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***The Externalisation of the  
Asylum Function in the  
European Union***

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**Abstract**

This paper aims to identify and assess the main items in the strategy followed by the EU and its member states on the externalisation of their asylum function. First, it analyses the European harmonisation of the return to *safe third countries* and to *countries of first asylum*, which is carried out by means of readmission agreements. Second, it refers to the strategies defined by the Hague and the Stockholm programs concerning the *External Aspects of the European Union Asylum Policy*, on the detention centres for illegal immigrants abroad, and on the proposals for delocalisation of asylum applications processing centres beyond the EU borders. Finally, this paper considers whether the strategy of externalisation of the function of asylum sometimes lacks legitimacy, and to what extent there is a fair balance between the interests of the states and the protection of the human rights of refugees and asylum seekers.

**Keywords:** Asylum, European Union, readmission, *safe third country*, Regional Protection Programmes.

**Author's biographical note**

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## 1. Introduction

It is widely accepted that asylum, considered as durable territorial protection in a foreign country in the case of persecution or risk of breach of fundamental rights, is not a subjective right of individuals in International Law. However, there is a right to recognition as a refugee in the event of a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” if the person 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” (1951 Geneva Convention relating to the Status of Refugees, article 1) and also a right to be protected in the event of a serious risk to the individual’s life or the risk of being subjected to torture or other violations of fundamental rights, at least on a temporary basis.

These rights arise from international conventions including the 1951 Geneva Convention and the 1967 New York Protocol relating to the Status of Refugees, the 1984 United Nations Convention against Torture, the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (1950 ECHR), the 1967 International Covenants, and despite its formal non compulsory status, the 1948 Universal Declaration on Human Rights. Some of these norms have attained the *ius cogens* status, such as the *non-refoulement* principle, or the ban on torture. The prohibition of states from sending or expelling to another country anyone who might there be subjected to any serious risk of treatment that amounts to torture, with a non-derogative character, stems from those norms, at least in the European countries which belong to the 1950 European Convention on Human Rights.

Conventional and non-conventional norms concerning refuge and asylum and those related to them taking part, as well as with a series of principles, rules, procedures and international standards, are based on the International Refugee and Asylum Regime, which is the basis for the idea that the states in the international community have an asylum function. These norms, principles, rules, procedures and standards lead to the existence of a function of asylum for states which cannot refuse entry, return or immediately expel asylum seekers who are in fact on their territory or in their jurisdiction.

The aim of this paper is to identify and assess the main items in the strategy followed by the EU and its member states which lead to the externalisation of their

asylum function<sup>1</sup>. For the purposes of this paper, the externalisation of the function of asylum is understood to be the design and application of policies by European Union countries (individually or collectively, by means of cooperation or participation in the Immigration and Asylum EU Policy), which aim to or result in the movement of the asylum function to third countries. By means of some of these policies, the effective responsibility for taking charge of refugees and other people needing protection is transferred elsewhere to transit and origin countries, in spite of the fact that these people initially applied for asylum in a European Union country. The externalisation of the asylum function can be the result of some forms of immigration control, such as remote control of borders, especially maritime borders; subcontracting this control (sometimes to private agents); and of the extraterritorialisation of control by means of the withdrawal of the act of controlling beyond the European line (e.g. visa requirements and controls before loading) (A.LÓPEZ SALA, 2009). However, the externalisation of the asylum function of the states may also be the result of strategies focusing on refugees. This paper aims to examine the instruments and strategies implemented by the European Union and its member states focusing on refugees which lead to the externalisation of the asylum function of the EU countries.

First of all, this article analyses the European harmonisation of the return to *safe third countries* and to *countries of first asylum*, which is carried out by means of readmission agreements. The strategies defined by the Hague and the Stockholm programs concerning the *External Aspects of the European Union Asylum Policy*, on the detention centres for illegal immigrants abroad, and on the proposals for delocalisation of asylum applications processing centres beyond the European Union borders will then be studied.

The paper also considers whether the strategy of externalisation of the function of asylum of the European Union member states sometimes lacks legitimacy, and whether there is a fair balance between the interests of the states and the protection of the human rights of refugees and asylum seekers.

### *1.1. The asylum function of states*

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<sup>1</sup> The asylum function belongs to the State, because the EU is not part of the main instruments which form the International Refugee and Asylum Regime, and because sovereignty over the territory in which it is possible to provide asylum belongs to the member states.

A refugee situation arises when the normal relationship between states and citizens breaks down, and when people are compelled to flee and seek protection abroad. Refugees and asylum seekers are then alone in facing the international community, in which nobody – within the international system in its strictest sense– is obliged to take them in as citizens or aliens. It has been suggested that refugees “are not the consequence of a breakdown in the system of separate states, rather they are an inevitable if unanticipated part of the international society. As long as there are political borders constructing separate states and creating clear definitions of insiders and outsiders, there will be refugees” (E. HADDAD, 2008). In this context, states have a moral duty to receive people in search of protection and, from a strictly legal point of view, an obligation to not refuse, return or immediately expel aliens arriving in their jurisdiction without giving them the opportunity to show that they need protection. This latter obligation entails a right for asylum seekers entering the territory or present in the jurisdiction of a state not to be refused, returned or expelled. This right entails some form of interim protection and therefore some form of *asylum*.

Interim or provisional asylum until a decision by the competent authorities on asylum applications is an unavoidable corollary of the interdiction of *refoulement*, or expulsion which encompasses a serious risk of torture or attempts on the most fundamental rights. This also constitutes the essential body of the function of asylum of the state in the international community.

### *1.2. General context of policies concerning asylum in the European Union countries*

In the last decades of the twentieth century, the European Union countries started to implement strategies of deterrence towards potential asylum seekers, aimed at avoiding the use of *non-refoulement* as a privileged way of entering the territory and settling in the country as migrants for economic reasons. In a context where economic migration has been almost proscribed, applying for asylum and family reunification are the only ways of entering the European Union (EU) zone. As people considered them as a “migrant individual” instead of “at risk of persecution or serious violations of fundamental rights”, asylum seekers are perceived as defrauding the European welfare state and as a threat to states’ homeland security. As Volker Türk says, this “fear of the other” is the basis for a distressing aspect of contemporary public debate on asylum: “asylum-seekers and refugees, though victims and particularly vulnerable to physical security threats, are increasingly perceived themselves as a threat” (V. TÜRK, 2003).

The first steps in the Common European Asylum System (CEAS) were taken after the Amsterdam Treaty (1999), which awarded competence to the European Community and adopted some common rules on asylum in the context of the construction of an Area of Freedom, Security and Justice (EUAFSJ). Before the Amsterdam Treaty, migration and asylum issues were included in the EU Treaties for the first time in the Third Pillar of Cooperation in Justice and Home Affairs created by the Maastricht Treaty (1993). The Third Pillar was created in order to try to include the free movement of persons and measures of cooperation in the fields of police and justice cooperation, migration and asylum in the Schengen Area (the Treaties of 1985 and 1990, in which the EU Member States excluding the United Kingdom and Ireland, and other European States such as Norway or Iceland, participated) in the framework of the European Union. The Amsterdam Treaty included the principle of differentiation in the European Union (European Member States are not obliged to implement EU objectives at the same time), which allowed the United Kingdom, Ireland and Denmark to benefit from Protocols establishing opt-out and opt-in clauses concerning measures adopted in the common EU areas (migration, asylum) of Justice and Home Affairs. Finally, the Lisbon Treaty (in force since December 2009) eliminates the structure of Pillars of the EU and places policies and instruments linked to the creation of a EUAFSJ within the Treaty on the functioning of the European Union (Part Three, Title V).

The EUAFSJ was included in the Amsterdam Treaty as a new objective of the European Union, according to which the free movement of individuals must be assured, in conjunction with measures concerning external border controls, asylum, migration and the prevention and combating of crime, terrorism and drug trafficking. The first five-year period (1999-2004) for the implementation of this new objective of the EU was guided by the Tampere Programme. The main European Union norms adopted during this period, which was the first development period of the EUAFSJ, are based on security considerations and the refugee and asylum policy is restrictive. In general, the norms adopted according to the Tampere Programme concern strategies for containing and deterring refugee and asylum flows arising from the legislations of the European Union countries, instead of dealing with the *race to the bottom* in the devaluation of asylum systems by those states in order to reduce migratory pressure. The devaluation strategies of asylum systems of the European Union states operate in various ways: (a) preventing departure from the country of origin (increased visa requirements; sanctions on carriers); (b) preventing entrance into the territory of the potential country of asylum

(international zones at borders; admissibility procedures which define legal admittance into the country, notwithstanding that the applicant could be in fact on the territory of the state or under its authority); and (c) discouraging applications for asylum or staying in the country (detention measures; poor reception conditions)<sup>2</sup>.

After the Tampere programme, the Hague programme, for the period 2005-2009 (the second development period of the EUAFSJ) stressed the need to develop external aspects of asylum policy. This direction is was deepened and diversified in the Stockholm programme adopted by the European Council on 10-11 December 2009, in order to move towards the third development period of the EUAFSJ. The Stockholm Programme intends to incorporate to the EUAFSJ a proactive approach, an innovation in the Justice and Home Affairs fields in the European Union which “has taken the form of a *reaction* to current events or to secular trends, *or at least has been presented in these terms*” (N. WALKER, 2004)

## **2. The return of asylum seekers to *safe third countries***

Destination countries usually reject asylum applications filed by people who, before arriving, have passed through countries deemed to be safe and where, not in the absence of a fear of persecution or serious violations of their human rights, applicants were in fact (or in law) protected, or could have obtained protection. Since the 1951 Geneva Convention does not forbid them from doing so by the *non-refoulement* rule of article 33<sup>3</sup>, countries which did not want to be forced to receive any kind of unexpected migrants, which asylum seekers are by definition, introduce clauses in their legislation

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<sup>2</sup> The main EU norms adopted under the Tampere programme which affect the personal situation of asylum seekers are: the Council Regulation (EC) No 343/2003 of 18 February 2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 50, 25.2.2003); the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals and stateless people as refugees or as people who otherwise would need international protection and the content of the protection granted (OJ L 304, 30.9.2004); Council Directive 2003/9/EC of 27 January 2003 which lays down minimum standards for the reception of asylum seekers (OJ L 31, 6.2.2003); Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ L 326, 13.12.2005).

<sup>3</sup> Article 33 “Prohibition of expulsion or return (“refoulement”)” of the 1951 Geneva Convention (1951 GC) establishes that: “1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”. According to this article, it could be possible to expel or return a refugee to the frontiers of a country where his life or freedom would not be threatened, thus to a *first country of asylum* or to a *safe third country*. A narrow interpretation of Article 33 of the 1951 GC says that there is nothing compelling countries to analyse an asylum application completely based on the refugee’s condition, if the applicant cannot prove that he/she landed directly from his country of origin, where he/she fears persecution.



to allow them to return those migrants to other countries in which they enjoy some form of protection (*first countries of asylum*), or should have applied for protection (*safe third countries*).

