



THE EUROPEAN ASYLUM REGIME AND THE GLOBAL SHIFT OF PARADIGM

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Introduction

The end of the 20th century has witnessed major changes in global asylum regimes, towards a less generous approach to refugees. The consolidation of the European Union, the end of the Cold War and the spread of the neo liberal model have been the backdrop to the European change of paradigm in asylum. This chapter shows that the European Union has become a leading actor in the formulation of a new asylum regime whereby European and global trends converge. These are characterised by a comprehensive policy and restrictions on entry designed to keep refugees in their region/location of origin and temporary stay with reduced social rights in European Union states, combined with a strong emphasis on repatriation.

The asylum regime after world war II

An analysis of asylum regimes as they are formulated today must necessarily be considered within the context of continuity and change in their historical development. In the post world war II era an asylum regime was elaborated which mostly addressed European refugees and was governed by the 1951 Geneva Convention; it soon evolved into a liberal regime of entry coupled with generous conditions of long-term stay in most industrialised countries. Although the Geneva Convention became a universal instrument (with the removal of the geographical and historical limitations), other regions of the world developed their own sub-regimes. In Africa, the Organisation of African Unity prepared its own Convention in 1969, which met the conditions pertaining to the end of colonisation, the problems deriving from it and the establishment of newly independent states. This regime was one of reciprocity and sharing with much broader defining criteria than those of the Geneva Convention. This was characterised by the acceptance of mass influxes, short or long-term temporary protection and repatriation when possible (Suhrke 1993). Asia demonstrated a kind of regional refugee regime with an internal practice of sharing (Suhrke and Hans 1995) particularly in South Asia, while in South East Asia a massive outflow from Indochina in the wake of the US defeat resulted in some granting of temporary protection in neighbouring states combined with the global co-ordination of mass resettlement outside the region into industrialised states. In Latin America a strong tradition of asylum was somewhat frozen up by the successive military dictatorships which took over the Southern cone in the early 70s and fanned refugees all over the world whereas in Central America the 1984 Cartagena Declaration facilitated the reception of refugees across a variety of states. One central feature of that period appears to be the generally favourable ethos vis-a-vis refugees albeit through regionally determined differentiated formulas. Central and Eastern Europe remained outside the regime as those countries did not adhere to the Geneva Convention, but they nonetheless received a number of refugees from right-wing military dictatorships (such as Chile in 1973).

The UNHCR defined that period as 'reactive, exile-oriented and refugee specific' (quoted in Joly and Suhrke 1997) and this is corroborated by a number of scholars who stress the exile bias of the regime (Chimmi 1998). The underpinnings to this focus in the Western world were those of a world divided into two blocks poised against each other, wherein refugees acquired an inherent ideological value for the Western block in the discrediting of the communist model and where the emphasis on human rights and solidarity served to legitimate the liberal world. The guilt generated by the atrocities concomitant with nazism and World War II also played a part. According to Chimmi, (1998) this led to a positivist tradition and a depoliticised discourse in refugee studies (mostly occupied by lawyers) positing international law as an abstract system of rules which could be identified, objectively interpreted and enforced, i.e. a neutral language opposed to the politicised language of the Soviet Union. It was also a period of relative economic prosperity and expansion in the industrialised world and of hope for better prospects in the decolonised part of the world. Altogether this conjuncture made way for a relatively favourable approach to asylum on the part of governments.

At the end of the Second World War, the presence of millions of refugees in Europe brought the question of asylum onto the political agenda of the international community. During that period, what I refer to here as the 'old regime' began to come into existence (see Table 16.1). The historical circumstances which presided over its formulation are twofold: the Second World War and the Cold War. Events leading up to World War II and the war itself generated widespread guilt throughout Europe, as a result of the atrocities carried out on millions of victims of fascism and Nazism, many of whom were refused permission to enter and obtain asylum in other European countries. As a consequence the notion of refugee was influenced by the social realities of the time; those categories who had suffered persecution under nazi and other fascist regimes (Hathaway 1984). In addition, the beginning of the Cold War was sealed by the political supremacy of the United States in the Western World, poised against the Warsaw Pact countries (Saloman 1991).

