

**Abstract:**

The paper explores the position of African states in the context of attempts by European states to externalize responsibility for asylum processing and refugee protection to refugees' regions of origin. It argues that the range of approaches developed by European states and their methods of cooperation fundamentally misrepresent the position of African states in the global refugee regime. Drawing upon the example of Tanzania, which has been the focal point for a range of the new initiatives, the paper demonstrates how the existing European approach has failed to adequately recognize many of the constraints on asylum in Africa. It argues that unless European states adapt their methods of cooperation and their implicit assumptions about the African state, there is a risk of undermining rather than enhancing refugee protection in Africa. However, the paper suggests that this is not an inevitable outcome and that an alternative approach is possible that might better address the interests of EU and African states while simultaneously enhancing refugee protection in Africa.

**Key words:**

Refugee and Asylum Policy, Europe, Africa, Tanzania

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## Introduction<sup>1</sup>

In the context of their attempts to control irregular migration, European Union (EU) states are developing new approaches to asylum policy based on the externalisation of refugee processing and protection.<sup>2</sup> So far, many of the proposed schemes have involved co-operation with African states; in particular, the Maghreb region and Sub-Saharan Africa. A range of bilateral and multilateral initiatives have focused in particular on strengthening protection capacity 'in regions of origin' while reinforcing methods of exclusion and deterrence to reduce irregular migration to the EU. Although the initiatives have encompassed a broad spectrum of approaches, they have been motivated by a common logic. Whether the initiatives have focused on transit processing centres, strengthening protection capacity or targeted development assistance to promote self-sufficiency or local integration, they have all attempted to foster international cooperation with African states as a means to reduce the number of spontaneous arrival asylum seekers reaching the EU.

Until now, however, the 'new' approaches have been debated and criticized from a largely Eurocentric perspective.<sup>3</sup> The responses of the would-be African partners, as part of the global South, have remained peripheral to the academic and policy level debates. Yet if North-South partnerships are to be formed on a 'win-win' basis without alienating African states and thereby undermining respect for the central tenets of the refugee regime, it is crucial to understand the concerns and constraints faced by host states in Africa, and the implications of these constraints on the desirability and effectiveness of the current European approaches.

The approach of the European states has so far assumed that cooperative agreements can allow Southern states to be enticed or persuaded to improve their own

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<sup>1</sup> This paper was first presented at a workshop held at the Centre for Migration, Policy and Society (COMPAS) at the University of Oxford on 23 November 2005 as part of the 'New Asylum Paradigm?' Project. The authors would like to thank Nick Van Hear for his role in organising the event and Anna Schmidt for being a discussant for the paper.

<sup>2</sup> Crisp, J (2003), 'A New Asylum Paradigm? Globalization, Migration and the Uncertain Future of the International Refugee Regime', *New Issues in Refugee Research*, Working Paper No. 100, (UNHCR: Geneva); Oxfam (2005), *Foreign Territory: The Internationalisation of EU Asylum Policy*, (Oxfam: Oxford); Betts, A (2005), 'International Cooperation Between North and South to Enhance Refugee Protection in Regions of Origin', *Refugee Studies Centre Working Paper* No. 25, (RSC: Oxford); Schuster, L (2005), 'The Realities of a New Asylum Paradigm', *COMPAS Working Paper* WP-05-20 (COMPAS: Oxford).

<sup>3</sup> 'A New Asylum Paradigm?' Workshop, Queen Elizabeth House, University of Oxford, Report on the one-day workshop in Oxford on June 14, 2005, Organised by the Centre on Migration, Policy and Society, Oxfam GB and the Refugee Studies Centre.

protection standards in order to reduce the need for the onward movement of asylum-seekers to Europe.<sup>4</sup> However, in their current attempts to foster such partnerships, European states are implicitly making a set of assumptions about both the response of Southern states and the implications that these responses have for the refugee regime. Understanding whether the asylum practices of African states have conformed to these assumptions is therefore an important starting point for evaluating the likely implications of European attempts to externalise asylum policy.

Critically reflecting on the position of African states is important not only for refugee protection and African states but also for meeting the underlying concerns of European states. If indeed the response of African states were to lead to the erosion of the principle of *non-refoulement*,<sup>5</sup> this would likely be contrary to European states' own interests. If African states were to reduce their commitment to the principle of territorial asylum, thereby undermining access to effective refugee protection within the region, this would almost certainly exacerbate the likelihood of onward movement and global insecurity.<sup>6</sup>

Given this potential tension, this paper examines the response of implicated African states - particularly Sub-Saharan African states - to Europe's 'new asylum paradigm' and the consequences their response are likely to have for refugee protection, especially adherence to the principle of *non-refoulement*. In so doing, it develops conceptual tools for understanding European-African cooperation in the asylum context. The paper argues that European approaches and assumptions misrepresent the political and structural position of African states. It further argues that in misunderstanding the concerns and priorities of African states, the current methods of inter-state cooperation risk exacerbating North-

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<sup>4</sup> The logic of improving protection capacity in Africa as an explicit means to reduce the need for onward movements has been present in, for example, UNHCR's documentation for the Irregular Secondary Movements strand of Convention Plus; Ruud Lubbers' speeches on Convention Plus; The European Commission Communication on Durable Solutions; The European Commission Communication on the Regional Protection Programmes (RPP); the predominantly European-funded Swiss Forum For Migration Survey On 'The Movements of Somali Refugees and Asylum Seekers and States' Responses Thereto'; and UNHCR justifications for the European-funded Strengthening Protection Capacity (SPCP) and CPA for Somali Refugees Projects.

