

The missing link: the need for comprehensive engagement in regions of refugee origin

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The asylum and migration structures and procedures of European Union (EU) countries are failing to cope with the demands made upon them. With migration pressures mounting and opportunities for legal immigration to many EU states restricted, larger numbers of potential migrants are turning to alternative means of entry and access, namely irregular migration and the asylum channel.

States' responses to these challenges have been to adopt more restrictive policies and practices that have considerably changed the balance between immigration control and refugee protection. In order to deter or prevent the arrival of people who intend to request refugee status, governments have introduced a series of measures, including stricter visa requirements, sanctions on carriers, pre-boarding documentation checks at airports and readmission agreements with transit countries, as well as interdiction and mandatory detention of asylum seekers.

While states have the right to control entry and enforce their borders, they are bound by international refugee and human rights legal instruments to do so without infringing the right of persons in need of protection to seek asylum. The restrictive measures that have come to dominate policy-making and recent immigration enforcement initiatives in Britain and other EU member states do not sufficiently discriminate between asylum seekers and other kinds of migrants, thereby failing to safeguard the right of refugees to seek protection.

The continuation of current policies will neither address the concerns of destination states nor ensure legal access to Europe for those in need of protection. This lack of legal access will, in turn, continue to increase the numbers of asylum seekers and migrants alike turning to smuggling and trafficking networks, fuelling the international criminal economy and pushing many migrants and asylum seekers to the margins of social and economic life.

The apparent contradiction between a refugee's right to seek asylum and states' right to control their borders could be better addressed by fairer, faster and more efficient asylum procedures and through a more harmonized and integrated EU asylum system that eliminates differing interpretations of the concept of 'the refugee' among EU member states. But these changes alone will not fully address the asylum crisis. The 'missing link' that would respond both to the concerns of

states and to the protection needs of refugees is more comprehensive engagement in regions of refugee origin.

In recent years, policy-makers, practitioners and academics have all paid greater attention than formerly to the crisis in asylum, the shortcomings of international burden-sharing, the security implications of international refugee movements and the strategic use of resettlement to enhance asylum. While these issues have traditionally been addressed separately, it is important to begin to understand how related areas, such as resettlement programmes, international development, foreign policy and asylum policy, can and should be rooted in a common understanding of the scope and nature of the refugee problem in the regions of refugee origin. It is in this way that Western asylum countries, including the UK, may best address the challenge of providing international protection to victims of persecution and respond to their own concerns about asylum.

The asylum crisis in the UK and Europe

With transport links improving and human rights, security and economic conditions in many parts of the world deteriorating, the number of asylum seekers travelling to Europe has greatly increased since the early 1980s. However, there have been peaks and troughs. Asylum applications to EU states grew from some 50,000 in 1983 to more than 684,000 in 1992. After 1993, as increasingly restrictive measures were adopted throughout western Europe, the numbers steadily declined, reaching about 276,000 in 1996. Since then, the total has slowly climbed again, reaching almost 381,600 in 2002—a level that is still only 56 per cent of the 1992 peak figure. Of all the EU countries, Germany was by far the largest recipient of asylum seekers during this period, frequently receiving more than 50 per cent of the regional burden. Since 2000, the United Kingdom has replaced Germany as the leading recipient of asylum flows to western Europe. But on a per capita basis Britain receives fewer asylum seekers than many other EU states.

Where do these asylum seekers come from and what are their reasons for leaving their home countries? A review of statistics collected by the Office of the UN High Commissioner for Refugees (UNHCR) on the top source countries generating applicants to EU asylum systems in recent years reveals certain trends.

First, a relatively small number of nationalities account for the majority of asylum applicants in the EU. The former Yugoslavia, Turkey, Iraq and Afghanistan together make up nearly half the total. In 2000 the top five source countries for applicants to western Europe and the other 22 industrialized countries were the former Yugoslavia, Iraq, Afghanistan, Iran and Turkey.¹ In 2001 the top five were Afghanistan, Iraq, Turkey, the former Yugoslavia and China.² In 2002 they were Iraq, the former Yugoslavia, Turkey, China and Afghanistan.³

¹ UNHCR Population Data Unit, 'Trends in asylum decisions in 38 countries, 1999–2000', Geneva, June 2001.

² UNHCR Population Data Unit, 'Trends in asylum applications in industrialized countries 1999–2001', Feb. 2002.

³ UNHCR Population Data Unit, 'Trends in asylum applications lodged in industrialized countries: levels and trends, 2000–2002', March 2003.

Second, people tend to seek asylum in their own region or nearby regions; most asylum applicants in western Europe in the past decade have come from Europe itself, the Middle East or western Asia. During 1990–9, the top four source countries of asylum seekers and refugees to the European Union were: former Yugoslavia, 25 per cent (1,043,800); Romania, 9.4 per cent (392,200); Turkey, 8 per cent (335,900); and former USSR, 4.7 per cent (196,600).⁴

Third, the leading source countries have been the same for some years; former Yugoslavia and Turkey have been among the top three every year since 1990 (except for 2000), and Iraq has been a consistent number four or five (and in recent years number one or two).