The 1951 Geneva Convention on refugees arose from this conjuncture, awarding a special treatment to 'political refugees' and stressing the individual rather than the group, through a universal definition. It was thus designed to cater also for refugees from communist states. However international laws on refugees reflect not only 'the conscience of the world' at a particular point in history but also the global balance of power and the political climate of the times. A measure of consensus had to be attained taking on board the different national interests, but also the social forces at work including the labour and communist movements; hence not only notions of individual liberty but also those of social rights and standards of treatment are enshrined in the Geneva Convention. The question of asylum was not formulated only in terms of entry but also of status and protection. Moreover, this period coincided with an economic boom and a liberal migration policy into Europe to meet labour shortages. The 1951 Convention had gradually been ratified by European states; 16 ratified it before 1960; they then proceeded to ratify the 1967 Protocol. In the 1970s, the trend in asylum law was a liberal one, (Jaeger 1992) incorporating the principles of the Convention and Protocol (Jaeger 1992). By 1995 there were 127 states signatory of the 1951 Convention and 1967 Protocol world-wide.ⁱ (Joly with Kelly and Nettleton 1997).ⁱⁱ

The regime that developed in the wake of the Second World War in Europe prevailed until approximately the end of the seventies. It is difficult to give it more precise historical limits as it neither was born nor ceased overnight. We are dealing with a regime being constructed and thereafter dismantled over time; the main characteristics which are defined here are in a sense those of a type and do not dwell on the many variations in its implementation by different countries.

Asylum: generous access

The 1951 Geneva Convention: became the main instrument governing the status of persons in need of protection in Europe and the majority of asylum-seekers obtained Convention refugee status. The 1967 Protocol was added to it which made it possible to remove the historical and geographical limitations of the Convention thus making its scope truly international as it then applied whatever the refugees' region of origin. One key characteristic of the Convention is that it constitutes a binding instrument: States signatory to

it are under the obligation of granting refugee status to persons who come under its remit and in principle do not have any discretion on this matter (although they do with regards to the right of residence). Moreover individual determination became the practice in European States although it is implicit rather than stipulated in the Convention (UNHCR 1994). However in exceptional cases a kind of *prima facie* group determination took place with a favourable presumption (such as for Hungarians, Chileans and Vietnamese).

The Convention definition replaced the nationality or group based criteria which had been in force before the Second World War (Hathaway 1984). The criteria of this definition are precisely defined and covered persons in need of protection outside the borders of their country of nationality or habitual residence on account of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. However a liberal interpretation of the criteria for refugee definition gave full scope to the subjective element (well founded fear). Where asylum-seekers are concerned they enjoyed the benefit of the doubt and were presumed genuine until it was determined that they did not meet the Convention criteria. As a consequence Article 1, including the definition of refugee and Article 33 prohibiting refoulement tended to coincide or were deemed to do so. Once refugee status was awarded it was almost invariably accompanied by permanent stay (until the cessation clause could be invoked which was not envisaged as a concrete possibility in the foreseeable future).

There was no major hurdle erected by reception countries in terms of access to their territory and procedure. Although protection was only accessible after the crossing of an international border this was not impeded by measures such as visas or sanctions to transporters. Ready access to the procedure for the determination of refugee status was made possible either on or after arrival without restrictions. Successive applications in different European countries were receivable thus giving more chances of success to asylum-seekers. One single procedure and status were available for all applicants in one country which meant that there was only one category of refugees.

Protection : an integration approach

The general approach of reception countries was generally oriented towards the welcome and integration of refugees into majority society. Convention refugees enjoyed a generous standard of protection in Western European countries; this meant that the vast majority of refugees came under this regime. They generally benefited from social rights and the right to work on a par with nationals of the country of reception and were entitled to family reunion. Travel documents and identity papers were delivered to them which enabled them to travel around Europe without a visa as most of those countries were signatory to the Strasbourg agreement. The assumption and practice was that permanent stay was granted which was concomitant with an early programme and facilities towards integration (Joly 1996). Attitudes from governments, media and populations tended to be favourable to refugees. When other statuses were initially granted, for the benefit of refugees who needed protection but did not meet the Convention definition the quality of protection approached that of Convention refugees. As for asylum-seekers they were usually considered as future refugees and benefited from a favourable presumption and thus also from generous social rights (Guillon 1992).