<sup>5</sup> *Non-refoulement* is the idea that refugees who have reached the territory of a state cannot be forcibly returned to a country where they might face a well-founded fear of persecution. It is arguably the most established tent of the global refugee regime.

<sup>6</sup> If the reciprocal basis for *non-refoulement* were to break down this would not only have severe implications for human rights but might also have serious implications for state security in both North and South. While this causal link needs to be substantiated, it seems clear from their own behaviour that European States continue to attach value to the 1951 Geneva Convention. Although burden-shifting and beggar-thy-neighbour approaches may be common, the 'new' proposals have continued to be justified in the language of the Convention.

South polarisation and thereby undermining rather than reinforcing the principle of *non-refoulement*. However, it argues that alternatives are possible which can indeed meet the interests of European and African states while enhancing the quality of refugee protection.

The paper divides into three main sections. The first section explores the 'European perspective'. It begins by examining the common logic underpinning the European approach to cooperation with African states; it then conceptualises the methods of cooperation used by EU states; finally it identifies the implicit assumptions about the response of African states inherent to these methods of cooperation. The second section explores the 'African perspective'. In particular, it examines the crisis of asylum in Africa and the justifications advanced by many African states for placing restrictions on the asylum they offer to refugees. The section builds from the case study of Tanzania, formerly one of the most generous asylum countries in Africa and the focus of a number of EU externalization initiatives, before turning to a more general consideration of the state of asylum in the region and the likely implications of increased externalization on the principle and practice of *non-refoulement*. The section will then outline the structural and political reasons underlying the asylum policies of African states and highlight the range of African concerns which need to be considered as part of a 'win-win' model of Afro-European cooperation. The third section then attempts to explore alternative models of Afro-European cooperation which might simultaneously address the interests and concerns of both European and African states, while strengthening rather than undermining the central tenets of the global refugee regime.

## Part I: The 'European Perspective'

### *The Common Logic of the European Approaches*

Over the last five years, a range of new European asylum-related initiatives have emerged, seeking to foster partnerships with third countries in the area of asylum and migration and, in some cases, to extra-territorialise the physical responsibility for providing refugee protection. The supposedly new European approaches have been characterised in a number of different ways – as the 'externalisation of EU asylum policy',<sup>7</sup> as a 'new asylum paradigm',<sup>8</sup> and as a shift from 'asylum policy' to 'refugee policy'.<sup>9</sup> However one characterises the overall trend, the new approaches have had particular implications for a number of regions, including African. While the logic of such initiatives has a much longer history,<sup>10</sup> the timeline below highlights how these initiatives have emerged over the past five years at the bilateral and multilateral level and the ways in which they have implicated African states.

- 2001: *Morocco-Spain migration partnership*  
Surveillance, border control and interception.
- 2002: *Seville European Council*  
External dimension to asylum and migration policy;  
Development conditionality suggested as a means to reduce migration.
- 2003: *UNHCR's Convention Plus initiative*  
  
*UK: 'New Vision'*  
Transit Processing Centres (TPCs) and Regional Protection Zones (RPZs)  
Approaches to Tanzania/South Africa
- 2004: *EC Communication on Durable Solutions*  
  
*Netherlands: 'Protection in Regions of Origin'*  
  
*Denmark: Naeromraadstrategien*  
Development Assistance for Refugees (DAR) agreement with Uganda

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<sup>7</sup> Oxfam (2005)

<sup>8</sup> Crisp (2003)

<sup>9</sup> Van Selm, J (2004), 'Access to Durable Solutions', Presentation, 'Presidency Conference on Future European Union Cooperation in the Field of Asylum, Migration and Frontiers', Amsterdam, 2 September.

<sup>10</sup> IGC (1994), "Working Paper on Reception in the Region of Origin", Geneva: IGC Secretariat, September; Noll, G (2003), 'Visions of the Exceptional: Legal and Theoretical Issues Raised by Transit Processing Centres and Protection Zones', *European Journal of Migration and Law*, pp. 303-341.

Bilateral partnerships with Kenya and Tanzania

*Italy-Libya Bilateral Agreement*

Schilly and Pisanu proposals for transit processing centres in Libya

*UNHCR Strengthening Protection Capacities Project (SPCP)*

Gaps analysis and National Consultations

(Tanzania/Kenya/Benin/Burkina Faso)

Funded by EC, Denmark, Netherlands, UK

*UNHCR's Comprehensive Plan of Action for Somali Refugees (CPA)*

(Djibouti/Ethiopia/Kenya/Yemen)

Funded by EC, Denmark, Netherlands, UK

2005: *European Commission's Regional Protection Programme (RPP)*  
Tanzania suggested as pilot.