Fourth and finally, these statistics indicate that many asylum seekers who have arrived in Europe since the early 1990s have come not simply to escape poverty, but frequently to flee grave internal disorder and civil strife or severe repression. The break-up of Yugoslavia in 1991 and the subsequent brutal conflict and ethnic cleansing led to a marked increase in numbers of refugees; human rights abuses, conflict and repression of their Kurdish minority populations have led to greater flows from Turkey and Iraq; conflict and persecution in Afghanistan, first by warlords and subsequently by the Taleban, caused an outpouring of refugees; a civil war and insurgency in Sri Lanka have resulted in a steady flow of Tamil asylum seekers; a failure in democratization and a simultaneous relaxation of border controls in Romania led to an increase in arrivals, particularly of Roma (or Gypsies), in western Europe; and repression in Zimbabwe has been sending large numbers of new asylum seekers to the UK.

A central feature of the mass character of recent population displacements is that people move because they fear political persecution and because both their means of livelihood and their dignity have been stripped away from them. They leave because their families and communities have been disrupted by a series of violent shocks, the full effects of which they can barely comprehend, let alone measure and predict. In such circumstances people panic and flee for safety.

People also feel compelled to move to the relative safety and stability of Western countries from their first countries of asylum in regions of refugee origin because in many cases they feel threatened or cannot find a satisfactory solution to their plight in these places. The majority of today's twelve million refugees are trapped in a protracted limbo, unable to return home, and without the prospect either of a solution in the country where they have sought asylum or of resettlement abroad.

Exodus is also fed by an intervening 'migration industry' comprising agents, recruiters, organizers, fixers and brokers, some with connections to international criminal syndicates, who sustain links with countries of origin and destination. Points of departure and arrival are also determined by networks of friendship, kin and ethnicity, organized by migrants themselves.

⁴ UNHCR, *The state of the world's refugees: fifty years of humanitarian action* (Oxford: Oxford University Press, 2000), p. 325.

In this complex situation, it is not always easy to differentiate between 'migrants' and 'refugees'. Armed conflict, poverty, political and economic instability, and environmental disasters all contribute to the formation of mixed flows of people on the move. However, as UNHCR has noted, 'the distinction between voluntary and involuntary population movements, between the refugee and the so-called "economic migrant", is not always as clear and definite as it may appear to be.'⁵ In reality, persecution and violent conflict often overlap with, or may be provoked or aggravated by, economic marginalization, population pressure, environmental degradation or poor governance. UNHCR and the International Organization for Migration (IOM) have drawn attention to the fact that not only do refugees increasingly move within a broader mixed flow which includes both forced and voluntary movements, but more of them now resort to migrant smugglers as one way to leave their country.

At the same time, large numbers of economic migrants not in need of international protection are using the asylum procedures to try to gain entry to the UK and other EU states. In the absence of viable, legal migration options to pursue, persons who are not refugees are seeking to enter countries of their choice through the asylum channel, it being often the only entrance effectively open to them. It is not surprising, therefore, that 'the line between migrant and asylum seeker progressively blurs in the public mind, just as does the distinction between migration control and refugee protection in the policies of States.'⁶

Faced with having to make distinctions between good and bad claims for refugee status, between forced and free migration, between refugees and migrants, EU governments have been granting a smaller percentage of asylum applicants either under the refugee convention or under lesser forms of humanitarian protection during the past few years. Only about 20 per cent of those who passed through asylum screening in the EU were granted convention or humanitarian protection in 2000.⁷

As approval rates of asylum applications decline steadily, EU governments maintain that widespread abuse of the asylum system exists in the West and that a substantial proportion of those who apply for asylum are not bona fide refugees but opportunists or at best economic migrants. Politicians and the media not only perceive that their governments have lost control of national borders, they are also alarmed that increasing backlogs of asylum cases and rising costs put heavy strains on their asylum systems. The estimated \$10 billion spent each year by the industrialized states on their asylum systems is substantially greater than the \$800 million that UNHCR spends on the 19 million refugees and displaced persons in less prosperous countries around the world.

Many politicians now feel that the large amounts of money that the industrialized countries are spending at national level on processing a few hundred

⁵ UNHCR, *Reconciling migration control and refugee protection in the European Union: a UNHCR perspective*, Oct. 2000, p. 5.

⁶ IOM and UNHCR, 'Refugee protection and migration control: perspectives from UNHCR and IOM', Global Consultations on International Protection, 2nd meeting, EC/GC/01/11, Geneva, 31 May 2001.

⁷ UNHCR Population Data Unit, 'Trends in asylum decisions in 38 countries, 1999-2000', p. 3.

thousand asylum seekers annually could be better spent on the millions of refugees staying in their regions of origin. These concerns have increased xenophobia and anti-refugee and anti-immigrant sentiments throughout Europe. Since September 2001 and the preoccupation with fighting global terrorism, governments perceive that mass influxes not only threaten social and cultural cohesion in their societies, but also, in some cases, endanger national security. In the more sensationalist press and media, asylum seekers are associated with terrorism, radical Islam and political violence.

Asylum has become a political nightmare for Britain's Labour government in particular. Despite the introduction of a series of legislative and administrative measures designed to limit the number of asylum applications the country receives, the number of arrivals in the UK has risen relentlessly in recent years: from just over 40,000 in 1997 to over 90,000 in each of the four years 1998–2001, and more than 110,000 in 2002. This has resulted in significant pressure on public finances. In March 2003, for example, Gordon Brown was obliged to make an emergency payment of £1.5 billion to the Home Office to cope with rising numbers of asylum applications at a time when the government was borrowing heavily to pay for other domestic programmes as well as for the war in Iraq.