A new asylum model

The entire global context has changed which provides a backdrop to the new asylum regimes. Regimes in distinct regions of the world are more interdependent and interconnected so that one can speak of a convergence towards a single regime. It is characterised by the search for solution rather than protection, by the diversified categories of persons of concern to refugee agencies such as UNHCR, by its humanitarian rather than human right bias, by the trans-sovereign character of initiatives and many other features examined below. A new discourse carefully chisels an ethical and ideological foundation to the new regime. Finally one aspect of the regime which is often not mentioned is the significant role of refugees as deliberate or unwitting movers of international policy and intervention; they have become one of the central political issues of the end of this century. The foundations of this regime are being forged by industrialised countries

which influence the agenda world-wide through co-ordinated action. For some scholars the regime is the result of experimentation in refugee protection and humanitarian response, giving rise to unplanned, crisis-driven experiments (Newland 1999) rather than a deliberate concerted plan. What is perceived as the failure of alternative methods leads to the assessment that the 90s are characterised by a deterioration of the general observance of principles of international law (Newland 1999). One lawyer speaks of 'threats' to refugee protection (Goodwin Gill 1996 pp 3 and 5) while another fears 'an impending fundamental breakdown of the protection regime' (Hathaway et al 1996 p.4). It has also been argued that the multi-faceted dimensions of the new regime concur to maintain refugees away from industrialised countries (Joly 1999). However, UNHCR describes it in a more positive light as 'proactive, homeland-oriented and refugee specific' (quoted in Joly and Surkhe 1997). There is a fair consensus on the policy features which typify the new regime among scholars. Chimmi (1998) selects in country protection, preventive protection, the right to remain, temporary protection (TP), closer co-operation with the Security Council and safe havens /safety zones. Mertus (1998) stresses states refusal to grant asylum, containment, temporary protection, secondary holding states, repatriation; for Roberts (1998) the key aspects of the new regime comprise preventive action (also in countries at war), safety zones, UN Security Council authorised military intervention, temporary protection, voluntary/forced repatriation, monitored repatriation, Western states reluctance to grant asylum.

In Europe, a set of factors have brought about the new asylum regime over the last 20 years. By the end of the seventies it became clear that economic recession had replaced economic expansion and that the closure of Europe's borders which had occurred in the mid-seventies was to continue. This coincided with a substantial increase in the number of asylum-seekers reaching Western Europe; the number of applications for asylum in Europe rose almost every year from 1983, when there were 73 700 applications to reach a peak of 692 685 in 1992 (Secretariat 1997). Meanwhile, the perspective of a borderless Europe entered the public scene with the preparation of the Single European Act towards a European Union (EU) without internal frontiers. The unequal distribution of refugees led the 'Northern' countries to get together in order to tighten up policies for 'fear' that asylum-seekers might enter the EU through Southern Europe and migrate freely to the North (Joly 1989). At this time 80 per cent of asylum-seekers were then received by France and Germany. This generated intensive activity at inter-governmental level. At the same time the character of refugee movements reaching Europe had been changing to include a greater proportion of 'humanitarian' refugees which could not be accommodated under a strict interpretation of the Geneva Convention definition.

At the end of the 1980s a momentous upheaval shook Europe with the collapse of the Berlin wall and the dismantlement of communist regimes: the Cold War was over. Eastern European frontiers were then open for their nationals but Western European countries were closing theirs as the numbers of both actual and potential asylum seekers from those regions had increased dramatically (Applications from European nationals made up 65.2 per cent of applications made in Europe (Joly et al. 1997); moreover no ideological gain could warrant their acceptance in a post-Cold War era. Tragic ethnic conflicts generated a mass movement of refugees in Europe of a scale unheard of since the Second World War and its aftermath while on the whole values of solidarity were replaced by individualism and protectionism in reception countries (Brochman 1993). Before convergence and harmonisation became prevalent several Western countries took individual initiatives to introduce measures to control the arrival and acceptance of asylum-seekers which might in turn be emulated by others. The contours of the new asylum regime were drawn throughout this long period but it is the introduction of temporary protection (TP) which tilted the balance and made it a qualitative change. The main features of the regime are now clearly defined and are examined below.