The Spanish Law on Asylum establishes the following grounds governing inadmissibility: “the applicant is recognised as a refugee and has the right to stay or to obtain effective international protection in a third country” and “the applicant comes from a safe third country (...) where it is possible to apply for refugee status and, if he/she is a refugee, to obtain protection in accordance with the Geneva Convention”. In both cases, it is formally required by law that asylum seekers would be readmitted, and their life or freedom would not be in danger in the third country, and would not be subject to tortures or inhuman or degrading treatments. A further requirement is that refugees would be effectively protected against a return to the country where the persecution is carried out according to the Geneva Convention”<sup>4</sup>.

Although the two concepts are quite different, in one case, asylum seekers *actually* received protection and in the other, asylum seekers *could* have been granted protection. At present, the difference in practice “can best be envisioned as one of degree” (S. LEGOMSKY, 2003).

Returning asylum seekers who apply for refuge or asylum in European Union countries but who have not arrived directly in third countries from the country where persecution is feared create the externalisation of the asylum function. This assumes the responsibility for asylum for people who have not arrived directly in European Union countries is transferred to other countries where asylum seekers have not usually applied for protection. Countries may expel or refuse entry to refugees as long as this is not forbidden by the 1951 Geneva Convention, but the legitimacy of this strategy is controversial in view of: first, the differences in the standards of protection between the European Union countries and the countries of the main regions of origin and transit; and second, the fact that the International Asylum and Refugee regime does not have a

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<sup>4</sup> Article 20.1§ c-d) *Ley 12/2009, de 30 de octubre, reguladora de del derecho de asilo y de la protección subsidiaria*, BOE 31 October 2009, no. 263, pp. 90860-90884. Between 2000 and 2002, these were the third grounds for inadmissibility of asylum applications in the decisions taken by the Spanish Asylum and Refugee Office (*Oficina de Asilo y Refugio*, OAR), according to the statistical yearbook of the Homeland Ministry [online] <http://www.mir.es/MIR/PublicacionesArchivo/publicaciones/catalogo/index.html>. After that date, the statistical publications only give the over numbers of rulings of inadmissibility. In 2008, out of 5171 applications, 2557 (49%) were not admitted, 2455 (47%) admitted, and the remainder, 159 (3%), deserted. *Anuario Estadístico del Ministerio del Interior 2008*, Secretaria General Técnica, July 2009 NIPO 126-09-054-3 [online: See 11 February 2010] [http://www.mir.es/MIR/PublicacionesArchivo/publicaciones/catalogo/anuarios/Anuario\\_Estadxstico2008.pdf](http://www.mir.es/MIR/PublicacionesArchivo/publicaciones/catalogo/anuarios/Anuario_Estadxstico2008.pdf)

burden sharing system. A burden sharing system based on solidarity should ensure financial aid to countries receiving asylum seekers and refugees and if necessary, the resettlement of asylum seekers and refugees in other countries in order to prevent the economic and social structure of the countries receiving large numbers of people in need of protection from collapsing (E. THIELEMANN, 2005, 2008). A way to relieve pressure on the countries of the region of origin of refugees is to respect the choices of asylum seekers. According to this doctrine, there is a *complicity principle* which states that “no country may send a person to another country, knowing that the latter will violate rights which the sending country is itself obliged to respect” (S. LEGOMSKI, 2003). However, the legitimacy of returning asylum seekers to *safe third countries* depends on questions including assessment that in that country, asylum seekers will have an *effective protection*; the link between the asylum seeker and the third country; and the procedure followed to return the person (S. LEGOMSKI, 2003).

The use of the notions of *third safe country* or *first asylum countries* notions for excluding responsibility for refugees and asylum seekers reveals the approach of European Union countries to asylum seekers as if they were economic migrants trying to breach restricted means of entry to the EUAFSJ. Asylum is considered by the European Union as an issue linked to migration, and control of external borders and internal security, rather than an issue principally linked to the protection of Human Rights, as shown for instance in the *European Pact on Immigration and Asylum* adopted by the European Council in September 2008. This Pact reaffirms the *Global Approach to Migration*, which states that migration issues are a central element in the European Union’s external relations, and establishes five basic commitments, which will continue to be developed by means of the Stockholm Programme (organising legal immigration; controlling illegal immigration; making border controls more effective; constructing a Europe of asylum; creating a comprehensive partnership with the countries of origin and of transit in order to encourage the synergy between migration and development) [*European Pact on Immigration and Asylum*. European Council. Brussels, 24 September 2008].

### 2.1. Externalisation by a harmonised notion of safe third country.

In the European Union, the Council Directive 2005/85/EC of 1 December 2005 on minimum standards in procedures in Member States for granting and withdrawing refugee status harmonises the notions of *first countries of asylum* and *safe third*

*countries*. The Directive also regulates the notion of *European safe third countries*. What the Directive does not precisely determine is the scope of the possible use of those notions by European Union countries, and the guarantees to be extended to the asylum seekers in order to refuse them, or expel them to a safe country.

Both notions, the *first country of asylum* and the *safe third country*, can justify the inadmissibility of asylum claims at first instance, which means the denial of entry to the territory, especially if the applications have been made at the border. The inadmissibility of an application for refugee status, asylum, or subsidiary protection means that it will not be examined on substantive grounds.

According to the Article 26 of the Directive 85/5005/EC, “a country can be considered as a first country of asylum for a particular applicant for asylum if: (a) he/she has been recognised in that country as a refugee and he/she can still avail himself/herself of that protection; or (b) he/she otherwise enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*; provided that he/she will be re-admitted to that country”.

Article 27 of the Directive establishes the requirements for considering a state as a *safe third country* and how this notion may be used by EU Member States. Safe third countries are those in which a person who seeks asylum will be treated in accordance with the following principles:

“(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; (b) the principle of *non-refoulement* in accordance with the Geneva Convention is respected; (c) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and (d) the possibility exists to request refugee status and, if found to be a refugee, to receive protection according to the Geneva Convention”.

While those principles can be considered as meeting the international standards of protection, the Directive does not state when and how the *safe third country* concept can be appropriately used at the same level. According to the second paragraph of article 27, the application of the *safe third country* concept “shall be subject to rules laid down in national legislation”. That means that there is no real harmonisation on this issue, and no uniform guarantee for asylum seekers that the *safe third country* concept will be applied to them according to the same standard of safety. National legislation of EU Member States must include:

“(a) rules which require a connection between the person in search of asylum and the third country concerned on the basis of whether it would be reasonable for that person to go to that

country; (b) rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe; (c) rules in accordance with international law which allow an individual examination to check whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that he/she would be subjected to torture, cruel, inhuman or degrading treatment or punishment”<sup>5</sup>.

Asylum seekers have no guarantee of similar treatment in all EU Member States since the “connection” between the asylum seeker and the third country on the basis of whether it would be “reasonable” to expel the person back to that country can be decided at national level. For instance, it is not clear whether transit for a brief period of time in one country before legal admittance to the territory, perhaps in an international zone, could be considered a sufficient connection. Issues such as what length of stay in a safe country is long enough to consider that it is “reasonable” for an asylum seeker to go to a safe country are not yet clear. Furthermore, asylum seekers in similar situations could be treated differently because there is no harmonisation concerning the guarantees that they must have in order to challenge their deportation from one country due to the application of the safe third country concept. The Council Directive 2005/85/EC on minimum standards on procedures does not require European Union Member states to provide for a legal remedy against decisions taken in asylum procedures, and nor does it prescribe that asylum seekers must benefit from a remedy with *automatic suspensive effect* of the return. According to the jurisprudence of the European Court of Human Rights, in order to comply with the requirements of the article 13 of the ECHR concerning the right to an effective remedy, asylum seekers must benefit from a remedy with *automatic suspensive effect* if a risk exists that the person may be submitted to torture or inhuman or degrading treatment<sup>6</sup>.

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<sup>5</sup> The Proposal for a new Directive on minimum standards on procedures in Member States for granting and withdrawing international protection, presented by the European Commission on October 2009, amends the final paragraph of this article: “on the grounds that the third country is not safe in his/her particular circumstances”. There is also a proposal to finish the article with the following statement “The applicant shall also be allowed to challenge the existence of a connection between him/her and the third country in accordance with point a”.

<sup>6</sup> Judgement of 26 April 2007 in the case *Gebremedhin versus France*, no. 25389/05, § 66-67. The Proposal for a new Directive on minimum standards on procedures presented by the European Commission seeks to improve the situation stipulating that Member States shall ensure that applicants for international protection have the right to an effective remedy before a court or tribunal which “shall have

As mentioned above, the 2005/85/EC Directive creates a new category of safe country; the *European safe third countries* (article 36). EU Member States applying this concept may decide that no, or no full, examination of the asylum application shall take place in cases where a competent authority has established, on the basis of the facts, that the applicant for asylum in seeking to enter or has entered illegally its territory from a safe third country (article 36)<sup>7</sup>. The only *European safe third countries* that can be considered are those which (a) have ratified and observe the provisions of the 1951 Geneva Convention without any geographical limitations; (b) have an established asylum procedure prescribed by law; (c) have ratified the 1950 ECHR and observe its provisions, including the standards relating to effective remedies; (d) have been designated by the Council<sup>8</sup>.

According to the 2005/85/EC Directive, the Council adopts a minimum common list of third countries to be regarded by member States as safe third countries of origin (article 29), and a list of European third countries to be regarded as safe third countries (article 36.3). EU Member States can also adopt or maintain national lists of safe third countries of origin (article 30); and lists of third safe countries (article 27.5 and article 36.7).

Both national lists and European Union lists of safe third countries can cause several problems (EU lists have yet to be adopted). First, the relatively permanent nature of the lists creates a presumption of safety for the countries included, which should only be ruled out for the asylum seeker as a result of very strong evidence, which is discrimination based on the applicant's country of origin that infringes both article 3 of the 1951 Geneva Convention and the *pro* refugee principle which must prevail according to international standards (UNHCR 1979). Second, the 2005/85/EC Directive does not ensure that asylum seekers are protected against indirect *refoulement* (if the *third safe country* expels the refugee to another country that is not *safe* according to the

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the effect of allowing applicants to remain in the Member State concerned pending its outcome", at least in border procedures (art. 41 § 4-5 of the Proposal).

<sup>7</sup> Various categories of asylum applications can be refused according to the Directive: *unexaminable* applications (applicants from a *European safe third country*, from an EU country to which the Dublin II Regulation is applicable); *inadmissible* applications (article 25 of the 2005/85/EC Directive); *unfounded* applications (article 28 of the 2005/85/EC Directive).