The UK's 'new vision' plan and other international initiatives at global refugee reform

Confronted with the failure of established asylum policies to reduce the numbers of asylum seekers, the UK is considering more radical and ambitious measures to address this persistent policy problem. Foremost among these measures is the 'new vision' plan, which proposes to cease processing asylum applications on British territory. With the possible exception of children, disabled people and high-profile political dissidents, all applicants would be automatically removed from the country shortly after arrival to processing centres overseas.⁸

The plan advocates the establishment of transit processing centres on the outskirts of the EU, in countries such as Albania, Bulgaria or Romania which are on major transit routes for migrants. Asylum seekers arriving in the EU from these areas would have their applications for refugee status examined in these transit processing centres. Successful applicants would be subsequently resettled in the UK or another EU country. Rejected cases would be returned to their country of origin. Other asylum seekers would be removed to 'protection areas' in their regions of origin. Those who travel to the UK or any other EU country to apply for asylum would be returned to the most appropriate regional protection area: Turkey, Iran, Iraqi Kurdistan, northern Somalia and Morocco have all been mentioned as possible places.

⁸ See Seumas Milne and Alan Travis, 'Safe havens plan to slash asylum numbers', *Guardian*, 5 Feb. 2003. The present authors have a copy of the cabinet discussion paper that is the basis for the UK proposals regarding offshore asylum processing.

The avowed intent of the plan is that some of the money saved on the UK's domestic asylum procedures would be used to improve the protection of, and enhance the assistance available to, refugees in their regions of origin. The supposed benefits of such a programme would be that people who had been forced to leave their own countries would no longer have to move great distances, often paying large amounts of money to people smugglers in an effort to find a safe refuge.

The 'new vision' proposal is the latest in a series of proposals in recent years by the Intergovernmental Consultations (IGC), the former UK Home Secretary Jack Straw,⁹ and others to regulate the transborder and transcontinental movements of people, including refugees and asylum seekers, and to bring under control the spontaneous arrival of asylum seekers on EU national territories by processing asylum claims in regions of refugee origin. It is interesting to note that the studies carried out by the IGC concluded that asylum processing and protection in 'internationally protected areas' in regions of origin would be unworkable.¹⁰

The UK is not alone in exploring regional solutions to the asylum issue. Since mid-2001 Australia has been pursuing its 'Pacific solution' to the challenge of dealing with increasing numbers of boats arriving on Australian shores from Indonesia carrying asylum seekers from South Asia and the Middle East.¹¹ Under High Commissioner Ruud Lubbers, UNHCR has launched its own 'Convention Plus' initiative in an effort to reform international refugee protection and resolve longstanding problems with their states' systems. It is envisaged as a series of multilateral 'special agreements' to complement the 1951 Refugee Convention,¹² and serve as a basis for comprehensive plans for regional solutions. Lubbers also suggests the use of targeted development assistance to countries hosting large refugee populations for protracted periods, the promotion of the self-reliance of refugees and returnees, and new multilateral commitments for resettlement and for roles and responsibilities of countries of origin, transit and destination in situations of secondary movements.¹³

UNHCR has also proposed its own three-pronged strategy for dealing with the processing of asylum claims in the West.¹⁴ The first element would focus on new approaches in regions of refugee origin in respect of 'irregular movers'

⁹ Jack Straw, speech delivered at European Conference on Asylum, Lisbon, Portugal, June 2000.

¹⁰ See Inter-governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC), 'Working paper on reception in the region of origin', Sept. 1994; IGC, 'Reception in the region of origin: draft follow-up to the 1994 working paper', Aug. 1995; IGC, 'Study on the concept of burden-sharing', March 1998; and IGC, 'The Kosovo humanitarian evacuation programme as a case study', 2000.

¹¹ See US Committee for Refugees (USCR), *Sea change: Australia's new approach to asylum seekers*, Feb. 2002, <http://www.refugees.org>.

¹² UNHCR Department of International Protection, *Convention Plus: questions and answers*, 20 Jan. 2003; authors' interviews with UNHCR staff, Geneva, March 2003.

¹³ In his statement to the informal meeting of the European Union Justice and Home Affairs Council, Veria, 28 March 2003, Ruud Lubbers, United Nations High Commissioner for Refugees, stated: 'by enhancing protection and increasing the prospects for durable solutions in regions of origin, we open up new possibilities for the return of refugees to countries of first asylum. To make this credible, such an approach requires effective burden-sharing with the provision of development assistance for refugees in host countries as well as reintegration and self-reliance activities.'

¹⁴ See Lubbers's statement at Veria, 28 March 2003. Authors' interviews with UNHCR staff, Geneva, March 2003.

(refugees who have moved on to Europe after having sought asylum in host countries in their regions of origin). This would involve returning asylum seekers of this kind to their regions of origin, where they would be registered and their asylum claims processed, but it would also include strengthening the capacities of first countries of asylum and enhancing solutions for asylum seekers, paving the way towards repatriation, integration in the region or resettlement abroad.

A second prong would focus on new joint initiatives within Europe itself in dealing with 'manifestly unfounded' applications for asylum—that is, those individuals without valid claims for international protection—and asylum claims from nationals of countries that do not normally produce refugees. Measures could include closed reception centres on the territories of some of the ten new EU member states due to join in 2004, the processing of claims by EU teams, and simplified appeals with UNHCR participation. Those found to be in need of international protection should be granted asylum in one of the EU countries, depending on their needs, skills, family connections and other links such as language. Collective EU action would also be required to make sure that those found not to be in need of international protection were returned promptly to their countries of origin.