A reactive comprehensive approach

A fully fledged comprehensive policy with a great many components, was formally endorsed by UNHCR in 1992 for the treatment of the refugee movements in former Yugoslavia. It is currently being applied throughout the world at the instigation of industrialised countries. Critiques have argued that the primary purpose of such an approach was to ensure that the smallest number possible of refugees would reach the

industrialised world. It includes preventive action, intervention in the country of origin, in-country protection, restrictive measures on asylum, regional containment, temporary protection, repatriation; it has been implemented through a variety of modes and instruments in varying combination according to the crisis involved and its geo-political situation. Refugee issues have been repoliticised as the end of the Cold War was a crucial catalyser making it possible to intervene in countries of origin. The sacrosanct sovereignty principle does not hold sway in the same manner any longer, as noted by UNHCR:

This is in keeping with a growing tendency for the international community to concern itself with conditions that until recently would have been treated as internal matters: violations of human rights, repression of minorities, indiscriminate violence and persecution. Such conditions can no longer be seen as falling within the realm of domestic concern, especially when they affect other countries by causing an outpouring of refugees (UNHCR quoted by Newland 1999 pp.17-18).

Direct intervention in several countries of origin illustrate this new trend as in Northern Iraq, Somalia, Haiti and Kosovo. A new conception of root causes has been formulated and implemented which does not as in the 80s address structural conditions of inequality, oppression, racism, authoritarianism and totalitarianism located within states and the international system (Joly and Surkhe 1997). The notion of early warning has faded. In the 90s narrower definition focuses on more immediate causes of refugee movements particularly as it guides the implementation of policies. This is what has warranted our choice of the adjective reactive appended to comprehensivisation. Unwittingly refugees have become prime agents motivating major international policies and intervention through their sheer numbers and movements. The debate among social scientists demonstrates the complexities of the issues and the difficulties of unravelling implications for policies (Joly and Surkhe 1997). The comprehensive approach has been evaluated positively by some scholars in its aspects involving political reconciliation, the rehabilitation of institutions of government and civil society, the international supervision of elections, the economic reconstruction (Newland 1999); she identifies a number of 'innovative' measures such as temporary protection, safe-havens, cross-border delivery of assistance and the use of peace keeping troops for the delivery of humanitarian assistance (Newland 1999). But the comprehensive approach is more often criticised for its deleterious impact on protection through *inter alia* prioritising the keeping of refugees as close as possible to the country of origin and returning them as soon as possible.

RESTRICTED ASYLUM

The rationale sustaining this approach has been the growing reluctance of states to offer asylum-based protection (Newland 1999, Roberts 1998) often attributed to their concern with the economic burden and the exacerbation of existing racial, ethnic and national tensions; this trend was initiated by industrialised countries which multiplied measures designed to pursue it and thus created a model influencing reception countries in other parts of the world; as testified by the UNHCR 'non-compliance with international treaty obligations for refugees is becoming something of a global norm' (MacNamara 1997:57 quoted by Suhrke 1998). For Suhrke (1998) the most dramatic feature of the refugee scene in the 1990s is thus the globalised restriction on asylum. It has sometimes led to the coining of the phrase 'the non-entrée' regime (Chimmi 1998). The European Union in particular prepared conventions and a great number of soft instruments to that effect (Joly 1996). The theme of 'bogus' asylum-seekers abusing the asylum system is being peddled repeatedly to justify restrictions. Non-industrialised countries have also been shown to refuse entry in an increasing manner: it has been argued that this is grounded in the problems of declining economies, population pressures and a growing awareness of the ecological cost of hosting large refugee populations exacerbated by the example originating from the richer states (Joly and Surkhe 1997). Paradoxically it is when an increased number of states adhere to the Geneva Convention that it is less and less implemented. The wings of the Convention are being clipped through an array of measures, including a joint action by the European Union on its definition of a refugee which excludes those for whom agents of persecution are not the state (Joly 1999). In the meantime, the dismantlement of communist regimes and the end of the Cold War

have entailed that Central and Eastern European countries are gradually signing the Convention but are at the same time queuing up to adopt the EU *acquis communautaire* and its asylum regime.