These proposals represent a range of approaches, which vary in a number of ways. Firstly, they vary in terms of the extent to which they focus on durable solutions, protection or processing. At one end of the spectrum, the CPA for Somali Refugees,<sup>11</sup> for example, purports to provide solutions to long-term encampment; at the opposite end of the spectrum, the proposals for transit processing centres focus on extra-territorialising refugee status determination.<sup>12</sup> Meanwhile, the majority of the proposals, particularly UNHCR's initiatives under Convention Plus, purport to strengthen protection capacity as a means to facilitate access to 'quality' or 'effective' protection in the country of first asylum and so obviate the need for onward movement.<sup>13</sup> Secondly, the approaches vary along a spectrum from addressing 'symptoms' through containment to tackling root causes. Oxfam highlight this by showing how the 'new' approaches vary across 'concentric circles' from transit states to host states to countries of origin.<sup>14</sup> Thirdly, the initiatives vary in whether they are bilateral, EU-led, or multilateral. The most notable bilateral partnerships have been between Spain and Morocco, Italy and Libya, and Denmark and Uganda. Meanwhile the European Commission has led the debate of 'protection in regions of origin' through its *Communication on Durable Solutions* and its *Regional Protection Plan*.<sup>15</sup> UNHCR's role has largely been as an

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<sup>11</sup> UNHCR (2004), 'Information Note: preparatory Project for the Elaboration of a Comprehensive Plan of Action for Somali Refugees', FORUM/2004/8.

<sup>12</sup> UK Government (2003), 'New International Approaches to Asylum Processing and Protection', 10/3/03, [www.statewatch.org/news/2003/apr/blair-simitis.asile.pdf](http://www.statewatch.org/news/2003/apr/blair-simitis.asile.pdf)

<sup>13</sup> Joint Statement by the Co-Chairs of the Core Groups on Irregular Secondary Movements, Convention Plus Forum, 18 November 2005.

<sup>14</sup> The Oxfam (2005) report works outwards from the European Union's border, to transit countries, to regions of origin, to root causes.

intermediary through its Convention Plus-related activities. Fourthly, the initiatives have varied in terms of the extent to which they have translated into practice. Some, such as the 'UK Proposals' appear to have mainly been directed at a domestic political audience rather than projects which were conceived with enough seriousness to imply implementation.

However, despite these variations, all of the approaches to 'engagement in the region of origin' are underpinned by a common logic.<sup>16</sup> That common logic can be described in a number of ways: 'Separating purchaser from provider',<sup>17</sup> 'common but *differentiated* responsibility-sharing',<sup>18</sup> or the 'Japanese position'<sup>19</sup>— but they broadly describe the same phenomenon. European states have based their approach on the assumption that their role in the global refugee regime should be predominantly financial, based on funding first asylum within the South, where the majority of the current refugees are situated. Primary responsibility for physical protection should then rest with states in the region of origin, which can be compensated or leveraged into playing this role through either incentives or coercion.

On the surface, this approach appears to present a number of advantages for European states. The approach appears to reduce the need for spontaneous arrival asylum and purports to allow a clearer and less differentiated approach to migration control. It thereby assumes to reconcile European states' obligations under the 1951 Convention with minimising the political, economic and social costs of discharging those responsibilities.

On a global scale, this common logic takes the position that 'it doesn't matter where asylum is provided as long as it is provided', and so assumes that a division of responsibility can be made between North and South. For example, this is quite clearly the logical outcome of the

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<sup>15</sup> European Commission (2004), Communication on *Improving Access To Durable Solutions: On the Managed Entry in the EU of Persons in Need of International Protection and the Enhancement of the Protection Capacity of the Regions of Origin*, COM (2004) 410 final, 4 June; European Commission (2005), Communication on *Regional Protection Programmes*, COM (2005) 388 final, 1 September.

<sup>16</sup> Schuster (2005).

<sup>17</sup> Betts, A (2003), 'The Political Economy of Extra-Territorial Processing: Separating Purchaser from Provider in Asylum Policy', *New Issues in Refugee Research*, Working paper No. 91, (UNHCR: Geneva).

<sup>18</sup> Hathaway, J (1997), 'Preface: Can International Refugee Law Be Made Relevant Again?' in Hathaway, J (ed), *Reconceiving Refugee Law* (Martinus Nijhoff: The Hague); Hathaway, J and Neve, A (1997), 'Making International Refugee Law Relevant Again: A Proposal For Collectivized and Solution-Oriented Protection', *Harvard Human Rights Journal*, Vol. 10.

<sup>19</sup> The 'Japanese position' refers to the Japanese Government's use of 'cheque book diplomacy' as a substitute for direct involvement in, for example, military involvement or the resettlement of refugees. Zolberg, A, Suhrke, A and Aguayo, S (1989), *Escape From Violence: Conflict and the Refugee Crisis in the Developing World*, (Oxford: Oxford).

very principle of 'effective protection'. If protection capacities can be sufficiently strengthened in host countries of first asylum, then this removes the need for 'irregular secondary movement' and so displaces physical responsibility to the region at a 'cheaper' overall cost than would be the case if asylum seekers sought refuge in the North.<sup>20</sup> For example, building on argument made earlier on by former UK Home Secretary Jack Straw, Caroline Flint MP argued to the UK's House of Lords that:

This logic has been made explicit by a number of European state representatives in their justifications for the new approaches. Western states spend annually around \$10 billion on less than half a million asylum seekers, most of whom are not in need of international protection. By contrast, the UNHCR supports 12 million refugees and five million internally displaced persons in some of the poorest countries in the world on a budget of only \$900 million.<sup>21</sup>

Similarly, the Dutch Government supported their proposals for 'protection in the region' by arguing that:

We believe that the scarce means that are available for refugee protection will be spent more efficiently. Nationally, we've been spending a lot of money on dealing with asylum claims – very often for people who turn-out not to be genuine refugees. If in some way we can free money from that pot for better protection in the region, we think that in the end that would benefit many parties.<sup>22</sup>

This type of argument has been extremely commonly mobilised by the main European advocates of 'externalisation', being deployed in relation to both 'protection in the region' and transit processing centres. What is notable, then, is that there is clearly identifiable rationale underpinning the new approaches: to provide refugee protection in the South wherever possible by, where necessary, underwriting the basis financial costs of doing so.

