illegal Immigrants.* Available at <http://www.europarl.europa.eu/sides/getDoc.do?language=en&type=IM-PRESS&reference=20080616IPR31785>. [Accessed 6 August, 2011].

Fitzpatrick, J. (2000). Temporary Protection of Refugees: Elements of a Formalized Regime. *The American Journal of International Law, 94*(2). pp. 279-306.

Fitzpatrick, J. (1995). Flight From Asylum: Trends Toward Temporary "Refuge" and Local Responses to Forced Migrations. *Virginia Journal of International Law, 35*(13). pp. 13-70.

Fitzpatrick, J. (1996). Revitalizing the 1951 Refugee Convention. *Harvard Human Rights Journal 229*. Pp. 229-253.

Forbes. (2009). *Europe Richer than America*. Available at <http://www.forbes.com/2009/09/15/europe-richest-region-markets-economy-assets.html>. [Accessed 6 August 2011].

Foster, M. (2002). Causation in Context: Interpreting the Nexus Clause in the Refugee Convention. *Michigan Journal of International Law 23*. pp. 265-340.

Gibney, M. and Hansen, R. (2003) *Deportation and the liberal state: the forcible return of asylum seekers and unlawful migrants in Canada, Germany and the UK, New Issues in Refugee Research, 77*. Geneva: UNHC

Goodwin-Gill, G., S. (1996) *The Refugee in International Law*. Oxford, Clarendon Press

Guild, E. (2000) *Moving the Borders of Europe*. Inaugural Lecture, University of Nijmegen. Available at: < http://cmr.jur.ru.nl/cmr/docs/oratie.eg.pdf >. [Accessed 6 August, 2011]

Guild, E. (2006). The Europeanisation of Europe's Asylum Policy. *International Journal of Refugee Law, 18*(3-4). pp. 630-651.

Green, D. (2011). *National Aslyum Stakeholder Forum Speech, May 2011*. Available at: <http://www.homeoffice.gov.uk/media-centre/speeches/asylum-forum-dg-speech>. [Accessed 15 August 2011].

Hammond, L. (1999). Examining the discourse of repatriation: towards a more proactive theory of return migration, in R. Black and K. Koser (Eds), *The End of the Refugee Cycle? Refugee Repatriation and Reconstruction*. Berghahn, Oxford: 227-244.

Hannan, D. (2010). European Commissioner likens France's deportations of Roma to Nazi genocide. *The Telegraph*. Available at: <http://blogs.telegraph.co.uk/news/danielhannan/100054179/european-commissioner-likens-frances-deportations-of-roma-to-nazi-genocide/>. [Accessed 20 April, 2011].

Home Office. (2010). *The Voluntary Assisted Return and Reintegration Programme (VARRP) 2008: A Process and Impact Assessment*. Available at < http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/horr41/>. [Accessed 13 July, 2011]

ICAR. (2005). *Regional Protection Zones and Transit Processing Centres*. Available at: <www.icar.org.uk/download.php?id=87>. [Accessed 6 August, 2011]

Independent Asylum Commission. (2007). *Detention of Asylum Seekers in the UK*. Available at <www.icar.org.uk/download.php?id=520>. [Accessed 20 August, 2011]

Kerber, K. (2002). The European Directive. *European Journal of Migration and Law 4*(2). pp. 1193-214.

Kjaerum, M. (1994). Temporary Protection in Europe in the 1990s. *International Journal of Refugee Law, 6*(3). pp. 444-456.

Koser, K. (2005). *Irregular Migration, State Security and Human Security*. Available at: < http://www.gcim.org/attachements/TP5.pdf >. [Accessed 25 June, 2011]

Koser, K., Walsh, M. & Black, R. (1998). Temporary Protection and the Assisted Return of Refugees from the European Union. *International Journal of Refugee Law, 10*(3). pp. 444-461.

Malkki, L. H. (1992). National Geographic: The Rooting of Peoples and the Territorialization of National Identity among Scholars and Refugees. *Cultural Anthropology, 7*(1). pp. 24-44.

McAdam, J. (2005). The European Union Qualification Directive: The Creation of a Subsidiary Protection Regime. *International Journal of Refugee Law, 17*(3). pp. 462 – 516.

McNamara, D. and Goodwin-Gill, G. (1999). *UNHCR and International Refugee Protection.* Available at: < http://www.rsc.ox.ac.uk/publications/working-papers/workingpaper2.pdf >. [Accessed 17 July, 2011]

Mind. (2009a). *A Civilised Society: Mental Health Provision for Refugee and Asylum Seekers in England and Wales.* Available at <http://www.medicaljustice.org.uk/images/stories/reports/mindrefugeereport.pdf>. [Accessed 29 July, 2011].

Mind. (2009b). *Men and Mental Health: Get it off your Chest.* Available at <http://www.mind.org.uk/assets/0000/0186/men_and_mental_health_report.pdf>. [Accessed 29 July, 2011].

Mole, N. (2009). Asylum and the European Convention on Human Rights. *International Journal of Refugee Law, 21*(3). pp. 645-649.

Murphy, G. C. and Athanasou, J. A. (1999). The effect of unemployment on mental health. *Journal of Occupational and Organizational Psychology*, 72. pp. 83–99.

MRF Brussels. (2010). *AVRR EU Year Report 2010*. Available at: <http://www.iom.ee/varre/failid/File/AVRR%20EU%20Year%20Report%202010.pdf>. [Accessed 17 June, 2011].