The third prong would focus on the effective functioning of Europe's individual national asylum systems. According to Lubbers, 'if the other two prongs work, national asylum systems will be able to focus more on the functions for which they were initially created—in other words, the provision of international protection to those in need of it.'¹⁵

Political, legal and ethical problems with processing asylum claims in regions of origin

Proposals seeking to transfer asylum processing to regions of refugee origin, an idea central to the British approach, work exclusively from the perspective of Western states, and are consequently deeply flawed. They do not conform to international human rights and refugee protection standards. They fail to understand the burdens, pressures and priorities of countries in those regions. They ignore the fact that such programmes would place asylum seekers at considerable risk, and that the UN agencies supposedly charged with the management of the 'protection areas' are understaffed, underfunded and unable to assume this responsibility. As such, these proposals are misguided and unworkable, for political, legal and ethical reasons.

The 'regionalization' of asylum procedures would violate a number of principles central to the international regime developed to promote refugee protection. At the core of this regime is the right to seek asylum, as articulated in the 1948 Universal Declaration of Human Rights.¹⁶ While there is no right

¹⁵ Lubbers's statement at Veria, 28 March 2003.

¹⁶ Article 14(1), 1948 Universal Declaration of Human Rights: 'Everyone has the right to seek and to enjoy in other countries asylum from persecution.'

to asylum in international law, individuals fleeing threats to their life and liberty are entitled to approach states and seek their protection. Returning asylum seekers to regions of refugee origin would violate this right.

In addition, returning asylum seekers to dangerous and unstable conditions in regions of refugee origin may violate the principle of non-refoulement, as set out in the 1951 Convention Relating to the Status of Refugees.¹⁷ The majority of asylum seekers entering Europe—Afghans, Iraqis, Iranians, Somalis—are fleeing not only unsafe home countries, but also unsafe regions of origin. In many instances, borders are porous, and agents of the home government operate freely in neighbouring countries. Thus refugees may face threats to their life and liberty not only in their home country, but in the wider region. Recent reports of Taleban agents active in the Northwest Frontier Province of Pakistan, of cross-border raids from Sudan and Somalia into Kenya, and of foreign agents active in Amman and Damascus, and the documented case of the murder of Rwandan children, held in a secure residence in Nairobi while awaiting resettlement,¹⁸ support this argument.

The indefinite restriction of refugees to ‘protection areas’, as envisioned by the UK proposal, would further violate a range of provisions of the 1951 Convention. These provisions cover not only the juridical status of refugees, but also their right to gainful employment, their welfare, and administrative measures governing a refugee’s freedom of movement and right to identity documents.¹⁹ It is clear that providing refugee protection does not end with simply keeping someone alive. There is a significant difference between the quality of asylum contained in the notion of ‘effective protection’, as recently discussed in the UNHCR Global Consultations process,²⁰ and the minimum standards of containment envisioned by regionalization proposals.

By eroding such key principles of refugee protection, regionalization would seriously undermine the entire international refugee protection regime, codified in the aftermath of the Second World War with the stated intention of balancing the protection needs of refugees with the concerns of states. This regime is

¹⁷ Article 33(1), 1951 Convention relating to the Status of Refugees: ‘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.’

¹⁸ In April 2002 an assailant, probably a Rwandan agent, broke into a ‘secure residence’ in Nairobi established by UNHCR for refugees at particular risk. The assailant murdered two Rwandan refugee children, aged nine and ten, by slitting their throats. Their mother, a close relative of a former Rwandan president, was also severely wounded. They had been waiting for eleven months for their resettlement application to be processed. See Human Rights Watch press release, ‘Kenya: refugee children murdered at “secure residence” in Nairobi,’ 23 April 2002.

¹⁹ See Chapters II, III, IV and V, 1951 Convention relating to the Status of Refugees.

²⁰ For a discussion of the concept of ‘effective protection’ and information on the Global Consultations process, see: <http://www.unhcr.ch>. The Global Consultations on International Protection were convened by UNHCR to mark the 50th anniversary of the 1951 Convention, and to address challenges to international refugee law which have arisen since the drafting of the convention. The process lasted more than a year, engaged a wide range of states, NGOs and refugee law experts, and culminated in the adoption of a Declaration and Agenda for Protection by a meeting of states parties to the 1951 Convention and/or its 1967 Protocol in December 2001. See *Agenda for Protection*, UNHCR Executive Committee, 53rd session, A/AC.96/965/add.1, 26 June 2002.

already shaken by over a decade of increasing restrictions on asylum by governments in western Europe, North America and Australia, and while the regime is recognized as being in need of enhancement and development,²¹ regionalization proposals have the potential of so gravely undermining the regime as to make it irrelevant.

The mechanics of recent regionalization proposals also constitute an abuse of third-country refugee resettlement.²² In recent years, resettlement countries,²³ non-governmental organizations (NGOs) and UNHCR have invested significant effort in developing a body of international resettlement policy, most clearly articulated during the UNHCR Global Consultations process.²⁴ A strong message emerging from this process is that resettlement and asylum are two 'distinct and separate possibilities'.²⁵ Resettlement is a tool of international protection, a durable solution for refugees, and an expression of international solidarity by resettlement countries. It cannot, and should not, be seen as a means of managing migration, or addressing perceived shortcomings in asylum systems.