The European Union directed its initiatives at the Geneva Convention which has become a residual instrument for the governing of refugees in Europe: Convention status is limited to 10% of asylum-seekers in Europe in 1995 and 1996 (Secretariat 1995, pp.418-19). An arsenal of measures introduced at European and national levels make it increasingly difficult for an asylum-seeker to fit the Geneva Convention criteria. The interpretation of the definition criteria is stricter and narrower: standard of proof of persecution, agent of persecution, internal flight alternatives (EU Joint Position on the harmonised application of the term 'refugee' in Article 1 of the Geneva Convention). However non refoulement retains its authority as an established principle of international law, independently of and beyond the Geneva Convention criteria which to an extent entails that Article 1 and Article 33 of the Convention do not always coincide. As a consequence the majority of refugees have other statuses than Convention status. Those are disparate and there is no uniformity. (i.e. Duldung, Exceptional Leave to Remain, Asile Territorial). With temporary protection, a new concept enters the scene which is implemented through a variety of instruments in European countries.

Several instruments may lead to the granting of some sort of protection either directly or indirectly: Guidelines from UNHCR documents, the European Convention on Human Rights and Fundamental Freedoms (ECHR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, some in-house guidelines (i.e. in Sweden, permitting the granting of protection to deserters and war resisters). At a European level the Schengen and the Dublin documents both include 'discretion' clauses which enable specific governments to grant protection for 'humanitarian reasons' (Dublin Convention Article 9) or for reasons relating to national law (Schengen Agreement 1990 Chapter 7). There are also references made to the ECHR in European Union resolutions and conclusions (July 1994). Two specific instruments directly inform temporary protection, at European level: the Conclusion on people displaced by the conflict in the former Yugoslavia (London 30 November 1992), and the Resolution on certain common guidelines as regards the admission of particularly vulnerable groups of persons from the former Yugoslavia (Copenhagen 1-2 June 1993). One important characteristic of these instruments is that they are much weaker than the Geneva Convention as they fail to carry the same binding authority: they are mere guidelines. This applies even to the innovative EU texts on temporary protection which give clear recommendations at European level on the granting of protection to some groups of refugees.

A major shift is taking place determining who qualifies for some kind of status. Under these newer instruments group determination is being reintroduced, negatively and positively: EU Conclusions on countries in which there is generally no risk of persecution are related to the drawing up of lists of countries whose nationals are confronted with a negative presumption when they apply for asylum while temporary protection introduces group determination positively. The criteria for awarding protection are often vague or indirect such as Article 3 and 8 of the ECHR or Article 3 of the Convention against Torture whereas temporary protection introduces precise criteria on a different basis to the Convention criteria; they are time and place bound as opposed to universal and therefore much more restrictive.

UNHCR recommended the following categories of persons who could qualify for temporary protection:

- . Persons who had fled from areas affected by conflict and violence
- . Those who had been or would be exposed to human rights abuses including [as a result of campaigning] of ethnic and religious persecution
- . Persons who for other reasons specific to their personal situation were presumed to be in need of protection (UNHCR 1994b).

The EU criteria come close to those of UNHCR (1994) and include, in general 'those nationals of former Yugoslavia coming directly from combat zones who are within their borders and who are unable to return to

their homes as a direct result of the conflict and human rights abuses' and more precisely with regard to 'vulnerable persons' those who

- . have been held in a prisoner-of-war camp and cannot otherwise be saved from a threat to life or limb
- . are injured or seriously ill and for whom medical treatment cannot be obtained locally
- . are under a direct threat to life or limb and whose protection cannot otherwise be secured
- . have been subjected to sexual assault, provided that there is no suitable means for assisting them in safe areas situated as close as possible to their homes.

Return to the country of origin is stipulated as the main objective associated to the temporary protection status (Joly 1998).