### ***The Methods of Cooperation***

In order to achieve this underlying aim, European states have adopted a range of approaches to achieving 'cooperation' and 'partnership' with African states. The combination of inducements and incentives used, has led Oxfam to argue that Southern states are being

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<sup>20</sup> Betts, A (2005), 'What Does "Efficiency" Mean In The Context of the Global Refugee Regime?', *COMPAS Working Paper* 05-09.

<sup>21</sup> Statement to Sub-Committee F (Social Affairs, Education and Home Affairs) of the House of Lords Select Committee on the European Union, in discussing extraterritorial processing, October 29, 2003.

<sup>22</sup> Interview with a representative of the Dutch Government (anonymity requested), Geneva, 16 September 2004.

'cooperated with'<sup>23</sup> and Amnesty International to talk of a 'carrot and stick' approach.<sup>24</sup> However, the techniques implicitly used have been more complex than these epithets imply and there is a need to develop new conceptual tools for understanding the EU's methods of cooperation and the implications this has for African states and their likely response.

Three specific methodologies seem to have been prevalent: the use of *linkages*, *divide and rule*, and *intermediaries*. Each of these has served the role of exacerbating the already unequal power relations between the EU and Africa as a means to induce compliance. While these are analytically distinct, in practice they have often overlapped. It is also important to note that not all of the actors have used all of the techniques in the same way. For example, Denmark has used the first two but not so much the third; the Netherlands has focused on the third; and Italy and Spain have focused on the first. These concepts can be explained in turn:

### *Linkages*

There has been increasing awareness amongst policy-makers and academics that asylum and refugee issues cannot be seen in isolation from other issue-areas of global governance. Notions such as the 'migration-asylum nexus'<sup>25</sup> and the 'migration-development nexus'<sup>26</sup> demonstrate growing awareness of the emerging interconnections across migration, development, security and humanitarianism.<sup>27</sup> There have also been growing calls for greater policy coherence or 'joined-up' governance in order to address the growing complexity created by globalisation.<sup>28</sup> However, the concept of 'issue linkages' is not just about 'policy coherence', it also has implications for international cooperation. This is because it represents a means to channel concerns in one issue-area into another, possibly previously unrelated, areas of global governance.

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<sup>23</sup> This is how Sophia Swithern of Oxfam has commonly characterised the externalisation of EU asylum policy. For example, in 'Foreign Territory: The Internalisation of EU Asylum Policy', Presentation at Queen Elizabeth House 50<sup>th</sup> Anniversary Conference, *New Development Threats and Promises*, 5 July 2005.

<sup>24</sup> Amnesty International (2005), *Spain, the Southern Border: The State Turns its Back on the Human Rights of Refugees and Immigrants*, 20 June, [www.amnesty.org](http://www.amnesty.org)

<sup>25</sup> Castles, S and Van Hear, N (2005), 'The Migration-Asylum Nexus: Definition and Significance', lecture given at COMPAS, 27 January; Papadopoulou, A (2005), 'Exploring the Asylum-Migration Nexus: A Case Study of Transit Migrants in Europe', *Global Migration Perspectives*, No. 23, (GCIM: Geneva).

<sup>26</sup> Van Hear, N and Sorensen, N (eds) (2002), *The Migration-Development Nexus*, (IOM: Geneva).

<sup>27</sup> Duffield, M (2001), *Global Governance and the New Wars*, (Zed: London).

<sup>28</sup> Refugee Studies Centre (2005), *Developing DFID's Policy Approach To Refugees and Internally Displaced Persons*, Final Report, (Oxford: RSC).

From a theoretical perspective, 'linkages' have been understood from both a constructivist and a rationalist perspective. Haas, in particular, has argued from a constructivist perspective that the way in which a regime – as a set of inter-related norms and institutions – is formed or clustered depends on the perceived interdependencies of issue-areas. In particular he has suggested that shared understandings about the causal connections between problems and solutions influence the clustering of issues and the scope of a regime. From this, he recognises that by creating new perceived connections, the scope for bargaining can be expanded beyond a given issue area.<sup>29</sup> Meanwhile, rationalist approaches to regime theory have recognised that linkages open the possibility, within multilateral and unilateral bargaining, to use 'side payments' across issue-areas in order to induce cooperation. Conybeare, for example, has suggested that collective action failure can be overcome by expanding the scope of bargaining beyond a single issue-area so as to meet the interests of all state actors.<sup>30</sup> These approaches are not, however, mutually exclusive. On the contrary, they highlight how perceived and institutional relationships across previously unrelated issue-areas can induce cooperation, by appealing to state interests.<sup>31</sup>