Regionalization recasts resettlement as a migration management tool. The recent UK regionalization proposal envisages that the newly established UK resettlement programme would be used as a means of transferring a limited number of refugees from the regional protection areas to the UK. Such a use of resettlement not only contradicts the expert opinion expressed by states, NGOs and UNHCR through the Global Consultations process, it also contradicts the British government's pledge in its February 2002 White Paper that the newly established resettlement programme would not compromise current asylum procedures.²⁶ Finally, resettling only a portion of those individuals returned to regional protection areas and subsequently found to be in need of international protection would result in a net transfer of refugees from Europe to regions of refugee origin.

Regionalization would further compromise the international refugee protection regime by undermining the principle of international solidarity and burden-sharing. Sharing the burden of hosting refugees is an essential precondition for the successful implementation of international refugee protection instruments, like the 1951 Convention. Transferring refugees from Europe to regions of

²¹ This recognition on the part of UNHCR and states further motivated the Global Consultations process. The resulting Agenda for Protection provides a framework for reconciling the asylum-related concerns of states and the principles of international refugee protection.

²² Third country resettlement involves the transfer of a refugee from his or her country of refuge to a third country which has previously agreed to admit and grant him or her status. For an overview of the principles and practice of refugee resettlement, see UNHCR Department of International Protection, *Resettlement Handbook*, Geneva, July 2002.

²³ In 2001, those countries (with their quotas) were: Australia (4,000), Benin (240 over two years), Brazil (30), Burkina Faso (100), Canada (7,300), Chile (65), Denmark (517), Finland (750), Iceland (23), Ireland (10 cases), the Netherlands (500), Norway (1,500), New Zealand (750), Spain (no specific quota), Sweden (1,375), Switzerland (no specific quota), US (80,000).

²⁴ See UNHCR Executive Committee, 'New direction for resettlement policy and practice', Standing Committee, 21st meeting, EC/51/SC/INF.2, 14 June 2001.

²⁵ *Ibid.*, para. 24.

²⁶ See UK Home Office, *Secure borders, safe haven: integration and diversity in modern Britain*, UK Government White Paper (London: Stationery Office, Feb. 2002). See also response from (British) Refugee Council, <http://www.refugeecouncil.org.uk>.

refugee origin would turn the notion of international burden-sharing on its head. Such policies would mean shifting the refugee burden away from richer, more stable countries and placing more of it on poor and unstable countries that already host the overwhelming majority of the world's refugees. According to UNHCR statistics, there were over 19 million refugees and displaced persons in the world in 2002.²⁷ Over 13 million of these forcibly displaced were to be found in Africa and Asia.

Potential host states identified in recent proposals already host significant refugee populations. Iran alone has hosted over two million refugees from Afghanistan and Iraq, many of whom have stayed for nearly two decades. Turkey is inundated with illegal migrants and asylum seekers from Iraq, Iran and Afghanistan. Kenya and Tanzania have together hosted roughly 500,000 refugees for over a decade. The long presence of refugees and asylum seekers in these and other countries in Asia and Africa, coupled with diminishing international support, has resulted in not only severe social, economic and environmental strains, but also threats to domestic and regional stability.²⁸ In response, many host states in these regions have placed significant restrictions on the asylum they offer.

It is unrealistic to think that countries that now feel overburdened would be willing to assume responsibility for yet more refugees, and unethical to expect them to do so. There is very little incentive for them to cooperate with proposals to regionalize asylum. Regionalization and the establishment of 'regional protection areas' would also require host states to transfer control over a portion of their territory to an external actor, such as the UN, the EU or the UK. Countries of Africa and Asia, which jealously defend their sovereignty, would find this unacceptable.

At an intergovernmental meeting at UNHCR in Geneva on 7 March 2003, several refugee-hosting states reacted negatively to proposals to process asylum claims in regions of origin.²⁹ Iran, long burdened with millions of Afghan refugees, called for 'fair burden- and responsibility-sharing' and doubted the applicability of local integration in massive and protracted refugee populations. Turkey spoke out against regional agreements and Pakistan noted that host countries are increasingly left with sole responsibility for refugees because of dwindling international support and interest. Thailand expressed concern that regional processing might turn into 'burden-shifting'. It would be unreasonable to expect a host state in a region of conflict—a Turkey, an Iran, a Pakistan, a Kenya or a Thailand—to agree to the return of asylum seekers from European countries to their territories when they are already hosting large numbers of refugees.

Research conducted by the present authors in 2001 and 2002—focusing on the human rights environment and physical conditions for Iraqi and Somali

²⁷ See <http://www.unhcr.ch/cgi-bin/texis/vtx/statistics>.

²⁸ See UNHCR Executive Committee, 'Economic and social impact of refugee populations on host developing countries as well as other countries', Standing Committee, 26th meeting, EC/53/SC/CRP.4, 10 Feb. 2003.

²⁹ UNHCR, Convention Plus/Forum Briefing, 7 March 2003, internal summary by the Department of International Protection.

asylum seekers, the quality of processing of refugee claims, and access to resettlement opportunities in Turkey, Syria, Jordan and Kenya³⁰—illustrates how regionalization would also be dangerous and dehumanizing for refugees and asylum seekers. Refugees interviewed for the research complained that inadequate security in their countries of first asylum was their greatest concern. The human rights records of these countries are poor. Physical harassment and detention, including at the hands of police and security forces, and deportation to countries where refugees risk persecution occur on a regular basis. Corruption is rampant.

Refugees also face serious economic and social deprivations in their countries of first asylum: their freedom of movement is severely restricted; they cannot integrate with local populations; they are given inadequate or no assistance; they are refused permission to work. They live in limbo.