A series of obstacles are set up by potential reception countries to place Convention status beyond reach. In the first place physical access to the country is rendered difficult through sanctions to transporters (Schengen and Dublin Conventions), entry and transit visas. Once in a country of reception, it is not guaranteed that asylum-seekers will have their case examined as they run the risk of being sent back to a 'third host country' through which they may have transited through the implementation of an EU Resolution on a harmonised approach concerning host third countries and re-admission agreements with countries of origin and countries of transit. (Recommendation concerning a framework text of a readmission agreement between an EU Member State and a third country 30.11.94 and 1.12.94.). The EU resolutions on temporary protection also stipulate that beneficiaries must be coming 'directly from combat zones'. Additional obstructions hinder access to the full procedure and a number of asylum-seekers are diverted onto a short procedure or 'fast track' on procedural or substantial grounds: the Resolution on manifestly unfounded application for asylum (London 30 November - 1 December 1992), the Conclusions on countries in which there is generally no serious risk of persecution. On the whole temporary protection beneficiaries do not have access to the procedure for convention status.

Two other significant changes modify the paths to protection: in some cases access to the procedure is made possible outside the country of reception, in the country of origin or transit (i.e. for some TEMPORARY PROTECTION beneficiaries); and it has become impossible to apply in more than one country of the European Union (Dublin and Schengen Conventions).

THE NEW REALITY OF PROTECTION

Protection itself is assuming new meanings. Roberts (1998) identifies a dichotomy which spans over on the one hand legal protection, i.e. state protection and refugee status and on the other hand physical protection. Under the previous asylum regime no noticeable discrepancy separated the two. Protection then also used to imply the quest for three possible solutions, permanent settlement in the country of exile (that was generally the case in industrialised countries), resettlement after a temporary stay in a transit country or repatriation from the later. While it generally used to involve a durable solution after the crossing of an international border its meaning has now shifted to include primarily in-country protection and repatriation from temporary solutions if a border was crossed. In the industrialised world some scholars have referred to a non-integration programme (Joly 1996). What has undoubtedly happened is that more restrictive asylum policies have been paired with less favourable reception/settlement policies. On the whole, quota for resettlement as a durable solution are very limited: ten states receive between 30 000 and 50 000 annually (Suhrke 1998) while the global burden-sharing and permanent settlement offers witnessed on the occasion of the Vietnamese refugee movement was replaced for Bosnians and Kosovans by temporary protection for limited numbers. A good amount of formulae stressing the search for solutions have been elaborated 'protecting' people *in situ* (hence the importance accorded to internally displaced persons), in the region of origin, under other statuses than the Geneva Convention status in reception countries including for the first time in Europe

temporary protection. One theme, which is slow to emerge in agencies concerns and scholarly writings is the question of women refugees, despite their overwhelming numbers and specific situations.

However the main emphasis has been laid on repatriation, which has gained great credence among policy-makers and NGOs and is customarily clamoured as the optimal solution for refugees with a view to spare them the trauma of exile. This is why the terminology used by governments and agencies concerned focuses on solutions rather than protection. Repatriation has become a central concept: 10 Million returned to their countries of origin between January 1991 and early 1997 (Roberts 1998). In Central America a regional process of peace with international representation incorporated a plan for the return of refugees; in the region the refugees continue to play an active role in the peace process as they had in their paths to exile and countries of reception. In parallel to this development the US introduced stricter border enforcement's through multilateral and bilateral agreements (two Acts in 1996) to return aliens to so-called third countries while Guatemala introduces severe sanctions for assistance to undocumented aliens (between five and eight years in prison) (Nezer 1999). Forcible returns have been numerous in different areas of the world: from Iran to Afghanistan and Azerbaijan, from Bangladesh to Burma, from Thailand to Burma and Cambodia, from Tanzania and the Congo to Rwanda, from Germany to Bosnia, from the US to Haiti and Cuba. Repatriation has sometimes been monitored by international agencies including UNHCR and may become one component of a development aid package to reconstruct a region formerly in conflict (as in Bosnia). Some industrialised countries have also offered return programmes to refugees settled on their territory (such as Norway).