<sup>8</sup> The 2005/85/EC Directive established secondary legal bases which allowed the Council to adopt a common list of *European safe third countries* and a common list of *safe third countries of origin*, which has been annulled by the European Court of Justice because it violates the European Parliament prerogatives and therefore infringes article 67 EC, which stipulates the co-decision procedure. Judgment of 6 May 2008, case *European Parliament v. Council of the European Union*, no. C-133/06. The Proposal of new Directive on procedures removes the paragraphs concerning these lists (art. 38).

meaning of this concept in the EU); nor that they can have access to a fair and effective asylum procedure (ECRE et al., 2004; *Réseau UE d'experts indépendants...*, 2005). The 2005/85/EC Directive does not require the allegedly *safe* third country to accept the asylum seeker and examine his/her application by means of procedures with an appropriate level of guarantees.

Finally, this specific list of *European safe third countries* states that only non European Union States that *observe* the clauses of the 1951 Geneva Convention and the 1950 ECHR can be included on the list. It is very difficult to ascertain the true degree of observance of the clauses of the Geneva Convention because there is no special international court responsible for monitoring this observance. In the case of the 1950 ECHR, the observance of which is ensured by the European Court of Human Rights (which receives individual applications), there is no mention of when a state ceases “to observe” its clauses. For instance, it is not clear how many condemnatory judgements should be necessary before a country is deemed to be in breach of the 1950 ECHR. Furthermore, in spite of the fact that all condemnatory judgements have the same weight, it is possible that judgements that criticize the inobservance of article 3 (prohibition of torture, which enshrines an *absolute right*) or article 13 (right to an effective remedy) are considered as a means to improve the demonstration of inobservance of the provisions of the 1950 ECHR.

Furthermore, the 2005/85/EC Directive does not resolve the fundamental question of border procedure which normally determines admission into the territory of states. Considering the diversity of practices and the lack of consensus, article 35 states that EU Member States can maintain “procedures derogating from the *basic principles and guarantees* described in Chapter II in order to decide at the border or in transit zones whether applicants for asylum who have arrived and made an application for asylum at such locations may enter their territory” (emphasis added). EU countries are authorized to apply a lower level of principles and guarantees at their borders than those ones considered *basic* guarantees. They therefore employ the *safe third country* concept in accelerated procedures, which do not ensure that asylum seekers are not sent to countries where their life or freedom may be threatened<sup>9</sup>.

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<sup>9</sup> The Proposal for a new Directive on minimum standards on procedures in Member States for granting and withdrawing international protection, presented by the European Commission on October 2009, proposes the elimination of those procedures derogating from the *basic principles and guarantees* at the borders (art. 37), and the possibility of using the *safe third country* concept in accelerated procedures (art. 27).

As the Procedures Directive provides for a lot of differences between Member States in several areas such as the application of the *safe third country* concept in admissibility, accelerated (article 23) and border procedures, “it lacks the substantive effectiveness needed to curb secondary movements of refugees and *refoulement* of asylum seekers” (M. JOHN-HOPKINS, 2009). What is even more worrying, as it has been pointed out by Michael John Hopkins in the case of the UK, with a statement that is also valid for other countries, is that “the Procedures Directive allows fairness to be sacrificed on the altar of speed and convenience because the third country and Non Suspensive Appeal segments, in particular, are not conducive to the type of individualized return and substantive determinations that can adequately take complex factual and legal issues into account, and do not provide asylum seekers with the opportunity to challenge safe country designations. The risk of erroneous decisions making lead to *refoulement* is thus unacceptably high” (*Ibidem*)<sup>10</sup>.

The Dublin II Regulation N° 343/2003, which *establishes the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national* endorses the applicability of the *safe third country* concept, because article 3§3 allows states to apply this notion both before and after the implementation of the Dublin system. An asylum seeker can be refused by the state in which he/she has applied for asylum due to coming from a *safe third country*, or by the responsible country, even if the admissibility procedure takes place after the transfer of the asylum seeker to the responsible country. The commitment of the EU as regards all the applications for refugee or asylum of third country nationals being examined by at least one Member State (article 3 of the Dublin II Regulation N° 343/2003) therefore vanishes.

Concerning the harmonisation of the safe third country concept in the European Union, it is possible to conclude that this harmonisation does not ensure a fair balance between the interests of states aiming to avoid receiving migrants, even if they are forced migrants such as asylum seekers, and the protection of Human Rights. Asylum seekers do not have the same possibility of remaining on EU territory in all European Union countries, because of the differences concerning the *safe third country concept*,

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<sup>10</sup> Until the entry into force of the Treaty of Lisbon, the UK and Ireland benefited from a Protocol which excluded them from the implementation of the measures concerning migration and asylum issues, and allowed them to opt-in, case by case. Both countries “opted in” in order to participate in the adoption of the 2005/85/EC Directive on procedures (paragraph 32-33 of the introduction of the Directive).

their implementation, and the guarantees for asylum seekers preventing their removal to third countries.

## 2.2. Externalisation by readmission agreements

The main purpose of readmission agreements is to guarantee the return of illegal immigrants to their country of origin and, in some cases, to transit countries. Asylum seekers who have already received a decision that rejects their applications in the admissibility procedure, or after a substantive examination of the grounds, are no longer considered as such, and are considered immigrants in an illegal situation from then on. This means that readmission agreements make the externalisation of the asylum function easier when it is used to ensure the return to transit countries of people whose asylum application have been rejected during the admissibility procedure on *third safe country* grounds.

EU Member States and the European Union have implemented a network of readmission agreements or agreements that include readmission clauses. This operates as a *contention barrier* or as an external protection fence for the EU (X. DENÖEL, 1993; J-P. GUARDIOLA, 1992).

Under the Third Pillar of the Maastricht Treaty, the Council of the European Union adopted a *model* of bilateral readmission agreement in November 1994, and a recommendation on principles informing the preparation of protocols for the application of readmission agreements in July 1995. At first, EU Member States concluded a system of bilateral readmission agreements with Central and Eastern European States which as Sandra Lavenex says, regarding the effects on refugees, “is less an expression of an emerging pan-European system of cooperation and burden-sharing, in which states cooperate on an equal basis — than an attempt of major Western refugee receiving countries to relieve their domestic asylum procedures by transferring their legal and humanitarian responsibilities to other, usually less wealthy states” (S. LAVENEX, 1998).

With the Amsterdam Treaty, the European Community gained competence on asylum and migration and – in the framework of this anticipated common policy – on readmission of illegal migrants (Article 63§3 *b* ECT [European Community Treaty]). At



that point, the purpose of the European Union strategy on readmission was to expand and generalise readmission agreements and readmission clauses<sup>11</sup>.

In December 1999, the Council of the European Union decided to update and adapt the *model clause* of readmission to be included in future EC agreements with third countries and between the EC, EU Member States and third countries<sup>12</sup>. One of the most important applications of this model was the *Partnership agreement between the members of the African, Caribbean and Pacific Group of States on one hand, and the European Community and its Member States, on the other hand*, signed in Cotonou on 23 June 2000<sup>13</sup>. Before the Amsterdam Treaty, readmission clauses were included in various kinds of agreements, mainly related to trade, cooperation and partnership. Many of those agreements include countries' obligation to readmit their own nationals and to negotiate further treaties concerning third country nationals, and included agreements with Algeria, Armenia, Azerbaijan, Chile, Croatia, Egypt, Georgia, Lebanon, Macedonia and Uzbekistan (Commission of the EC, COM (2002) 175; S. PEERS, 2003).

After that date, the European Council held in Seville on June 2002, urged "that any future cooperation, association or equivalent agreement which the European Union or the European Community concluded with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration" in order to materialise Tampere's objectives<sup>14</sup>. This was one of the firmest expressions of EU's desire for a general inclusion of readmission in its external policy, in order to manage illegal immigration. All these clauses do not constitute final readmission agreements, but facilitate and prepare future negotiations in this direction.

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<sup>11</sup> Council of the European Union (JAI), Action plan of the Council and the Commission on how to best implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice — Text adopted by the Justice and Home Affairs Council of 3 December 1998, (1999/C 19/01), OJ 23.1.1999, No. C 19/1-15 §36.c) ii); European Council, Tampere, Presidency Conclusions, 15-16 October 1999, doc. 200/99, § 24-25, 27.

<sup>12</sup> Council of the European Union (JAI) 2 December 1999, session no. 2229, doc. 13409/99 MIGR 69 [Press 386-Nr: 13461/99] §A8.

<sup>13</sup> OJ 15 December 2000, No. L 317/3-286. The clause included in this agreement (article 13 *Migration* §5 c)) establishes the obligation of EU Member States to readmit and accept the return of any of their nationals residing illegally in an ACP State, and the obligation of ACP States to readmit and accept the return of any of their nationals residing illegally in EU Member States. Negotiations must be conducted "in order to conclude in good faith and with due regard for the relevant rules of international law, bilateral agreements governing specific obligations for the readmission and return of their nationals". These "agreements will also cover, if deemed necessary by one of the Parties, arrangements for the readmission of third country nationals and stateless people". "Adequate assistance to implement these agreements will be provided to the ACP States".

<sup>14</sup> European Council, Seville, Presidency Conclusions, 21-22 June 2002, doc. 13463/02 POLGEN 52, § 33.

According to the Commission, these clauses are *enabling clauses* “intended to commit the contracting parties to readmit own nationals, third-country nationals and stateless people”, but “the actual operational arrangements and procedural modalities are left to implementing agreements to be concluded bilaterally by the Community or by individual Member States” (Commission of the EC, COM (2002) 175).

The European Strategy on readmission was developed at the end of 1998, when the European Union Council established the High Level Working Group on Asylum and Immigration, with a mandate to prepare *Action Plans* including various aims:

1. The analysis of causes of influx of migrants and asylum seekers;
2. Suggestions aimed at strengthening the common strategy for development with the involved country;
3. The identification of humanitarian needs and proposals to this end;
4. Indications on readmission clauses and agreements;
5. Indications on the possibilities of reception and protection at the origin, safe return, repatriation, as well as on the cooperation with UNHCR<sup>15</sup>.

In October 1999, the Council adopted the Final Report of the Group, with action plans for four main countries of origin and transit (Afghanistan and the neighbouring zone, Iraq, Morocco, Somalia, Sri Lanka) and an Interim Report on Albania and the neighbouring zone<sup>16</sup>. The European Council approved the continuation of the mandate of the High Level Working Group in October 1999 in order to prepare new action plans<sup>17</sup>. The Action Plans were considered by the Commission and the Council as the first attempts by the European Union to define a comprehensive and coherent approach targeted at the situation in a number of important countries of origin or transit of asylum-seekers and migrants. However, the European Parliament considered the creation of the High Level Group and the followed procedure as showing a marked tendency to use an intergovernmental approach even after the requirement of the Treaty of Amsterdam to bring immigration and asylum policies within the Community sphere. The action plans do not sufficiently assess the issue of human rights and do not establish

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<sup>15</sup> The list of countries to be examined by the group was: Afghanistan/Pakistan; Albania and the neighbouring region; Morocco; Somalia and Sri Lanka. Council of the European Union (General Affairs and External Relations), session 2158, 25 January 1999 [Press: 21-Nr: 5455/99] §A 26.