National Audit Office. (2009). *The Home Office: Management of Asylum Applications by the UK Border Agency*. Available at: < http://www.nao.org.uk/publications/0809/management_of_asylum_appl.aspx >. [Accessed 20 July, 2011]

Noll, G. (1997). "Prisoner's Dilemma in Fortress Europe: On the Prospects for Equitable Burden-Sharing in the European Union." *German Yearbook of International Law 40*. pp. 405-37.

Noll, G. (2000). *Negotiating Asylum*. The Hague, Martinus Nijhoff Publishers

Noll, G. (2003) *Visions of the Exceptional: Legal and Theoretical Issued by Transit Processing Centres and Protection Zones*. Available at < http://www.opendemocracy.net/people-migrationeurope/article_1322.jsp >. [Accessed 6 August, 2011]

Ogata, S. (1992, 25 May). *Statement by Mrs. Sadako Ogata, United Nations High Commissioner for Refugees, at the International Management Symposium, St. Gallen, Switzerland, 25 May 1992.* Available at <http://unhcr.org/3ae68faec.html>. [Accessed 10 August , 2011]

Parliament. (2011). *House of Lords Hansard 26th April 2011 Written Answers*. Available at <http://services.parliament.uk/hansard/Lords/ByDate/20110426/writtenanswers/part017.html >. [Accessed 10 August, 2011]

Pearce, N. (2011). *Caps are No Basis for Migration Policy*. Available at: <http://www.guardian.co.uk/commentisfree/2011/feb/22/uk-immigration-policy-arbitrary-caps >. [Accessed 20 July, 2011].

Refugee Council. (2011). *A Common European Asylum System*. Available at: <http://www.rcis.org.uk/Asylum+legislation/eu>. [Accessed 23 July, 2011].

Robjant, K., Robbins, I. & Senior, V. (2009). Psychological Distress Amongst Immigration Detainees: A Cross-Sectional Questionnaire Study. *British Journal of Clinical Psychology, 48*. pp. 275-286.

Sales, R. (2002) The Deserving and the Undeserving: Refugees, asylum seekers and welfare in Britain. *Critical Social Policy, 22*(3). pp. 456–78.

Severance, K. (2010). *France's Expulsion of Roma Migrants: A Test Case for Europe*. Available at: <http://www.globalresearch.ca/index.php?context=va&aid=21558>. [Accessed 23 August, 2011].

Statewatch. (2004). *EU divided over list of "safe countries of origin" – Statewatch calls for the list to be scrapped.* Available at

<http://www.policylaundering.org/issues/migration/safecountries.pdf>. Accessed [5 August, 2011]

Statewatch. (2008). *The EU's Return Directive*. Available at: <http://www.statewatch.org/analyses/eu-returns-analysis-mar-08.pdf>. [Accessed 5 August, 2011].

Thielemann, E. R. (2005). Symbolic Politics or Effective Burden-Sharing? Redistribution, Side-Payments and the European Refugee Fund. *Journal of Common Market Studies, 43*(4). pp. 807-824.

Thornburn, J. (1995). Transcending Boundaries: Temporary Protection and Burden-sharing in Europe. *International Journal of Refugee Law, 7*(3). pp. 459-478.

UKBA. (2011). *New Family Returns Process Begins*. Available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/newsarticles/2011/march/03new-family-returns-process>. [Accessed 15 August, 2011].

UNHCR. (n.d.). *UNHCR Policy on Return to Burundi*. Available from: <http://www.unhcr.org/refworld/pdfid/3cd917cb4.pdf>. [Accessed 20 June, 2011].

UNHCR. (1996). *Handbook. Voluntary Repatriation: International Protection.* Available at: <http://www.unhcr.org/publ/PUBL/3bfe68d32.pdf>. [Accessed 20 April, 2011].

UNHCR. (1997*). The State of the World's Refugees*. Available at <http://www.unhcr.org/3eb78b3e4.html>. [Accessed 3 August, 2011]

UNHCR. (2003). *The European Union, Asylum and the International Refugee Protection Regime: the new multiannual programme in the area of freedom, security and justice: Key Recommendations from UNHCR.* Available at: <http://www.fr.refugeelawreader.org/index.php?option=com_docman&amp;task=cat_view&amp;gid=46&amp;Itemid=>. [Accessed 12 July, 2011]

UNHCR. (2004). *UNHCR Urges Caution as EU Negotiates "safe country" Concepts.* Available at <http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3f7aa8704&query=safe%20country>. [Accessed 23 July, 2011].

UNHCR. (2010). *World Refugee Day 2010.* Available at <http://www.unhcr.org/pages/4bf4f2616.html>. [Accessed 29 July, 2011]

UNHCR. (2011). *Durable Solutions*. Available at <http://www.unhcr.org/pages/49c3646cf8.html>. [Accessed 1 July, 2011]

UN Population Division. (2011). *Europe: 1990-2010*. Available at:
<http://esa.un.org/migration/p2k0data.asp>. [Accessed 30 April, 2011].

Watt, N. (2011). *Barnardo's to Offer Play Facilities at Yarl's Wood Replacement*. Available
at: <http://www.guardian.co.uk/uk/2011/mar/09/barnardos-play-facilities-yarls-wood-
replacement>. [Accessed 19 June, 2011].

Webber, F. (2010). *The Politics of Voluntary Returns*. Available at:
<http://www.irr.org.uk/2010/november/ms000026.html>. [Accessed 16 April, 2011].

Webber, F. (2011). How Voluntary are Voluntary Returns? *Race and Class, 52*(4). Pp. 98-
107.