In Europe the qualitative change which has taken place is noticeable in the general attitude of governments, media and populations which now tend to be hostile to refugees and asylum-seekers; racism and xenophobia are rampant. Politicians' declarations, electoral results on asylum, and criminal acts against refugees testify to this (Joly with Nettleton and Poulton 1992). In the UK the months of February and March 2000 resonated with a particularly hostile media coverage of the refugee issue, in the newspapers, the television and the radio. All types of refugees are affected. In addition the *de jure* and *de facto* differential incorporation of different categories of refugees and the discrimination they suffer turn them into prime targets of exclusionary societal processes. Conditions of reception are often designed adversely with the clear purpose of deterring arrivals or applications. This may include detention, limitation in the freedom of movement, reduced or no welfare benefits, limited rights to education or to work. Each country tries to outbid the next in the exercise of 'humane deterrence' to ensure that they do not 'attract' too many asylum-seekers.

Asylum-seekers suffer from a negative presumption. One could almost say that they are considered guilty until they prove themselves innocent (of 'frauding') and this is their responsibility. A non-integration programme is also implicit in the measures applying to non-Convention refugees in most of the European countries. There are no early programmes or facilities towards integration available to them, their authorisation to stay is limited in time and they generally do not enjoy social rights on a par with nationals: social benefits, right to work, right to family reunion. The quality of protection is inferior. They have to fend for themselves and may achieve a satisfactory settlement almost against and despite the host society, if and when they eventually obtain some form of authorisation to stay. Moreover, even after obtaining the latter, they are not always provided with identity /travel documents. This results into the creation of a marginalised group in a semi legal situation.

Temporary protected refugees are a case in point which even demonstrate the existence of programmes precluding integration into the majority society; TP does not include measures towards integration; on the contrary, reception facilities sometimes evidence a policy to deter integration: as in Denmark where TP persons were kept in a camp where they were not taught the host country's language and where children were educated according to the curriculum of their country of origin (Brochman 1995). Temporary protection generally did not provide the same level of rights as Convention refugees and in particular did not award family reunion or identity papers. Even UNHCR initially requested a minimum standard of treatment much more limited than that to which Convention refugees are entitled (UNHCR 1992). Moreover the length of

stay is limited by the very status which stipulates return as the main objective and durable solution associated with TP status. This tends to disempower those groups and hamper their contribution to reception societies, thus exacerbating hostile perceptions of them among the majority society.

Parallel to a non-integration approaches, return has become the buzz-word where refugees are concerned. Re-integration in the country of origin is praised by all and sundry in official circles as the optimum solution causing least trauma for refugees and return packages are sometimes offered. With regards to temporary protected persons from Yugoslavia, return is stipulated as the only outcome envisaged. Other aspects of policy give a clear indication on the negative turn taken towards refugees; on the one hand the European Union discusses burden-sharing (a telling term) to no avail so far, on the other hand rejected asylum-seekers are clearly signified that they must leave (EU Resolutions on expulsion, London 30.11 and 1.12.1992 and Copenhagen 1 and 2.6.1993).

INSTITUTIONAL ACTORS

The leading actors in this process are the governments of the industrialised world through intergovernmental bodies and supra-national agreements. The European Union is a major player together with the Intergovernmental Consultations on Asylum Refugee and Migration Policies in Europe, North America and Australia which comprise the main industrialised countries and the UNHCR. In addition international non-governmental organisations (INGOs) and NGOs attempt to influence the agenda and play an important role in the field; it is pointed out that NGOs now collectively transfer more resources to Southern countries than the world bank (Mertus 1998). The United Nation Security Council is called upon; NATO takes it upon itself to intervene militarily but also provides humanitarian assistance.