<sup>16</sup> Docs. 11450/99 JAI 79 AG 34, 11424/99 JAI 73 AG 28 + COR 1, 11425/99 JAI 74 AG 29, 11426/99 JAI 75 AG 30, 11427/99 JAI 76 AG 31, 11428/99 JAI 77 AG 32, 11429/99 JAI 78 AG 33 + ADD1. Council of the European Union (General Affairs and External Relations), session 2206, 11 October 1999 [Press: 296-Nr: 11651/99] § A 9. After that date, subsequent action plans were approved regarding Albania and the neighbouring zone, for instance.

<sup>17</sup> European Council, Tampere, Presidency Conclusions, 15-16 October 1999, doc. 200/99, § 12.

a coherent distinction between immigration and asylum. The European Parliament stressed as well “the lack of political realism inherent in the view that readmission agreements are the only instrument for counteracting the phenomenon of illegal immigration and the difficulty of concluding such agreements with the involved countries because of their political instability”<sup>18</sup>.

So far, the European Community has concluded readmission agreements with the following countries or regions: Hong Kong<sup>19</sup>; Macao<sup>20</sup>; Albania<sup>21</sup>; Sri Lanka<sup>22</sup>; the Russian Federation<sup>23</sup>; Ukraine<sup>24</sup>; the Yugoslav Republic of Macedonia<sup>25</sup>; Montenegro<sup>26</sup>; Serbia<sup>27</sup>; Bosnia-Herzegovina<sup>28</sup>; Moldova<sup>29</sup>; Pakistan<sup>30</sup>; and Georgia<sup>31</sup>.

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<sup>18</sup> European Parliament, *Report on asylum-seekers and migrants – action plans for countries of origin or transit. High Level Working Group (C5-0159/1999, C5-0160/1999 - C5-0161/1999 - C5-0162/1999 - C5-0163/1999 - C5-0164/1999 - C5-0165/1999 - C4-0133/1999 - 1999/2096 (COS)*, Jorge Salvador Hernández Mollar (rapporteur) final A5-0057/2000, PE 285.869, 29 February 2000. Resolution approved on 30 March 2000.

<sup>19</sup> *Agreement between the European Community and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on the readmission of people residing without authorisation*, concluded on 17 December 2003, OJ 24.1.2004 No. L 17/23-39. Entry into force: 1 May 2004 (OJ 2.3.2004 No. L 64/38).

<sup>20</sup> *Agreement between the European Community and the Macao Special Administrative Region of the People's Republic of China on the readmission of people residing without authorisation*, concluded on 21 April 2004, OJ 30.4.2004, No. L 143/97-115. Entry into force: 1 June 2004 (OJ 5.8.2004, No. L 258/17).

<sup>21</sup> *Agreement between the European Community and the Republic of Albania on the readmission of people residing without authorisation*, concluded on 7 November 2005, OJ 23.11.2005 No. L 304/14-15 [text of the agreement: OJ 17.5.2005 No. L 124/22-40]. Entry into force: 1 May 2006 (OJ 5.4.2006 No. L 96/9).

<sup>22</sup> *Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of people residing without authorisation*, concluded on 3 March 2005, OJ 17.5.2005 No. L 124/41-60. Entry into force: 1 May 2005 (OJ 1.6.2005 No. L 138/17).

<sup>23</sup> *Agreement between the European Community and the Russian Federation on readmission*, concluded on 19 April 2007, OJ 17.5.2007 No. L 129/38-60. Entry into force: 1 June 2007 (OJ 16.6.2007 No. L 156/37).

<sup>24</sup> *Agreement between the European Community and Ukraine on the readmission of people*, concluded on 29 November 2007, OJ 18.12.2007 No. L 332/46-65. Entry into force: 1 January 2008 (OJ 29.1.2008 No. L 24/52).

<sup>25</sup> *Agreement between the European Community and the former Yugoslav Republic of Macedonia on the readmission of people residing without authorisation*, concluded on 8 November 2007, OJ 19.12.2007 No. L 334/1-24. Entry into force: 1 January 2008 (OJ 29.1.2008 No. L 24/51).

<sup>26</sup> *Agreement between the European Community and the Republic of Montenegro on the readmission of people residing without authorisation*, concluded on 8 November 2007, OJ 19.12.2007 No. L 334/25-44. Entry into force: 1 January 2008 (OJ 29.1.2008 No. L 24/51).

<sup>27</sup> *Agreement between the European Community and the Republic of Serbia on the readmission of people residing without authorisation*, concluded on 8 November 2007, OJ 19.12.2007 No. L 334/45-64. Entry into force: 1 January 2008 (OJ 29.1.2008 No. L 24/51).

<sup>28</sup> *Agreement between the European Community and Bosnia and Herzegovina on the readmission of people residing without authorisation*, concluded on 8 November 2007, OJ 19.12.2007 No. L 334/65-83. Entry into force: 1 January 2008 (OJ 29.1.2008 No. L 24/52).

<sup>29</sup> *Agreement between the European Community and the Republic of Moldova on the readmission of people residing without authorisation*, concluded on 22 November 2007, OJ 19.12.2007 No. L 334/148. Entry into force: 1 January 2008 (OJ 29.1.2008 No. L 24/51).

<sup>30</sup> Agreement signed in Brussels on 26 October 2009. [http://www.german-info.com/press\\_shownews.php?pid=2257](http://www.german-info.com/press_shownews.php?pid=2257) [See: 25 March 2010]

The Commission has so far been authorised to negotiate Community readmission agreements with Morocco<sup>32</sup>; Algeria, Turkey and China<sup>33</sup>, and has recommended the conclusion of readmission agreements with Libya, and Cape Verde.

These agreements complete operationally bilateral readmission agreements concluded by the EU Member States<sup>34</sup> and make return procedures more effective by means of technical assistance and norms related to all issues concerning the return. Spain, for instance, has concluded four readmission agreements (among other instruments for managing migration), with African countries: Morocco, Algeria, Guinea-Bissau and Mauritania. According to these agreements, Morocco is only obliged to readmit third country nationals (not its own nationals); Algeria and Guinea-Bissau, their own nationals; and the agreement with Mauritania merely establishes the obligation to readmit its own and third country nationals that are illegal residents (M.A. ASÍN CABRERA, 2008).

All those readmission agreements concluded by the European Community establish the obligation of the parties to readmit their own and former own nationals, people from another jurisdiction (in cases of Macao and Hong Kong), third country nationals or stateless people. The Preamble of the eight readmission agreements concluded with European countries emphasizes that the agreements are “without prejudice to the rights, obligations and responsibilities of the Community, the Member States of the European Union” and the country concerned “arising from International Law, in particular from the European Convention of 4 November 1950 for the Protection of Human Rights, the Convention of 28 July 1951 and the Protocol of 31 January 1967 on the Status of Refugees” (in some cases other instruments are also mentioned). This reservation does not appear in the agreements with Hong Kong, Macao and Sri Lanka (the latter is not even a party to the Geneva Convention, and is therefore not a *safe third country* in the sense of article 27 of the 2005/85/EC Directive

<sup>31</sup> Agreement reached on 25 November 2009. According to the Information given in the Provisional Agendas for Council Meetings prepared by COREPER. Doc. 11512/09; and [http://www.embassy.mfa.gov.ge/index.php?lang\\_id=ENG&sec\\_id=313&info\\_id=5331](http://www.embassy.mfa.gov.ge/index.php?lang_id=ENG&sec_id=313&info_id=5331) [See: 25 March 2010]

<sup>32</sup> The *Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, on one hand, and the Kingdom of Morocco, on the other hand* concluded on 24 January 2000, OJ 18.3.2000 No. L 70/1-204 [Entry into force: 1.3.2000, OJ 18.3.2000 No. L 70/228] includes only a “Joint Declaration relating to readmission” where parties “agree to bilaterally adopt the appropriate provisions and measures to cover readmission of their nationals in cases in which the latter have left their countries”.

<sup>33</sup> Justice and Home Affairs Council Meeting, held in Brussels on 28-29 November 2002. Doc. 14817/02.

<sup>34</sup> Concerning readmission agreements signed by EU Member States, [http://www.mirem.eu/datasets/agreements/index?set\\_language=en](http://www.mirem.eu/datasets/agreements/index?set_language=en)

on minimum standards of procedures). A reservation of this type certainly does not create additional obligations for countries already obliged by international instruments to which they are party. However, it provides a reminder of the normative context in which readmission agreements are reached, or at least those concerning the EU Member States.

None of the readmission agreements concluded by the EC makes a distinction between the readmission of economic migrants in an illegal situation in the requesting country and asylum seekers whose application has been rejected in the admissibility procedure on the grounds of the *third safe country* concept. The EU approach to the readmission policy of illegal immigrants aims at *efficacy* and leaves the priority of *protection* in cases of vulnerable people to one side<sup>35</sup>. In this respect, readmission agreements contribute to the aim of preserving homeland security and to containing immigration, which is perceived as a threat rather than an opportunity for the EU.

### **3. The External Aspects of the European Union Asylum Policy**

The key idea in the Hague programme and other related documents was that as well as the improvement of a Common European Asylum System (CEAS), it was necessary to develop the *external dimension of asylum and migration*. At a first stage, following the recommendations of the European Commission, The Hague programme stressed the aim and advisability “of assisting third countries, in full partnership, using existing Community funds where appropriate, in their efforts to improve their capacity for migration management and refugee protection, prevent and combat illegal immigration, inform on legal channels for migration, resolve refugee situations by providing better access to durable solutions, build border-control capacity, enhance document security and tackle the problem of return”. With a “spirit of shared responsibility” the emphasis was placed on cooperation with third countries and countries in the regions of origin, in order “to provide access to protection and durable solutions at the earliest possible stage” (*The Hague Programme*, 2005).

Until recently, the strategy of the EU since this first stage has focussed on three main issues: establishing Regional Programmes of Protection in third countries; the need to provide the EU with a system of resettlement of protected people; and having

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<sup>35</sup> Réseau U.E. d'experts indépendants en matière de droits fondamentaux. *Observation thématique No. 2: Les droits fondamentaux dans l'action extérieure de l'Union Européenne en matière de justice et d'asile et d'immigration*, CFR-CDF.Obs.Them.2003.fr. January 2004. P. 29/40.

ordered and managed arrivals of people in need of protection by means of Protected Entry Procedures (PEP) (COM (2008) 360 final §5.2).