Regionalization proposals by European states would have to operate within the framework set out in article 3 of the European Convention on Human Rights. This provision categorically forbids European states from returning individuals from their territory to states where the individual would be subjected to torture, or other cruel or degrading treatment. As detailed in a recent report by the European Council on Refugees and Exiles (ECRE) and the US Committee for Refugees (USCR),³¹ conditions in the regions in question fall well below any standard that could satisfy a European or UK court that the human rights of those removed from Europe were not being abused by the proposed scheme.

Finally, regionalization proposals identify a central role for UNHCR in the administration and management of the 'protection areas' and invest it with a central responsibility in processing the asylum claims of individuals returned to these areas from Europe. UNHCR is already overstretched and understaffed. It is increasingly unable to carry out protection, assistance and activities in pursuit of durable solutions for refugees in regions of origin. The number of protection officers posted to refugee-populated areas has been significantly reduced. Food assistance to refugees who are restricted to camps and completely dependent on aid has been reduced to dangerously low levels. Voluntary repatriation and resettlement plans have been cancelled because of insufficient funding, and programmes aimed at promoting local integration through development initiatives have not proceeded past the planning and piloting stage.³² Given its limited resources and shortage of staff in these regions, it is unlikely that UNHCR would be able to provide a protected environment for asylum seekers returned under regionalization arrangements.

Even if regionalization proposals were enacted in their current form, and if their practical and principled drawbacks could be overcome, there is little evidence that the new approach would achieve the desired result of reducing the

³⁰ ECRE and USCR, *Responding to the asylum and access challenge: an agenda for comprehensive engagement in protracted refugee situations*, London and Washington DC, April 2003.

³¹ *Ibid.*

³² See USCR, 'Funding crisis in refugee assistance: impact on refugees', 20 Nov. 2002, <http://www.refugees.org>.

number of illegal entries into Europe. Programmes that forcibly return asylum seekers to regions of origin would not reduce the desire of certain individuals to get into Europe. Such programmes would serve only to discourage migrants from registering with the authorities upon arrival, and would drive illegal migrants further underground and further away from the limited monitoring capacity of national authorities.

Given current conditions in refugee camps in Africa and Asia, it is likely that protected areas would act as a magnet for the very smugglers and criminal elements that these proposals seek to combat. Events of the past 15 years demonstrate that smugglers are able rapidly to adapt to changes in entry opportunities. As legal opportunities to gain access to the protection and opportunities of Europe have been closed, the services of smugglers have become more valuable. There is little evidence that regionalization will break the smuggling trade. On the contrary, it is likely that regionalization will drive more desperate and vulnerable people into the arms of smugglers.

Elements of a new approach: capacity-building, comprehensive solutions and prevention

A noteworthy feature of the current regionalization proposals put forward by the UK and UNHCR is the recognition that improving conditions of reception and providing effective protection in regions of refugee origin are crucially important. Increased external engagement in regions of refugee origin, comprehensive solutions to protracted refugee situations, and a more holistic approach to ensure effective refugee protection in the regions of origin constitute the best way to address the significant concerns of Western states, meet the protection needs of refugees, and respond to the problems of countries of first asylum. Such a holistic approach would ensure effective protection in the region of origin, thereby diminishing the need for individuals to migrate to Europe to seek such protection; would be structured around managed comprehensive responses, thereby ensuring the predictability sought by European states; and would work towards the comprehensive solution of protracted refugee situations, thereby contributing to both the protection of refugees and the legitimate concerns of countries of first asylum.

The success of such an approach will depend entirely on the commitment of the international community to see it succeed. In the short term, donor and resettlement countries, in cooperation with countries of asylum in the regions and UNHCR, will have to engage in concerted and sustained capacity-building initiatives to improve the protection environment in countries of asylum, the capacities of local and international NGOs, and the ability of UNHCR to play its essential supervisory and coordinating role. Comprehensive approaches to protracted refugee situations will also depend greatly on enhancing the complementary use of the three durable solutions: repatriation, local integration and third country resettlement. Extensive research is required both to draw fuller

lessons from past experiences with comprehensive approaches and to formulate comprehensive solutions individually appropriate to current protracted refugee situations.

In the long term, governments, individually and collectively, must consider how elements of their external policies and programmes, including trade, aid, development, strategy and diplomacy, may be brought to bear in not only addressing but preventing refugee flows. Ultimately, it must be recognized that the most efficient, effective and humane approach to refugee situations is their prevention, and that by engaging the failing and failed states of today, the international community will be preventing the refugee movements of tomorrow.

Capacity-building

The urgent need for enhancing the capacity of host states, NGOs and UNHCR was a recurring theme throughout the UNHCR Global Consultations process. Governments recognized that capacity-building serves two important functions. While it is important primarily in respect of the range of protection needs currently unmet in regions of origin, a secondary benefit of capacity-building is to 'reduce the need for asylum seekers and refugees to move on in an irregular manner by making protection available and generating solutions' in their country of first asylum.³³ To invest in capacity-building is therefore not only to work towards better protection and more timely solutions for refugees; it is also to invest in a reduction in the number of refugees who are compelled to leave their country of first asylum for fear of their safety and security.