UNHCR has become embroiled in controversies and its relationship to governments and donors countries has been the target of sharp criticisms. In some cases, the agency has been supported for extending its concern to new categories of persons and mutating from a refugee organisation to a broad based humanitarian refugee agency. For instance UNHCR monitoring of internally displaced persons and returnees has sometimes been perceived as a positive extension of its mandate and an innovative change in the regime through providing some degree of assurance and safety (Roberts 1998). Another prevalent view opposed to the latter is that the protection mandate of UNHCR is undermined by the pressures of its expanded humanitarian assistance role (Rudge 1998,) or even that its humanitarian responsibilities and its protection mandate are potentially incompatible (Goodwin-Gill 1999). UNHCR has also been accused of legitimating and furthering the agenda of industrialised states in the pursuance of their interests through prioritising concepts such as in-country protection, the right to remain, repatriation (Chimmi 1998). New UNHCR concerns embrace substantial numbers (13M), who are not refugees but Internally Displaced Persons (IDPs), returnees, war affected populations in former Yugoslavia, relocated population in the Russian Federation, and stateless people (Roberts 1998) Uprooted populations, displaced people, involuntary migrants are the new terms used which tend to replace the concept of refugee (Joly and Suhrke 1997)

In Europe policy decisions are informed and governed through inter-governmental agreements Schengen, Dublin and also the numerous EU resolutions and conclusions. The main seat of regime formulation is the EU which sets up models and attracts in its wake non-EU members in Europe. Despite and perhaps thanks to the measures introduced and encouraged by those agreements, individual governments have more discretion on decisions determining status as they enjoy greater flexibility vis-à-vis the Geneva Convention. Harmonisation of policies is the main trend. Intense co-ordination and information sharing is taking place at EU level. However this harmonisation process does not apply to all areas concerning asylum and refugees; up until now it has hardly touched the question of non-Convention refugees and of refugee settlement. It is my view that harmonisation measures so far have been a concerted effort to clip the wings of the Geneva Convention in the EU to re-instate governmental and inter-governmental discretion over the acceptance of refugees.

Nevertheless other actors are debating and disputing the agenda. The UNHCR enjoys an enhanced role in Europe, but runs the risk of becoming part of the new agenda led by the EU. Other bodies although less influential, are taking an active part in the debate on refugees: the European Parliament, the European Commission, the CSCE, the Council of Europe, ECRE and other NGOs. Finally, this phenomenon encompasses the whole of Europe as Central and Eastern European countries are eager to join the *acquis communautaire* on asylum.

Conclusion

This major shift of paradigm can be attributed to several possible underlining factors. It has been argued that the end of the Cold War has reduced the importance of international relations which gave some refugees an intrinsic ideological value and thus facilitated the institution of asylum for all (Joly 1996). The new regime, defined by some as a 'post-cold war' paradigm (Mertus 1998) appears to be driven by narrow domestic considerations at a time when there is a retreat in values of universalism and solidarity (Rudge 1998), partly as a consequence of an overbearing neo-liberal economic model which let loose the forces of the market. An introverted conception of the national interest is prevailing in industrialised states and it is perceived that refugees are representing a threat to society's political regime, cultural identity, socio-economic order and environment and national security (Weiner 1996).

In Europe this does not signify the complete end of asylum but a new mode which leaves asylum seekers almost at the total mercy of reception states. The harmonisation of asylum policies in the European Union has achieved the curtailment of the Geneva Convention. European states main goal was to regain the control of their borders so that they could muster maximum flexibility about whom they would accept as refugees, for how long and in what conditions of installation. The model they have adopted is a regime of selective, temporary, rotative asylum with reduced social rights.

It overlaps increasingly with new immigration policies in the offing. Alarmist demographic curves combined with a rejuvenated economy are calling for new imports of labour migrants. It is becoming the dominant discourse in some countries of the European Union such as France and Italy, where politicians of the right and the left stress the need for a new immigration programme. In the UK, there are harbingers clearly announcing a similar position. This is developing as a European trend with indications that the new model is that of a selective, temporary, rotative immigration system, away from long term settlement and integration. How will this be implemented in practice? The voice of history tells us that it is very difficult to maintain a strictly selective pattern and almost impossible to ensure that temporary migrants do not become long-term settlers at least in a large proportion.

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- ⁱ The temporal and geographical limitation has now been lifted by all parties to the Geneva Convention (including most recently Hungary on 8 January 1998), except for the Democratic Republic of Congo (Zaire), Madagascar, Malta, Monaco and Turkey.
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