Linkages have been recognised as potentially playing a very positive role in promoting North-South cooperation, by off-setting power imbalances and making cooperation mutually beneficial.<sup>32</sup> However, they can also play a more divisive role. Firstly, they can be tantamount to blackmail or bribery, generating horsetrading across issue-areas in order to create leverage. They can be based on a form of 'negative conditionality' in which the continuation of privileges already held by Southern states in seemingly unrelated areas become conditional upon compliance in the given issue-area. Secondly, in the context of refugee protection or human rights such linkages can also be dangerous if the side-payments are based on creating agreement through a lowest common denominator approach based on the logic of 'give us a break in this area of global norms and we'll let you off in that area'. Indeed inter-state cooperation may not necessarily be synonymous with the promotion of

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<sup>29</sup> Haas, E (1980), 'Why Collaborate? Issue-Linkages and International Regimes', in Kratochwil, F and Mansfield, E (eds) (1994), *International Organization: A Reader*, (Harper Collins: New York), pp. 364-384.

<sup>30</sup> See, for example, Conybeare, J (1984), 'Public Goods, Prisoner's Dilemma and the International Political Economy', *International Studies Quarterly*, Vol. 28, pp. 5-22.

<sup>31</sup> Aggarwal, V (2000), 'Reconciling Multiple Institutions: Bargaining, Linkages, and Nesting', in Aggarwal, V (ed), *Institutional Designs for a Complex World* (Cornell: Cornell), pp. 1-30.

<sup>32</sup> Conybeare (1984), pp. 5-22.; Ravenhill, J (1990), 'The North-South Balance of Power', *International Affairs*, Vol. 66:4, p. 15.

human security, since the primary objective is not to uphold principles of refugee protection but to achieve a convergence in the interests of states.

There is evidence to suggest the prevalent (and possibly growing) use of linkages as side-payments based on implicit negative conditionality as a European method to induce African cooperation. On a bilateral level, three examples stand out in particular. Firstly, the *Italy-Libya* partnership on migration, based on the 2004 Cooperation Agreement, is being negotiated in the context of wider agreements based on the oil and arms trade. The economic imperative for Libya to cooperate and Colonel Gaddafi's desire to rehabilitate Libya within the international community is providing a strong leveraging device for European states to influence the country's approach to migration and security.<sup>33</sup> Secondly, the *Morocco-Spain* Cooperation Agreement of 2001 has involved, for example, privileged access to temporary labour migration visas for Moroccan nationals, ensuring that remittance flows can continue.<sup>34</sup> Morocco has similarly needed support to control its Southern border so as not to be left with full responsibility for all Sub-Saharan transit migration. These wider incentives in other areas have underpinned much of Morocco's willingness to comply. Thirdly, and in the context of refugee protection in Sub-Saharan Africa, the Uganda-Denmark bilateral cooperation on refugee protection has shown the similar use of 'linkages'. Uganda's cooperation with Denmark to support self-sufficiency has been based largely on a desire by the Government to attract development assistance and to avert the pressure to move from no-party rule. DANIDA (the Danish International Development Agency) had bilateral relations with Uganda prior to its *Naeromraadstrategien*. However, while making cuts in other states, the Danish right-wing Government linked the continuation of development funding to Uganda's ongoing Self-Reliance Strategy (SRS). In focusing on Arua and Adjumani, and channelling resources into the patronage domain of Vice-President and Refugee Minister Moses Ali, *Naeromraadstrategien* essentially 'buys-off' the support of the government through creating a link to patron-client networks. From a Ugandan perspective, cooperation with UNHCR's approach to 'targeting development assistance' has been linked to issues such as poverty reduction and the fight against HIV/AIDS. For example, at the Fourth Convention Plus Forum, the government expressed the need for greater support in

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<sup>33</sup> Dietrich, H (2004), 'The Desert Front – EU Refugee Camps in North Africa?', *Konkret*, issue 12, [www.statewatch.org](http://www.statewatch.org); Amnesty International (2005), 'Immigration Cooperation With Libya: The Human Rights Perspective', 12 April, [www.amnesty.org](http://www.amnesty.org); Amnesty International (2004) 'Italy: Government must ensure access to asylum for those in need of protection', Public Statement, 6 October.

<sup>34</sup> Dietrich (2004); Amnesty International (2005a), *Spain, the Southern Border: The State Turns its Back on the Human Rights of Refugees and Immigrants*, 20 June, [www.amnesty.org](http://www.amnesty.org); Schuster (2005), pp. 11-16.

relation to targeted development assistance if gains in other areas were not to be jeopardised.<sup>35</sup>

Such 'linkages' have also been used in the multilateral context in which European states have used intergovernmental organisations, most notably UNHCR, as intermediaries through which to advance the externalisation agenda. These have been prevalent throughout Convention Plus and the CPA for Somali Refugees, for example, both of which were predominantly funded by the European Commission, Denmark, the Netherlands and the UK – the principal architects of the externalisation agenda. Both of these initiatives have drawn heavily on linkages to areas such as security, development and migration in appealing to interests in both North and South.<sup>36</sup> However, what has been evident is that a significant use of these 'linkages' has been to imply that a failure of Southern states to cooperate in strengthening protection capacity, providing 'effective protection', offering self-sufficiency, and thereby reducing onward movements might in turn result in consequences in other areas – such as the reduction of humanitarian assistance channelled through UNHCR or the reduction of development assistance. Indeed the very relationship between the 'Irregular Secondary Movements' (ISM) and 'Targeting Development Assistance' (TDA) strand was premised upon creating this type of incentive to create 'effective protection' in the context of the 'third safe country concept'. Where this has implicitly translated into a negative form of conditionality is insofar as European states have made clear throughout the TDA debate and by their limited funding of projects such as the Strengthening Protection Capacities Project (SPCP) that resources would not be *additional*, thereby invoking the idea that states have something to lose by non-compliance.