Given that states have primary responsibility for providing protection to refugees, the focus of capacity-building has traditionally been on host states. European states, independently and collectively through the European Commission, have long realized the value of enhancing the protection capacity of states in central and eastern Europe. From 1999 to 2000, the PHARE (Poland and Hungary Assistance for Reconstruction of Economy) Horizontal Programme on Asylum supported the development of asylum systems, instruments and legislation in line with regional and international legal standards.³⁴ Building on this approach, the expansion of such capacity-building programmes to regions of refugee origin, such as Africa, the Middle East and South Asia, should be actively considered. Given that the largest national groups arriving in Europe seeking asylum originate in these regions, enhancing capacity in the regions of origin should be viewed as being in the best interests of European states anxious to reduce numbers of applicants for asylum. Such an engagement, coupled with the development of a European resettlement programme (as discussed below), would also be a tangible demonstration of international solidarity with host states in the region of origin, and would directly benefit refugees and asylum seekers.

³³ Section 2, Goal 3, *Agenda for Protection*.

³⁴ UNHCR, 'Strengthening protection capacities in host countries', Global Consultations on International Protection, 3rd meeting, EC/GC/01/19, 19 April 2002, annex II.

The authors' field research in regions of refugee origin underscored the importance of focusing on the immediate benefits that would derive from enhancing the capacity of NGOs in these regions, especially in Africa and the Middle East. An important constraint on the ability to offer a secure asylum environment for refugees in these countries is the extremely limited roles played there by NGOs and civil society. In many cases, local NGOs have to register with government ministries and are not permitted to function freely. In Turkey and Syria, for example, local NGOs cannot have direct access to foreign funds for their assistance and protection programmes for refugees. Not only do Turkish authorities try to curtail refugee work by depriving NGOs of funds, they also subject NGOs to harassment and intimidation. Human rights NGOs in particular are marginalized, and are frequently depicted as subversive organizations threatening to national security and supportive of guerrilla and terrorist groups. This working environment also limits many international NGOs. The result is that there are often virtually no checks on governments or on the few international agencies that deal directly with refugees, such as UNHCR.

This status stands in stark contrast with the vital role played by NGOs in the asylum and refugee protection systems of western Europe. Here, national refugee councils, asylum activities, local NGO service providers and charitable organizations working with refugees form an integral part of the state's overall ability to respond to the needs of refugees and asylum seekers. NGOs act as 'watchdogs' on the asylum process, can advise governments on policies and can respond to the needs of individual cases. In fact, the role and presence of NGOs in the asylum process constitute one of the most striking differences between the asylum/refugee programmes of western Europe and the situation in regions of refugee origin.

European NGOs should be encouraged and supported to form partnerships with local NGOs in the regions of refugee origin, and to participate in personnel exchanges, joint training programmes and resource development. There should be greater opportunities for the staff of local NGOs to develop their experience and knowledge of refugee protection issues by participating in learning programmes and further education. European states, whose refugee reception and integration programmes have benefited significantly from the involvement of national refugee NGOs, should actively encourage their counterparts in the regions of origin to foster closer, more collaborative working relationships with local NGOs, while respecting the need of NGOs to be independent, impartial and neutral in their work.

Finally, it is important to focus attention on the capacity-building needs of UNHCR. UNHCR would need to play a vital role in any increased engagement in regions of refugee origin, but, as noted above, shortfalls in funding have resulted in a dramatic reduction in its ability to exercise its protection and assistance functions in these regions. Apart from increased and more dependable financial support, UNHCR also needs political and diplomatic support from all states for its efforts to ensure protection for refugees and durable solutions. Such

support is especially vital in view of UNHCR's work with potential host states in regions of conflict to maintain an open border policy in the event of an influx of asylum seekers, as recently demonstrated in its engagement with Pakistan and Iran in late 2001, and with Syria, Jordan, Iran and Turkey in 2003.

Formulating comprehensive solutions to protracted refugee situations

The most effective form of protection for a refugee is a durable solution. But millions of refugees around the world exist without hope of a durable solution for years on end. These are the protracted refugee situations, where refugees languish in isolated and insecure camps, or as unassisted and unprotected persons in sprawling urban areas in host countries, sometimes for over a decade. In the interest of conflict prevention, peace-building, and preventing the need for onward migration, resolving such situations through comprehensive approaches should be a priority for the international community.

All regions of refugee origin are confronted with the complex challenges associated with protracted refugee situations. Failed or failing states create environments that spur wider regional conflicts that are frequently the cause of these chronic refugee flows. Longstanding refugee populations pose serious challenges to Western interests in terms of illegal trafficking of asylum seekers, migrants and refugees to Western shores, billions of dollars spent on humanitarian and peace-keeping assistance, and lost trade and investment opportunities in the regions.

Protracted refugee situations are, moreover, sources of instability no less dangerous than other more conventional security threats, and need to become a central part of any regional and international security agenda. These situations also raise major security problems for source countries and host countries in the regions. Recurring refugee flows are a source of regional conflict, causing instability in nearby countries, triggering intervention, and sometimes giving a basis to armed refugee communities within camps that give rise to insurgency, resistance and terrorist movements. Protracted refugee situations are also often a drain on the local resources and economies of host countries, blocking development efforts and causing acute local tensions. They are both a consequence of conflict, environmental degradation, and political and citizenship disputes, and a cause of continuing conflict and instability.

Host countries are also exposed to indirect security threats and political, economic and social burdens as a result of large, chronic refugee populations. As noted above, host countries in the developing world shoulder the economic and social strains of the world's refugee populations. The long-term presence of refugees can heighten existing ethnic tensions, particularly in failing states or those with vulnerable economic or social infrastructure, or hostile neighbours. Given the frequent regionalization of conflict in Africa and Asia, and the domestic instability caused by protracted refugee situations, the indirect security threats posed by refugee populations, if left unaddressed, are likely to have serious consequences for regional and global security.