The following elements will be now examined: the strategies adopted in order to try to improve protection in third countries; the proposals for joint processing of asylum applications outside the EU territory and PEP; and the situation concerning the attempts to provide the EU with a resettlement system. The enhancement of protection in origin and transit regions is intended to legitimize a non-restrictive implementation of return based on the concepts of *safe third country* and *first asylum country*, either unilaterally or through readmission agreements. The existence of detention centres for immigrants outside the EU will also be assessed. All these topics are directly or indirectly useful for the externalisation of the asylum function of the EU Member States. Sometimes, as in the case of detention centres, there is a risk of being on the fringes of real respect for the principles, norms and standards of International Law concerning asylum, refugees and even Human Rights.

### *3.1. Strategies for improving protection in third countries*

At first, the EU intended to establish Regional Protection Programmes and to enhance the reception capacity and asylum systems of third countries through financial programmes like AENEAS. AENEAS was a programme for financial assistance to third countries in the areas of migration and asylum<sup>36</sup>. In recent years, after the approval of the *Global Approach to Migration* and the *European Pact on Immigration and Asylum*, the external dimension of European asylum policy seems to be more involved with EU External Relations and structured by means of a thematic approach.

#### *a. Regional Protection Programs*

Following the priorities established for the implementation of The Hague programme (enhancement of capacities of protection of origin regions and transit countries; management of resettlement on an EU scale), the European Commission presented a proposal regarding the implementation of *Regional Protection Programmes* (RPP) in September 2005. The proposal was based on the idea of establishing links between aid projects and resettlement commitments of EU Member States on a voluntary basis, to

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<sup>36</sup> Regulation (EC) No. 491/2004 of the European Parliament and of the Council of 10 March 2004 establishing a programme for financial and technical assistance to third countries in the areas of migration and asylum (AENEAS). *OJ* 18.3.2004 No. L 80/1-5.

support the credibility of the EU initiative with a *partnership element* (COM [2005] 388).

After taking into account a number of items such as specific refugee situations, available financial opportunities, existing relationships and frameworks for cooperation between the EC and particular countries or regions, as well as political considerations, the European Commission proposed to implement two RPP: one in the Western Newly Independent States (Ukraine, Moldova, Belarus), and the other in Sub-Saharan Africa (Great Lakes/East Africa), mainly in Tanzania. The implementation of the plans continued in 2009.

Strictly from the perspective of the external dimension of asylum European policy, the implementation of RPP creates several problems because of the risk of considering the countries involved as *safe havens*, “allowing EU States not to process asylum claims lodged by individuals having transited through these countries” (BOUTEILLET-PAQUET, 2005).

In 2006, the approach on the external dimension of immigration and asylum European policy changed slightly with the endorsement of the *Global Approach to Migration* (European Union Council 15/16.12.2006 §IV and Annex I). With this approach, the EU intended to enhance links between migration issues and development, recognising “the importance of tackling the root causes of migration, for example through the creation of livelihood opportunities and the eradication of poverty in countries and regions of origin, the opening of markets and promotion of economic growth, good governance and the protection of human rights”. The strategy is based on stressing partnership with third countries instead of on deepening bilateral restraint commitments on a specific subject. Priority actions would be focused on Africa and the Mediterranean countries, but an extension of this approach to Asia and Latin America is foreseen in the future. The Global Approach is aimed at including the protection of refugees, the enhancement of reception of asylum seekers and readmission, and return policies among a number of other questions, such as the promotion of co-development projects; the pooling of support measures in capacity building in order to manage and control migration in a more effective way; and the promotion of reintegration of returnees. From this perspective, asylum ceases to be considered in crisis management terms, and is embedded with migration and Human Rights issues on the development agenda and other External policies of the EU. In this regard, Regional Protection Programmes continue to be implemented in connexion with other instruments.

Notwithstanding this, Regional Protection Programs make a greater contribution to the strategy of legitimating the externalisation of the asylum function of the EU Member states.

The financial resources for enhancing cooperation with third countries in questions related to migration and asylum were covered by geographical instruments including PHARE (pre-accession countries), TACIS and MEDA (the Balkans, Mediterranean and Eastern European countries), and also by the AENEAS programme, which was intended to highlight the weakness identified in these issues. The latter was created in 2004 to cover the period 2004-2008 and was endowed with €250 million. The AENEAS Programme attracted “a larger (although still limited) participation of governmental and non-governmental organisations from third countries and EU Member States” (COM [2006] 26, §2.3).

*b. Thematic programme for the cooperation with third countries in the area of asylum*

Due to the end of the EU financial framework in 2006, the period of the AENEAS programme was shortened to three years, and its activities continued with the thematic programme within the framework of the 2007-2013 financial perspectives. According to the European Commission, “the general objective of the thematic programme in the fields of migration and asylum is to bring specific, complementary assistance to third countries to support them in their efforts to ensure better management of migratory flows in all their dimension”. The thematic programme complements geographic instruments and supports new initiatives and “will cover the major fields of action which correspond to the essential facets of the migratory phenomenon”, including international protection (COM [2006] 26, §3)<sup>37</sup>.

The thematic programme on cooperation with third countries in the areas of migration and asylum was established in Regulation (EC) No. 1905/2006 of 18 December 2006 (article 16), and concerning asylum, the areas of activity which should be covered are:

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<sup>37</sup> In addition to the thematic programme, three framework programmes have been created for the period 2007-2010. One of them encompasses refugee issues: “Security and Safeguarding Liberties”, concerning crime and terrorism (745 M€ for the period); “Fundamental Rights and Justice” (542.90 M€); and “Solidarity and Management of Migration Flows” (4020.37 M€). This latter encompasses the External Borders Fund, the Integration Fund, the Return Fund, and the European Refugee Fund. Online information. [http://ec.europa.eu/justice\\_home/funding/intro/funding\\_intro\\_en.htm](http://ec.europa.eu/justice_home/funding/intro/funding_intro_en.htm) [See: 25 March 2010]



Promoting asylum and international protection, including through regional protection programmes, in particular in strengthening institutional capacities; supporting the registration of asylum applicants and refugees; promoting international standards and instruments on the protection of refugees; supporting the improvement of the reception conditions and local integration, and working towards lasting solutions<sup>38</sup>.

The 2009 and 2010 Annual Action Programmes for the Thematic Programme of Cooperation with Third Countries in the Areas of Migration and Asylum establishes the amounts for the financing measures in these areas: 38.5 M€ from the Community's budget allocation for 2009, and 31.4 M€ from the EU budget allocation for 2010<sup>39</sup>.

### *3.2. Proposals for the delocalisation of asylum applications processing centres beyond the European Union borders*

The idea of transferring the site of processing asylum applications addressed to the Member States beyond the frontiers of the EU was not new in 2004, when The Hague programme was approved. In 2000, the European Commission assumed the approach taken by some EU States which suggested that one of the problems of asylum in Europe was the disorder and unpredictability of the arrival of asylum seekers. It considered that "processing the request for protection in the region of origin and facilitating the arrival of refugees on the territory of the Member States by a resettlement scheme are ways of offering rapid access to protection without refugees being at the mercy of illegal immigration or trafficking gangs or having to wait years for recognition of their status"<sup>40</sup>.

The EU member states have proposed main two ways to achieve ordered and managed entries of asylum seekers and refugees: establishing Transit Processing Centres, and designing Protected Entry Procedures and coordinated resettlement measures. The establishment of detention centres for illegal migrants and asylum seekers should serve these purposes. This would be followed by an examination of the approach by the European Union and its members to these three issues.

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<sup>38</sup> Regulation (EC) No. 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation. *DOUE* 27.12.2006, No. L 378/41-71. Article 16.2 (e).

<sup>39</sup> [http://ec.europa.eu/europeaid/documents/aap/2009/aap\\_2009\\_dci-migr\\_en.pdf](http://ec.europa.eu/europeaid/documents/aap/2009/aap_2009_dci-migr_en.pdf) [See: 25 March 2010]

<sup>40</sup> Commission of the European Communities. Towards a common asylum procedure and a uniform status, valid throughout the Union, for people granted asylum. COM (2000) 755 final. 22 November 2000, §2.3.2.

### *a. Transit Processing Centres*

The discussion on the idea of processing asylum applications abroad, with the participation of EU Member States and institutions as well as non governmental actors such as human and refugees' rights organisations began after the UK Prime Minister presented a document summarising the British *new approach* to the refugee question in 2003, during the British presidency of the European Council<sup>41</sup>.

The starting point of the document was a pessimistic vision of the current asylum system, as one lacking in solidarity and fairness. After this diagnosis, some proposals were outlined in order to make better use of the resources available. First, some measures were proposed in order to improve the management of migratory flows in the regions of origin and to improve protection in the source regions by means of *Regional Protection Areas* (RPA). Second, the document proposed the creation of processing centres in protected zones of third countries, preferably in transit countries (*transit processing centres*, TPC). According to the British proposal, asylum seekers arriving in the territory of EU Member States should be transferred to those *transit processing centres* and once the corresponding procedures are completed, those recognised as refugees would be resettled in Member States according to a burden-sharing system (others would be returned to their country of origin). This solution was inspired by the practices of other countries such as the USA, which used the military base at Guantanamo Bay as a processing centre for refugees intercepted before their arrival to the United States; or Australia, which after the crisis created by the arrival of the *Tampa* vessel with distressed Afghan refugees, decided to transfer asylum seekers reaching its coasts or intercepted at sea to centres in Nauru or the Christmas Islands, outside Australian jurisdiction.

The second part of the British proposal received a great deal of criticism from Amnesty International, the European Council on Refugees and Exiles (ECRE), Human Rights Watch, the Refugee Council, and the Platform for European Red Cross Cooperation on Refugees, Asylum Seekers and Migrants (PERCO). In general terms, they pointed out the risks in terms of human rights and basic principles related to standards of refugees and asylum seekers protection and warned against the establishment of detention centres in North Africa. Amnesty International blamed the

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<sup>41</sup> *New International Approaches to Asylum Processing and Protection*. 10 March 2003. This letter was sent by Tony Blair to Costas Simitis, Greek Prime Minister. Contextualisation and reactions to the document: NOLL, 2003.

fact that “involuntary transfer of people to another country for extra-territorial processing is inherently unlawful, and the risk of human rights abuses in the course of transfer is high”. “Transfers would amount to discriminatory treatment, in breach of human rights standards” (Amnesty International, 2003). Other risks were pointed out, such as fewer opportunities to benefit from effective remedies against violations of human rights and against transfers, and the problems arising from the detention measures inherent in the system.

The British proposal advocated creating areas outside EU territory with an uncertain legal status regarding the exercise of jurisdiction and therefore regarding the responsibility of third countries where centres would be placed for the observance of European standards of protection of Human Rights and of the International Asylum and Refugee Regime. In this sense, it is useful to recall that in order to clarify such a question whether TPC were created, the USA Supreme Court established that the applicability of the writ of habeas corpus to the Guantanamo centres “depended not on the formal notions of territorial sovereignty, but rather on the practical question of *the exact extent and nature of the jurisdiction or dominion exercised in fact (..)*”.