#### *Divide and Rule*

Despite a raft of new initiatives, the overall 'pot' of resources being channelled into refugee protection in Africa has remained finite and appears to be declining.<sup>37</sup> While African states

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<sup>35</sup> In the Statement of the Government of Uganda (GoU), the Fourth Convention Plus Forum, 20 May 2005, the GoU argued: "Here, I would like to stress that these resources, which are to be made [available] for the effective implementation of DAR, should be funds that otherwise would be for Uganda but are in addition to the resources already allocated for the country. As you are all aware, the country has made significant progress in the areas of macro-economic growth, poverty reduction, and the fight against HIV/AIDS. However, there is a growing concern that continued influxes of refugees, given new and protracted conflicts in the region, could place additional strains on the country such that many of these positive developments would be lost".

<sup>36</sup> Betts, A (2005), 'International Cooperation Between North and South to Enhance Refugee Protection in Regions of Origin', *Refugee Studies Centre Working Paper* No. 25, (RSC: Oxford), Section 5.

<sup>37</sup> UNHCR's Annual Budget declined between 2004 and 2005.

have constantly emphasised a concern for 'additionality' throughout Convention Plus, European states have attempted to avoid increased financial commitments.<sup>38</sup> Instead, the approach has been based on substitution and diversion, channelling existing contributions to refugee protection into meeting EU priorities related to migration and secondary movements.<sup>39</sup>

This has created a number of contradictions. On the one hand, there are sustained annual shortfalls in meeting refugee assistance budgets. On the other hand, a range of new projects are being considered. For example, by undertaking the negotiations on the new approaches outside of UNHCR's Annual Budget process, the competition for resources has increased. This has had a number of perverse consequences. For example, in Uganda, although the Danish support for Development Assistance for Refugees (DAR) has helped create new offices in Kampala, there have simultaneously been cuts in UNHCR's operational budget in Uganda.<sup>40</sup>

In this context, there is growing competition for limited resources. In contrast to the late 1970s and early 1980s when African states had greater leverage over Western donors in the context of the Cold War, and in the absence of a common African position, the imbalanced power relations between African and donor states has allowed European states to negotiate with African states on an individual basis, and from a position of power.<sup>41</sup> This has allowed a 'divide and rule' strategy through which the negotiating position of African states has been eroded and some states have benefited to the detriment of the objective of refugee protection in Africa as a whole. For example, in the African Group's negotiations in Geneva, the Governments of Uganda and Zambia, because of the relative benefits they have from UNHCR's Development Assistance for Refugees (DAR) and Development for Local Integration (DLI), have appeared to disassociate themselves from the African Group statements. Even the African Group statements have often masked wider divergences between states. It is these divisions and the lack of a clear collective bargaining strategy that have allowed European states such as Denmark to 'cherry pick' strategic partners by playing African states off against one another to achieve the greatest degree of compliance.

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<sup>38</sup> Betts, A (2004), 'International Cooperation and Targeting Development Assistance For Refugee Solutions', *New Issues In Refugee Research*, Working Paper No. 107 (UNHCR: Geneva).

<sup>39</sup> Oxfam (2005)

<sup>40</sup> The DAR funding provided by Denmark has been spent, in part, on building new offices for staff in Kampala. Information from informal discussions with UNHCR staff.

<sup>41</sup> See, for example, Mortimer, R (1984), *The Third World Coalition in International Politics* (Westview: London).

The 'divide and rule' strategy has also been notable in the context of EU relations with North African states in which, for example, despite the Maghreb states attempt to maintain a collective position in unanimously rejecting the Otto Schilly proposals for transit processing centres in a meeting with UNHCR in September 2004,<sup>42</sup> Libya subsequently broke rank, exploiting its position as a non-signatory of the 1951 Convention in order to establish a cooperative relationship with Italy that may include such processing centres.<sup>43</sup>

There is, however, a growing awareness amongst African states that this European strategy exists and there has been a recognition that establishing a stronger collective position may ultimately be in their best interests. This has been evident, for example, in the TDA debate in Convention Plus. Having spent a great deal of time divided and seemingly competing with one another, with Uganda and Zambia being great advocates for DAR and DLI, and states such as Tanzania and Kenya being vocal critics, while others such as Nigeria and Ghana presented a moderated position, the African Group presented a united front at the 16 September 2005 TDA Core Group Meeting. Clearly wising up to the 'divide and rule' strategy, the Group argued collectively that, given the contradictions in under-funding in some parts of Africa and targeted funding to meet selective European interests in others, the TDA discussions should be transferred to take place alongside UNHCR's Annual Budget and in the more transparent context of UNHCR's Standing Committee. The only African state which appeared not to align itself with this position was Uganda, who has benefited greatly from its privileged status in the TDA debates.<sup>44</sup> However, recognition of the 'divide and rule' strategy is not the same thing as having the power to respond.

#### *Intermediaries*

The 'new' initiatives relating to the externalisation of EU asylum policy have been conceived and debated in a non-participatory way, which has systematically excluded African states from meaningful dialogue and attempted to impose a pre-determined agenda. This has been the case in both the multilateral and bilateral contexts.

Agenda setting for supposedly multilateral initiatives has been formulated outside of a multilateral framework, either in closed discussion groups such as the IGC or at the EU Justice and Home Affairs (JHA) level, passed on to UNHCR as an intermediary, and then presented to African states as a *fait accompli* to ratify. This use of intermediaries to

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<sup>42</sup> Interview with diplomatic representative of a North African state, Geneva, 1 October 2004.

<sup>43</sup> Schuster (2005), p. 11.

<sup>44</sup> Statement by Nigeria on Behalf of the African Group on the Occasion of an Informal Meeting On Targeted Development Assistance, 16/9/05, Palais des Nations, Geneva (on file with the authors).

construct a 'take it or leave it' approach has systematically excluded African states from meaningful participation in open debate, leaving them with a 'suasion game' situation in which they can either take what is on offer or risk hurting themselves more by rejecting what is offered to them.<sup>45</sup>

The way in which UNHCR's Convention Plus initiative was conceived offers a case in point. Despite establishing a Forum ostensibly for North-South dialogue, and with the intention of enhancing multilateral cooperation, the agenda of Convention Plus and its three 'generic strands' were conceived by UNHCR in consultation with European funding states. In launching the initiative, Ruud Lubbers, as High Commissioner, was responding to debates and initiatives, such as the 'UK Proposals' and the Dutch and Danish commitment to 'protection in the region', which had been discussed on a bilateral level between European states.

The work on the generic strands and in specific situations likewise limited the extent of participation by African states, with UNHCR delivering European led initiatives to Southern states for approval. The TDA strand and the preparatory projects of the CPA for Somali Refugees and the Strengthening Protection Capacity Project (SPCP) exemplify this. In the first instance, Southern states were entirely excluded from the initially 'donor-only' discussions on TDA.<sup>46</sup> The African Group in Geneva responded by arguing that:

We are, however, disappointed that discussions relating to this strand [targeting development assistance] seems to be *about* assistance to major refugee-hosting countries or countries of origin and not discussions *with* such countries.<sup>47</sup>

This statement was followed by further complaint from the African Group to UNHCR that "separate discussions of groups of states unfortunately do not add to a transparent and open process".<sup>48</sup> The first time Southern recipient states were included was in September 2005, two months before the end of Convention Plus. At the meeting they were presented with a pre-written 'statement of good practice on the targeting of development assistance' in to which they had had no prior input. In the second instance, the

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<sup>45</sup> Martin, L (1993), 'The Rational State Choice of Multilateralism' in Ruggie, J (ed), *Multilateralism Matters: The Theory and Praxis of an Institutional Form* (Columbia: New York).

<sup>46</sup> The African Group Statement (read by Ghana) to the Third Convention Plus Forum on 1 October 2004 showed particular discontent with the exclusion of Southern host states from a donor-only meeting on TDA held on 22 September 2004 in Geneva.

<sup>47</sup> Statement on Behalf of the African Group at the Third Convention Plus Forum, 1 October 2004.

<sup>48</sup> Letter from Sebastian Mutomb Mujing, DRC, on Behalf of the African Group to the Convention Plus Unit, 8 March 2005.

CPA for Somali Refugees and the SPCP also exemplify this approach. Although the implicated states have been involved in 'national consultations', these have essentially only allowed the scope for host states to ratify 'preparatory projects' conceived by the European Commission, Denmark, the Netherlands, and the UK in consultation with UNHCR.<sup>49</sup> Even UNHCR staff noted the difficulty that the genesis of the SPCP and CPA created, placing the organization in a position in which it needed to deliver a *fait accompli* to 'targeted countries' such as Kenya and Tanzania, which had not been the initiators of those projects.<sup>50</sup>

Numerous bilateral initiatives relating to transit processing approaches have been characterised by the absence of any form of bilateral dialogue between European states and their prospective African 'partners'. For example, the UK Government has notably claimed to be on the verge of concluding numerous bilateral agreements, such as with Tanzania and South Africa, only for the implicated states to deny that there had been any such agreement.<sup>51</sup> This approach has been replicated even outside of the African context, in which Austria has been reported as claiming to have negotiated the presence of transit processing centres in Ukraine, only for the authorities to deny that such agreement exists.<sup>52</sup> Furthermore, despite advocating 'protection in the region', the Dutch Government has consistently argued that UNHCR should be taking the lead on talking to 'the regions' on their behalf and has therefore failed to talk to the 'regions of origin'.<sup>53</sup>

### ***European Assumptions about the South***

The overall European approach to the externalisation of asylum policy has implicitly made a number of assumptions about how Southern states will respond. In particular, the underlying assumption is that states will comply and there will be no 'unintended consequences' which might in turn undermine global norms such as *non-refoulement*. This section seeks to identify those assumptions and how they are implicit to the cooperation techniques described above. Three assumptions in particular are present: firstly, *cooperation*; secondly, the *perfect*

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<sup>49</sup> In both the CPA for Somali Refugees and the SPCP, a two stage Preparatory Project was conducted. This involved 'gaps analyses' and 'national consultations'. The Projects were, in both cases funded by the European Commission, Denmark, the Netherlands and the UK, and predominantly focused on identifying areas in which protection capacity could be strengthened through domestic legislation. The implicated host states were Djibouti, Ethiopia, Kenya, Yemen, Tanzania, Benin, and Burkina Faso.