Strategies aimed at improving the management of asylum in Europe must ensure a fair balance between efficacy and protection. This would prevent a hypothetical arrangement of entrances aimed at keeping asylum from ever replacing spontaneous arrivals and applications for asylum in the EU Member States, which are the main expression of the *right to seek asylum* recognised by the 1948 Universal Declaration of Human Rights (article 14). A system where spontaneous arrivals were deported would represent a *radical break*, and lead to the transformation of the refugee regime into another system working in a permanent *state of exception* (NOLL, 2003).

The British proposal was supported by Denmark and the Netherlands, and led to counterproposals by the UNHCR (UNHCR, 2003) and the European Commission. The latter, while sharing the starting point of the proposal concerning the inefficacy of the European asylum system and acknowledging the need for *structural responses*, ruled out the most problematic items in the British proposal (COM [2003] 152; COM [2003] 315). The European Council of Thessaloniki, held in June 2003, laid aside the proposal under pressure from France and Sweden. It was revived one year later by Italy and Germany. However, the idea of TPC did not seem feasible in the short or medium term. The Hague programme only stipulated carrying out a study in consultation with the UNHCR which “should look into the merits, appropriateness and feasibility of joint

processing of asylum applications outside the EU territory, complementary to the Common European Asylum System and in compliance with the relevant international standards” (§1.3). The Stockholm programme does not explore this path, but does not close the door completely<sup>42</sup>.

#### *b. Detention Centres*

Nevertheless, what is nowadays a fact in the EU is that detention centres for illegal immigrants and asylum seekers who were unable to present their applications to the authorities of the destination country have been established. The idea of the establishment of detention camps outside the frontiers of Europe has put into practice. It is difficult to ascertain how many detention centres exist, because they are formally under the jurisdiction of the host country, but their relationship with European Union States is undeniable. They can even be said to have an indirect responsibility in terms of the way people treat them. The *Immigrant Detention Centre* located in Nuadhibou (Mauritania) is one of these centres. The objective behind constructing this centre was to accommodate illegal immigrants intercepted before their arrival to Spain or who had just arrived in the Canary Islands.

There are 21 detention centres for foreigners in Spain<sup>43</sup>. Two of them, located in the Spain’s African enclaves of Ceuta and Melilla, are open centres (CETI, *Centro de Estancia Temporal de Inmigrantes*). In general, the others are closed centres (CIE, *Centro de Internamiento de Extranjeros*) except the centres for asylum seekers and other vulnerable people (pregnant women, unaccompanied minors, etc.). Some are located in transit zones (Global Protection Project 2009; European Parliament, 2007).

As shown on the map, in recent years the most overcrowded centres are situated in the Canary Islands. In response to repressive measures at the borders, immigrants try to reach Europe from more places further to the southplaces. For this reason, the Spanish government tries to turn them back when they are nearer these places. By 2005-2006, reaching Europe through Ceuta and Melilla had become increasingly difficult, especially after the tightening of controls and the improvement of intruder detection

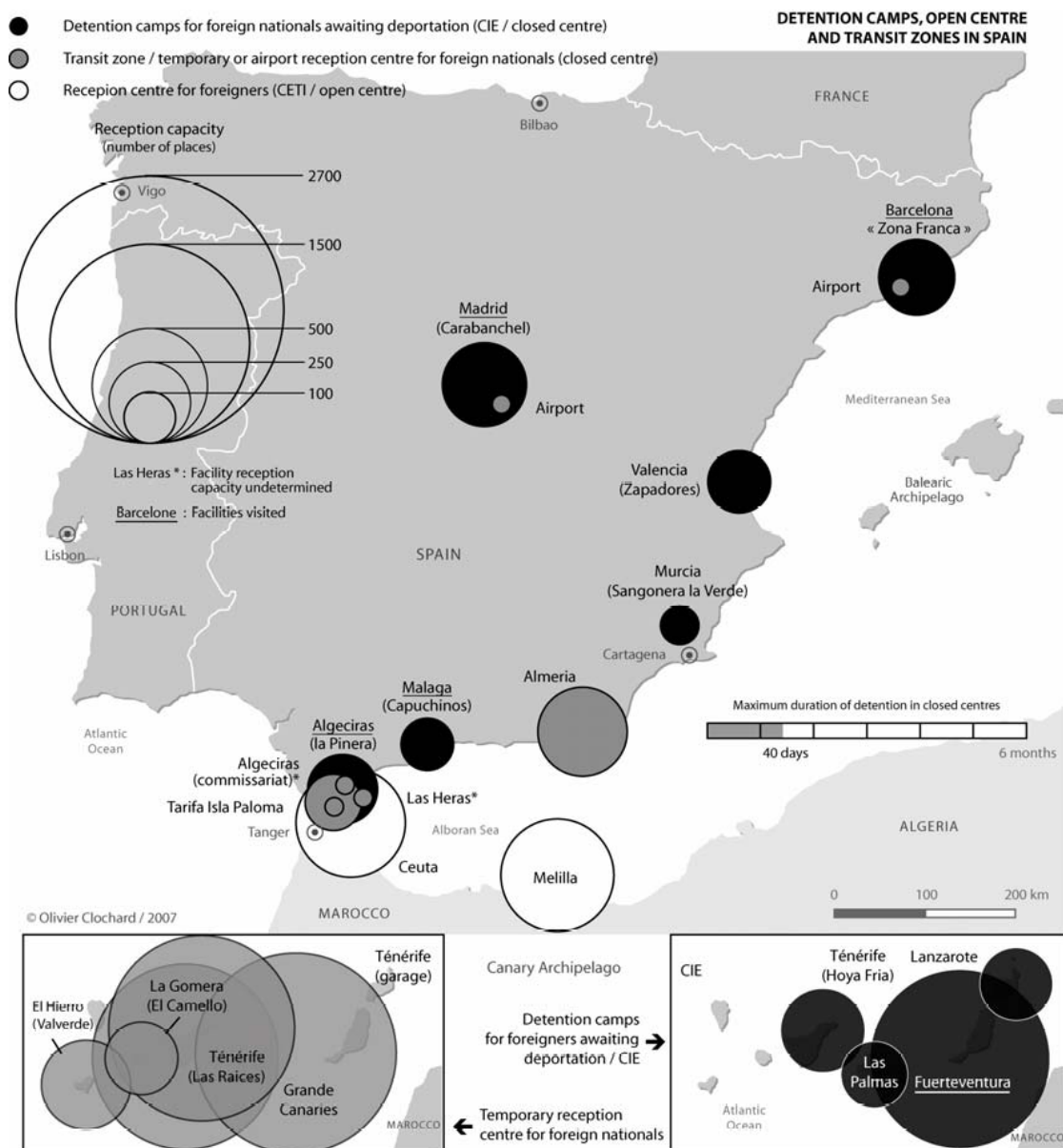
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<sup>42</sup> The European Council invites the Commission “to finalise its study on the feasibility and legal and practical implications to establish joint processing of asylum applications” but nothing is said concerning the location, in the EU or abroad, where such procedures should take place (§ 6.2.1).

<sup>43</sup> A study on the conditions of detention in Spanish Centers has recently been published: CEAR. *Situación de los centros de internamiento de extranjeros en España. Informe CEAR* [Pau Pérez-Sales, Dir.] December 2009 [Online] <http://www.cear.es/informes/Informe-CEAR-situacion-CIE.pdf>

systems installed on the fences around those cities. In October 2005, a number of people died in their attempt to jump over the fences and to enter the Spanish enclaves. The Moroccan authorities increased their repressive practices, including expulsions in the desert (CEAR, 2006).

From 2006 onwards, the departure points for sub-Saharan migrants gradually moved southwards. People tried increasingly dangerous methods and travelled in larger boats, known as “cayucos”, instead of in “pateras” (small dinghies used to cross the Strait of Gibraltar). Nouadhibou and Nouakchott, in Mauritania, and even Senegal, Gambia and Guinea became departure points. In 2006-2007, many immigrants tried to arrive, mainly in the Canary Islands (other destinations in the continent were also attempted).



Source of the graphic: European Parliament, 2007.

During these years, the European Commission created different means of financial aid aimed at supporting Mauritania in the improvement of its border controls and the observance of its commitment to readmit illegal migrants and return them to their countries of origin. Spain concluded a Protocol to establish the return to Mauritania of illegal immigrants arriving in Europe after departing from a Mauritanian harbour. In this context, the Nouadhibou Immigrant Detention Centre was built by members of the Spanish army in March 2006, with the financial support of the Spanish government (*Agencia Española de Cooperación Internacional para el Desarrollo*) (CEAR, 2008; CEAR 2009). It is now accountable to the Mauritanian Ministry of the Interior and as pointed out in a CEAR Report, they lack legal foundation and “the majority of the facilities, especially the cells, do not reach minimum conditions of habitability, healthiness, safety and privacy” (CEAR 2008). Moreover, the Centre has no protocol for informing detainees about their eligibility for applying for international protection (CEAR, 2009). The CEAR Report concludes with the recommendation that the centre should be closed and European and Spanish cooperation linked to detention measures suspended (*Idem*).

### *c. Protected Entry Procedures and resettlement*

One central issue in the attempts to externalise the process of asylum applications, both in the British proposal for common European processing centres abroad and the immediate sending of illegal immigrants before they can apply for asylum to the authorities of the destination country is the weak commitment of EU Member States to the resettlement of protected people.

There are two ways to obtain an ordered and managed arrival of asylum seekers and refugees to the EU: *protected entry procedures* (PEP) and resettlement of people coming from a *first country of asylum*. Neither of them is new, but they both have been barely examined at EU level, because countries are reluctant to make commitments to receive immigrants, even in the case of protected people. Some countries, such as Spain, have used PEP because their legislation on asylum makes embassies competent places to apply for asylum<sup>44</sup>. Others use or have used PEP on a permanent or temporary basis<sup>45</sup>.

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<sup>44</sup> The number of applications for asylum presented in the Spanish embassies has been usually low. According to the CEAR annual reports, the following number of applications were presented in embassies

The European Commission considered the possibility of implementing PEP, which were defined as ways “to allow a non-national to approach the potential host state outside its territory with a claim for asylum or other form of international protection, and to be granted an entry permit in case of a positive response to that claim, be it preliminary or final” (COM [2003] 315 §6.1.2.3). The Commission envisaged two ways of implementing PEP: *a*) By the establishment of a *EU Regional Task Force* responsible for disseminating information; if required, assisting local authorities and the UNHCR in the refugee determination process; and, finally, managing entry and resettlement into a Member State; or *b*) By the introduction of a rudimentary form of Protected Entry Procedures in all Member States such as a harmonised humanitarian visa of entry (*Ibidem*). At present, the application of PEP remains a method that EU Member States can apply unilaterally through their diplomatic and consular offices. In the absence of a basic agreement on this issue, the major disagreement between States forced the European Commission to rule out establishing PEP at EU level and to retain the possibility of using it as an *emergency strand* (COM [2004] 410 §35).