<sup>50</sup> Interviews with UNHCR staff.

<sup>51</sup> Schuster (2005), pp. 9-10.

<sup>52</sup> Interview with Bartjan Wegter, Special Advisor to the High Commissioner, 30 September 2004.

<sup>53</sup> Interview with representative of the Dutch Government (anonymity requested), Geneva, 16 September 2004 (interview on cassette with the author).

*substitutability* of 'protection in the region' for asylum in Europe; thirdly, that cooperative arrangements exist as *isolated partnerships* which exert no other adverse influence.

### *Cooperation*

The approach assumes that cooperation can be achieved relatively unproblematically; that a 'common but differentiated' approach to responsibility-sharing is viable; and that Southern states will be compliant in response to financial inducements, even in the absence of sustained dialogue.

Indeed North-South relations in the refugee regime are based on unequal power relations. Not only are there disparities in terms of economic and political influence, but the presence of the majority of the world's refugees in the South, places Southern states in a weaker bargaining position, especially given the largely discretionary nature of burden- and responsibility-sharing. One of the ways in which regime theory in international relations has tried to characterise this structural relationship between North and South is by the idea of *suasion games*. This situation will arise when, in a two-actor model, there is one player who is privileged and must be persuaded to participate, while the other has little choice but to cooperate. In other words, it may occur when the stronger actor has little to gain and the weaker actor little to lose in the specific area, undermining the prospects for cooperation.<sup>54</sup> As Conybeare's analysis of the global trade regime illustrates, this problem is particularly likely to occur in the context of North-South relations. He uses the example of the prospects for a weak state using a retaliatory tariff against a strong state. This, he suggests, would only make the small state worse off, highlighting the extent to which a weaker actor or group of actors might be forced to accept only very small gains or scupper the prospects for cooperation entirely.<sup>55</sup> Given that the majority of the world's refugees are in the South, one can immediately see how the *suasion games* analogy fits with the refugee regime, and Southern states are frequently faced with either accepting what it 'on offer' or harming themselves by rejecting a relatively small contribution.

In many ways, the European assumption about African states has been that, given this power imbalance, and the two options within such a *suasion game* logic, African states will simply 'take what is on offer' rather than reject the offer and render themselves worse off. In other words, European states seem to have assumed that African states are so disempowered that even nominal financial compensation directed towards strengthening

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<sup>54</sup> Martin (1993)

<sup>55</sup> Conybeare (1984)

protection capacity could not possibly be rejected as to do so would appear against the interests of the African states. However, there is emerging evidence to suggest that this assumption may be false and that some African states may indeed be willing to choose the non-cooperative option within the suasion game logic, even if it appears to go against their short-term economic interests. The Tanzanian Home Affairs Minister's indignant response to the UK approach to pay them to accept Somali asylum seekers<sup>56</sup> and the African Group's response to the targeting development assistance debate in Convention Plus<sup>57</sup> illustrate how African states may in fact have a response other than passive compliance in spite of the weaker bargaining position.

### *Perfect substitutability*

The European approach assumes that an external 'refugee policy' in Africa can be a substitute for an internal 'asylum policy' in Europe without any erosion of *non-refoulement*. This assumption is most prevalent in the efficiency discourse that has been used to justify 'protection in the region' and transit processing.<sup>58</sup> Not only does this notion that 'asylum should be provided where it is cheapest' ignore the fact that spontaneous arrival asylum would still be necessary for those fleeing individual persecution, but more significantly, it also ignores the influence of, firstly, 'demonstration effects' to Southern states and, secondly, the importance of the 'visibility' of refugees in the North. In other words, it denies that protection in Africa and protection in Europe may be *complementary goods*.<sup>59</sup> If, in particular, European states, as rich industrialised countries, are not willing to provide asylum, what kind of signal does this send to African states with weaker economic and political capacity to host refugees? Indeed the language of the Tanzanian Government, for example, has been to constantly observe the hypocrisy of the North as a means to legitimate its increasingly exclusionary practices.<sup>60</sup>

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<sup>56</sup> The Tanzanian Ministry of Home Affairs, for example, put out a press release on 26 February 2004 dismissing the UK's proposals. On file with the authors.

<sup>57</sup> Statement by Nigeria on Behalf of the African Group on the Occasion of an Informal Meeting On Targeted Development Assistance, 16 September 2005, Palais des Nations, Geneva (on file with the authors).

<sup>58</sup> Betts, A (2005), 'What Does "Efficiency" Mean In The Context of the Global Refugee Regime?', *COMPAS Working Paper* 05-09.

<sup>59</sup> Cottingham, J (2000), 'Partiality, Distance and Moral Obligation', *Ethics, Place and Environment*, 3 (2000), pp. 309-313.

<sup>60</sup> Interview with The Hon. Omar Mapuri, MP, Minister for Home Affairs, Tanzania, Geneva, 7 October 2004.