*Resettlement* measures were looked upon favourably by the Commission as forming part of Regional Protection Programs, but they have yet to be implemented at EU level. The European Commission considers that files would be selected in cooperation with the UNHCR and that the transfer of people would be done with the aid of the International Organisation for Migration (IOM) (COM [2004] 410 §22-34). Some EU States, such as Sweden, Finland, Denmark, the United Kingdom, Ireland, the Netherlands, Portugal, France, Romania and the Czech Republic, take part annually in the resettlement programmes implemented by the UNHCR. Others, such as Spain, have occasionally participated (UNHCR, 2008). In the case of Spain, the new Law on Asylum introduces *ex novo* a legal framework for the adoption of resettlement programmes in collaboration with the UNHCR.

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or consulates: 349 (7.73%) in 2008, (CEAR 2009. P. 342); 1,725 (22.15%) in 2007 (CEAR 2008. P. 216); 320 (6.04%) in 2006 (CEAR 2007. P. 236); and 395 (7.52%) in 2005 (CEAR 2006. P. 107). The new Spanish Asylum law stipulates that it is possible to apply for asylum in the embassies, but nevertheless establishes that only nationals of countries other than the one where the embassy is located may apply for asylum. In these cases, a procedure to be adopted will determine in which cases the applicants would be moved to Spain (Article 38 *Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria*, BOE 31 October 2009, no. 263, pp. 90860-90884).

<sup>45</sup> In 2002 the *Danish Centre for Human Rights* working for the European Commission concluded that Austria, France, the Netherlands, the United Kingdom and Denmark (until June 2002) used PEP regularly and that Belgium, Germany, Ireland, Italy, Luxemburg and Portugal had used PEP occasionally (NOLL 2002).

As regards the future, taking into account the European Pact on Immigration and Asylum and the prospects for the Stockholm programme, the European Commission advocates extending Regional Protection Programmes in partnership with the UNHCR, enhancing political dialogue with origin and transit countries, such as Libya and Turkey, and continues to propose the implementation of Procedures for Protected Entry and the facilitation of humanitarian visas “on the aid of diplomatic representations or any other structure set up within the framework of a global mobility management strategy” (COM [2009] 262, §5.2.3).

As for resettlement, on 2 September 2009 the European Commission proposed a “Joint EU Resettlement Programme” aimed at providing an effective instrument for closer political and practical cooperation between the Member States “so as to increase the effectiveness and cost-efficiency of their resettlement activities, as well as the humanitarian and strategic impact of resettlement” (European Commission, IP/09/1267; *id.* MEMO/09/370). This Programme is based on voluntary decisions by the EU States and intends to contribute to the resettlement of particularly vulnerable refugees who are currently in Jordan, Syria, Chad and Kenya. Although the Programme aims to facilitate the resettlement of people who deserve protection from third countries, it seems that EU Member States more easily accept the resettlement of protected people already present in EU territory when a country faces disproportionate pressure from highly vulnerable people, as is the case in Malta, where a pilot project for this purpose has been in place since June.

It could be concluded that the EU has explored the strategy of improving protection in third countries through *regional protection programmes* – although the results do not show less migratory pressure – in more depth than ways to achieve ordered and managed arrivals by means of PEP or common *resettlement* programs. This seems to show that from the EU States perspective, one of the main objectives of the external dimension of asylum policy is to prevent the need to resettle people. EU States should demonstrate through action that they are willing to carry out their function of asylum by accepting the resettlement of a large number of protected people. As the ex EU Commissioner Jacques Barrot pointed out in December 2008, the EU Asylum policy is a *duty* for Europe, and the reception of persecuted people is linked to complying with the Human Rights that was the basis for the construction of Europe<sup>46</sup>.

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<sup>46</sup> “L’Asile, un devoir pour l’Europe”, Speech, 30 October 2008, *Assemblée Générale Biannuelle ECRE* (European Council on Refugees and Exiles)



#### **4. Conclusions**

Measures and instruments of various types implemented by the EU Member States contribute to the externalisation of their function of asylum to third countries. The use of the *safe third country* concept is the closest, and the one which produces externalisation in the most direct way. However, the use of the *safe third country* concept by EU States, even after an attempt to harmonise this concept, leads to different treatments of asylum seekers coming from the same region and arriving in different European Union countries. Their opportunities to challenge the decision to return them to a safe third country in each particular case are also unequal, in terms of the availability of effective remedies, for instance. There have been demands for the removal of all the exceptional categories from the Procedures Directive, such as safe third country, European safe third country and safe country of origin which “have the effect of diminishing or excluding the general procedure for specific classes of asylum seekers. All asylum seekers should be entitled to a fair and effective procedure” (GUILD et al., 2009).

After the approval of The Hague program, the purpose of externalisation focused on the implementation of the external dimension of asylum policy, which was based on the implementation of RPP for the first time. Nowadays, as a result of the Stockholm Programme, the European Immigration and Asylum Policy seems to be more integrated into the External Relations of the EU through the Neighbourhood Policy and the Euro-Mediterranean Partnership. The externalisation of the asylum function has become a little more tenuous and legitimised in formal terms. The development of external aspects of the asylum policy is aimed at reducing and if possible eliminating spontaneous arrivals of asylum seekers through third countries.

After examining the strategy of externalisation and enhancement of capacities for offering protection and durable solutions in the region of origin to asylum seekers, some conclusions concerning the EU approach to asylum should be drawn. The EU and its member states approach the question of asylum based on the following assumptions:

1. Secondary flows of refugees and people in need of protection must be avoided;
2. Since Europe does not produce refugees or people in need of protection, the refugee problem is not a European one. If it exists, it is due to the lack of

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[http://ec.europa.eu/commission\\_barroso/barrot/archive/081030-%20L\\_Asile\\_un\\_devoir\\_pour\\_%20l\\_Europe.pdf](http://ec.europa.eu/commission_barroso/barrot/archive/081030-%20L_Asile_un_devoir_pour_%20l_Europe.pdf) [See: 24 March 2010]

capacity for protection in the regions of origin and transit countries which receive the forced migrants first.

3. The *non-refoulement* principle does not always amount to a right of asylum in Europe. It only obliges European States not to expel or return anyone to a place where he/she fears persecution. *Refoulement* is therefore allowed to all safe countries through which asylum seekers have travelled before arriving on EU territory.
4. The return to *safe third countries* would be best justified if the EU implemented resettlement programs, but there is no link of conditionality between the two issues.

To be equitable, the externalisation of the function of asylum of EU Member States requires first, that the use of the safe third country notion strictly respects some substantive and procedural guarantees (*effective protection* in the third country, and the existence of a sufficient link between the asylum seeker and the third country); and, second, that the development of the External Dimension of the European asylum policy ensures a fair balance between the interests of the States and their duty to provide protection to the people who deserve it, which is the core of the asylum function of States.

## **Documentation**

### *a. EU Documentation and Information Sources*

Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. OJ EU 13.12.2005 N° L 326/13-34.

Council of the European Union (JAI), *Action plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice — Text adopted by the Justice and Home Affairs Council of 3 December 1998*, (1999/C 19/01), OJ 23.1.1999, N° C 19/1-15

Council Recommendation of 30 November 1994 concerning a specimen bilateral readmission agreement between a Member State and a third country OJ 19.9.1996 N° C 274/20-24.

Council Recommendation of 24 July 1995 on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements, OJ 19.9.1996 N° C 274/25-33.

Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. OJ EU 25.2.2003 N° L 50/1-10.

European Commission. COM (2002) 175 final. Commission of the European Communities, *Green Paper on a Community return policy on illegal residents*. Brussels, 10.4.2002. P. 24/26.

European Commission. COM (2003)152 final. Communication from the Commission to the Council and the European Parliament *On the common asylum policy and the Agenda for protection*. Brussels, 26.03.2003.

European Commission. COM (2003) 315 final. Communication from the Commission to the Council and the European Parliament. *Towards more accessible, equitable and managed asylum systems*. Brussels, 3.6.2003.

European Commission. COM (2004) 410 final. Communication from the Commission to the Council and the European Parliament *On the managed entry in the EU of people in need of International protection and the enhancement of the Protection capacity of the regions of origin “Improving access to durable solutions”*. Brussels, 4.6.2004.

European Commission. COM (2006) 26 final. *Communication from the Commission to the European Parliament and the Council. Thematic programme for the cooperation with third countries in the areas of migration and asylum*. Brussels, 25.1.2006

European Commission. COM (2007) 301 final. *Green Paper on future Common European Asylum System*. Brussels 6.6.2007.

European Commission. COM (2008) 360 final. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions Policy Plan on Asylum an Integrated Approach to protection across the EU. Brussels, 17.6.2008.

European Commission. COM (2009) 262 final. Communication from the Commission to the Council and the European Parliament. *An area of freedom, security and justice serving the citizen*. Brussels, 10.6.2009.

European Commission. COM (2009) 266 final. Communication from the Commission to the Council and the European Parliament. *Tracking method for monitoring the implementation of the European Pact on Immigration and Asylum*. Brussels, 10.6.2009.

European Commission. COM (2009) 554 final. Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection. Brussels, 21.1.2009.

European Commission “Funding opportunities in the Justice, Freedom and Security policy areas, for the period 2007-2013”. [online. See 8 August 2009]  
[http://ec.europa.eu/justice\\_home/funding/intro/funding\\_intro\\_en.htm](http://ec.europa.eu/justice_home/funding/intro/funding_intro_en.htm)

European Commission “Stepping up efforts on resettlement of refugees” [online] Brussels 2 September 2009 IP/09/1267 [See: 2 September 2009]

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1267&format=PDF&aged=0&language=EN&guiLanguage=en>

European Commission “Questions and Answers on the establishment of a >Joint Resettlement Programme” [online] Brussels, 2 September 2009 MEMO/09/370 [See: 2 September 2009]

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/370&format=PDF&aged=0&language=EN&guiLanguage=en>

*European Pact on Immigration and Asylum*. European Council. Brussels, 24 September 2008. Doc. 13440/08 LIMITE ASIM 72.

European Parliament. *The Conditions in centres for third country national (detention camps, open centres as well as transit centres and transit zones) with a particular focus on provisions and facilities for people with special needs in the 25 EU member states*, REF: IP/C/LIBE/IC/2006-181. [online] December 2007. [See: 6 August 2009]. P. 144/236 [http://www.libertysecurity.org/IMG/pdf\\_eu-ep-detention-centres-report.pdf](http://www.libertysecurity.org/IMG/pdf_eu-ep-detention-centres-report.pdf)

Global Detention Project. Spain Country Profile. [online] [See: 6 August 2009] <http://www.globaldetentionproject.org/countries/europe/spain/list-of-detention-sites.html>

*The Hague Programme: Strengthening Freedom, Security and Justice in the European Union* (2005/C 53/01), OJ 3.3.2005 N° C 53/1-14 §1.6.

*The Stockholm Programme: An open and secure Europe serving and protecting the citizen*, Doc. 17024/09. Council of the European Union. Brussels, 2 December 2009.

Regulation (EC) N° 491/2004 of the European Parliament and of the Council of 10 March 2004 establishing a programme for financial and technical assistance to third countries in the areas of migration and asylum (AENEAS). OJ 18.3.2004 N° L 80/1-5.

Regulation (EC) N° 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation. OJ 27.12.2006 N° L 378/41-71. Article 16.2 (e).

*b. Other sources*

Amnesty International, *Unlawful and Unworkable. Amnesty International's view's on proposals for extraterritorial processing of asylum claims*. [online] AI Index IOR 61/004/2003 [See: 5 August 2009].

<http://www.amnesty.org/en/library/info/IOR61/004/2003>

*Anuario Estadístico del Ministerio del Interior 2008*, Secretaria General Técnica, Julio de 2009 NIPO 126-09-054-3 [online: See 11 February 2010] [http://www.mir.es/MIR/PublicacionesArchivo/publicaciones/catalogo/anuarios/Anuario\\_Estadistico2008.pdf](http://www.mir.es/MIR/PublicacionesArchivo/publicaciones/catalogo/anuarios/Anuario_Estadistico2008.pdf)

CEAR (Comisión española de Ayuda al refugiado) *Informe de evaluación del Centro de Detención de Migrantes en Nouadhibou (Mauritania)*. [online] Madrid, 10 December 2008 [See: 6 August 2009]. P. 22/35.

<http://www.cear.es/files/Informe%20CEAR%20Nouadhibou%202009%20.pdf>

CEAR, *La situación de los refugiados en España. Informe 2006*. Madrid: La Catarata. 2006. ISBN 84-8319-265-9. P. 71-81.

CEAR *La situación de los refugiados en España. Informe 2007*. Madrid: Entimema, 2007. ISBN 978-84-8198-706-5.

CEAR *La situación de los refugiados en España. Informe 2008*. Madrid: Entimema, 2008. ISBN 978-84-8198-769-0.

CEAR *La situación de las personas refugiadas en España. Informe 2009*. Madrid: Entimema, 2009. P. 61-72. ISBN 978-84-8198-795-9.

CEAR. *Situación de los centros de internamiento de extranjeros en España. Informe CEAR* [Pau Pérez-Sales, Dir.] December 2009 [Online] <http://www.cear.es/informes/Informe-CEAR-situacion-CIE.pdf> [See: 25 March 2010]

ECRE-U.S. Committee for Refugees. *Responding to the asylum and access challenge. An Agenda for Comprehensive engagement in protracted refugee situations*. April 2003. [online]. PP. 75-85. [See: 5 August 2009]. <http://www.ecre.org/files/gmf.pdf>

ECRE, ILGA Europe, Amnesty International, Pax Christi International, Quaker Council for European Affairs, Human Rights Watch, CARITAS-Europe, Médecins Sans Frontières, Commission des Églises auprès des Migrants en Europe, Save the Children Europe, *Appel au retrait de la directive relative aux procédures d'asile*, 22 March 2004 [online. See: 30 July 2009]  
[http://www.amnesty-eu.org/static/documents/Lettre\\_Vitorino.rtf](http://www.amnesty-eu.org/static/documents/Lettre_Vitorino.rtf)

Human Rights Watch. *An Unjust 'Vision' for Europe's Refugees*. Human Rights Watch Commentary on the U.K.'s 'New Vision' Proposal for the Establishment of Refugee Processing Centres Abroad. [online]. June 2003 [See: 5 August 2009].  
<http://hrw.org/backgrounder/eca/refugees0603/refugees061803.pdf>

*New International Approaches to Asylum Processing and Protection*. 10 March 2003. [online. See: 5 August 2009] <http://www.statewatch.org/news/2003/apr/blair-simitis-asile.pdf>

PERCO, *Argumentation Tool for PERCO National Societies for use in discussions with their respective governments concerning Transit Processing Centres outside the EU*. [online]. Sophia, 13-14 October 2005. [See: 5 August 2009].  
<http://www.ifrc.org/docs/pubs/perco/perco-transit-en.pdf>

Refugee Council, *Unsafe havens, unworkable solutions*. Refugee Council position paper on the UK proposals for transit processing centres for refugees and regional management of asylum. [online]. May 2003. [See: 5 August 2009].  
[http://www.refugeecouncil.org.uk/Resources/Refugee%20Council/downloads/policy\\_responses/unsafehav\\_lv\\_may03.pdf](http://www.refugeecouncil.org.uk/Resources/Refugee%20Council/downloads/policy_responses/unsafehav_lv_may03.pdf)

Réseau U.E. d'experts indépendants en matière de droits fondamentaux, *Rapport sur la situation des droits fondamentaux dans l'Union européenne en 2004*, CFR-CDF.rep.EU.fr.2004, January 2005. PP. 92-93/152.

Supreme Court (USA). Judgement of 28 June 2004. N° 03-334 and 03-343, *Shafiq Rasul et al., Petitioners, v. George Bush, President of the United States and Fawzi Khalid Abdullah Fahad al Odah, et al., Petitioners, v. United States et al., on Writs of Certiorari to the United States Court of Appeals for the District of Columbia*

*Circuit. Human Rights Law Journal*. Vol. 25, no. 1-4 (2004), § IV. P. 115 (112-122).

UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979, § 196.

UNHCR. *UNHCR's Three-Pronged Proposal. Working Paper*. Geneva, June 2003.

UNHCR *Resettlement in Europe* [online] April 2008 [See: 6 August 2009]  
<http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=45c6f2fc4&query=resettlement%20Europe>



## **Bibliography**

- ASÍN CABRERA, M<sup>a</sup> Asunción (2008). “Los acuerdos bilaterales suscritos pro España en materia migratoria con países del continente africano: especial consideración de la readmisión de inmigrantes en situación irregular”. *Revista española de Derecho Constitucional Europeo*. Nº 10 (July-December). P. 172-179 (165-188).
- BOUTEILLET-PAQUET, Daphné “EU regional protection programs: Enhancing protection in the regions or barring access to the EU territory?” [online] Brussels: Amnesty International. September 2005 [See: 7 August 2009]  
<http://refugeelaw.qeh.ox.ac.uk/pdfs/ai-eu-on-rpps-october-2005.pdf>
- DENÖEL, Xabier (1993). “Les accords de réadmission du Benelux à Schengen et au-delà”. *Revue trimestrielle de Droit Européen*. Vol. 29, no. 4. PP. 635-653.
- FERNÁNDEZ SÁNCHEZ, Pablo Antonio (2007). “El marco jurídico de las relaciones exteriores de la Unión Europea en materia de inmigración”, *Revista de Derecho Comunitario Europeo*. Núm 27. PP. 463-510 .
- GUARDIOLA, J.-P. (1992). “Les accords de réadmission”. In: *Les Accords de Schengen: quelle politique migratoire pour la Communauté?* Luxembourg: Institut Universitaire International de Luxembourg. PP. 147-166.
- GUILD, Elspeth, et al. (2009). *Challenges and Prospects for the EU’s Area of Freedom, Security and Justice: Recommendations to the European Commission for the Stockholm Programme*. [online] CEPS (Centre for European Policy Studies) Working Document Nº 313/April, ISBN 978-92-9079-877-4 [See: 7 August 2009]  
[http://shop.ceps.be/downfree.php?item\\_id=1830](http://shop.ceps.be/downfree.php?item_id=1830)
- HADDAD, Emma (2008). *The Refugee in International Society. Between sovereigns*. Cambridge: Cambridge University Press. ISBN 978-0-521-68895-6. P. 7.
- JOHN-HOPKINS, Michael (2009). “The Emperor’s New Safe Country Concepts: A UK Perspective on Sacrificing Fairness on the Altar of Efficiency”. *International Journal of Refugee Law*. Vol. 21, no. 2. PP. 250-251 (218-255).

- LAVENEX, S. (1998). "Passing the Buck': European Union Refugee Policies towards Central and Eastern Europe". *Journal of Refugee Studies*. Vol. 11, no. 2. P. 144 (126-145).
- LEGOMSKY, Stephen H. (2003). "Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective protection". *International Journal of Refugee Law*. Vol. 15, no. 4. P. 573-574 and 677 (567-677).
- LÓPEZ SALA, Ana María (2009). "El control de los flujos migratorios y la gestión política de las fronteras en España". In: ZAPATA-BARRERO, Ricard (coord.) *Políticas y gobernabilidad de la inmigración en España*. Barcelona: Ariel. P. 33-35 (31-49).
- NOLL, Gregor (2000). *Negotiating Asylum. The EU Acquis, Extraterritorial Protection and the Common Market of Deflection*. The Hague: Kluwer Law Internacional. ISBN 90-411-1431-9.
- NOLL, Gregor; et al. (2002), *Study on the feasibility of processing asylum claims outside the EU against the background of the Common European Asylum System and the Goal of a Common Asylum Procedure. Final Report*, [online] Brussels: European Commission- Danish Centre for Human Rights. P. 4/295. [See: 6 August 2009]  
[http://ec.europa.eu/justice\\_home/doc\\_centre/asylum/studies/docs/asylumstudy\\_dchr\\_2002\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/asylum/studies/docs/asylumstudy_dchr_2002_en.pdf)
- NOLL, Gregor (2003). "Visions of the Exceptional: Legal and Theoretical Issues Raised by Transit Processing Centres and Protection Zones". *European Journal of Migration and Law*. Nº 5. PP. 304-310, 340 (303-341.)
- PEERS, S. (2003). "Readmission Agreements and EC External Migration Law" Statewatch analysis. [online] Nº 17. P. 3/7. [See: 2 August 2009]  
<http://www.statewatch.org/analyses/no-17-readmission.pdf>
- THIELEMANN, Eiko (2005). "Symbolic Politics or Effective Burden-Sharing? Redistribution, Side-payments and the European Refugee Fund", *Journal of Common Market Studies*, vol. 43, Nº 4. P. 807-824.

THIELEMANN, Eiko (2008). “The Future of the Common European Asylum System: In Need of a More Comprehensive Burden-Sharing Approach”, *European Policy Analysis*. [online], Issue 1. [See: 25 March 2010]  
<http://personal.lse.ac.uk/thielema/Papers-PDF/Sieps-2008.pdf>

TÜRK, Volker (2003). “Forced Migration and Security”. *International Journal of Refugee Law*. Vol. 15, no. 1. P. 114 (113-125).

WALKER, Neil (2004). “In Search of the Area of Freedom, Security and Justice: A Constitutional Odyssey”. In: WALKER, Neil, *Europe’s Area of Freedom, Security and Justice*. Oxford: Oxford University Press. P. 11 (3-37).