Comprehensive solutions to protracted refugee situations are not new. Such an approach was central to resolving the situation of displaced people remaining in Europe long after the Second World War, of millions of Indo-Chinese refugees in the 1970s and 1980s, and of Central American refugees in the 1980s. By engaging with the particular character of each refugee situation, and by considering the needs, concerns and capacities of the countries of first asylum, the countries of origin, and the resettlement and donor countries, along with the needs of refugees themselves, the international community has successfully resolved the plight of numerous refugee populations in the past 50 years. Similar creativity, compassion and commitment are needed now to resolve refugee situations of similar magnitude, and to address the growing concerns of Western asylum countries and of countries in the regions of refugee origin, and the increasingly dire conditions of protection for millions of refugees.

Towards the end of the 1950s, concerned individuals in Europe drew attention to the plight of the tens of thousands of displaced people within Europe after the Second World War who remained in need of a solution. British refugee advocates, backed by NGOs and UNHCR, called for international action by governments.³⁵ This pressure resulted in 1959 being declared 'World Refugee Year' by the United Nations, and the initiation of a comprehensive response to those remaining, both within and outside camps. Following UNHCR's appeal to resettlement governments to provide both funds and resettlement quotas, this protracted refugee problem was finally resolved by the mid-1960s. This response to 'the residual groups left behind after successive selection missions have picked those people who were young and healthy and met rigid resettlement criteria',³⁶ motivated by humanitarian concern, illustrates the potential of a comprehensive resettlement effort to address the needs of protracted and neglected refugee caseloads. This programme is an often-forgotten precedent for addressing the durable solution and protection needs of refugees for whom neither local integration nor repatriation is a viable option.

The international response to the Indo-Chinese refugee crisis in South-East Asia is a second important example of a comprehensive solution. In response to public outcry at the dire conditions of thousands of 'boat people' fleeing Vietnam, Cambodia and Laos, and following dramatic steps by countries in the region of refugee origin to restrict asylum by preventing the asylum seekers from making landfall, concerned states gathered at an International Conference on Indo-Chinese Refugees in July 1979.³⁷ Western states agreed to increase dramatically the number of refugees they resettled from the region. In exchange, it was agreed that the boat people would be recognized as refugees *prima facie*, that illegal departures from countries of origin would be prevented, and that regional

³⁵ Yéfime Zarjevski, *A future preserved: international assistance to refugees* (Oxford: Pergamon Press/Office of the United Nations High Commissioner for Refugees, 1988), pp. 88–90; Gil Loescher, *The UNHCR and world politics: a perilous path* (Oxford: Oxford University Press, 2001), pp. 89–91.

³⁶ Statement by the UN High Commissioner for Refugees at meeting of American Immigration Conference, 28 Oct. 1958, UNHCR Archives HCR/1/7/5/USA/CAN.

³⁷ UNHCR, *State of the world's refugees*, 2000, p. 84.

processing centres would be established. The result was a formalized *quid pro quo*: resettlement to Western states in exchange for assurances of first asylum in the region.

While immediate results were positive, the number of asylum seekers began to rise dramatically by 1988 as promises of resettlement generated a dramatic pull factor. It was clear that the new arrivals constituted a mixed flow of refugees and economic migrants, and that a satisfactory solution could not be achieved without the cooperation of a wide range of actors. A Second International Conference on Indo-Chinese Refugees was convened in June 1989 and concluded by adopting the Comprehensive Plan of Action for Indochinese Refugees (CPA). The CPA contained five mechanisms through which the countries of origin, countries of first asylum and resettlement countries cooperated to resolve the refugee crisis in South-East Asia: an Orderly Departure Program (ODP) to prevent clandestine departures; guaranteed temporary asylum by countries in the region; individual refugee status determination for all new arrivals; resettlement to third countries for those recognized as refugees; and facilitated return for rejected claimants.³⁸ Notwithstanding a number of criticisms,³⁹ the CPA is seen to have generally achieved its objectives of reducing the number of clandestine departures, managing the flow of migrants from Indo-China and of finding extra-regional durable solutions for recognized refugees.

In contrast to the CPA, where resettlement was identified as the primary durable solution, the International Conference on Central American Refugees (CIREFCA), also convened in 1989, placed the greatest emphasis on return and reintegration, supported by selected projects on local integration, as the primary durable solution.⁴⁰ Following a series of peace agreements ending over a decade of civil conflict in El Salvador, Nicaragua and Guatemala, CIREFCA was an integral part of the wider objective of consolidating peace in the region. Through a series of development initiatives for returning refugees, capacity-building initiatives targeting states and NGOs, and the integration of refugees and returnees into national and regional development strategies, CIREFCA formulated a comprehensive solution appropriate to the needs and priorities of the region.

These three examples demonstrate how comprehensive solutions may effectively respond to the challenges of protracted refugee situations. While each approach used different combinations of the three durable solutions, they share the common feature of representing concerted efforts on the part of a wide range of actors to address the particular needs of individual refugee situations. In considering the preconditions for future comprehensive responses, the UNHCR's

³⁸ See UNHCR, *International conference on Indo-Chinese refugees: report of the Secretary General*, Annex: Declaration and Comprehensive Plan of Action (CPA), 1989.

³⁹ The CPA has been criticized for a number of reasons. See Shamsul Bari, 'Refugee status determination under the Comprehensive Plan of Action (CPA): a personal assessment', *International Journal of Refugee Law* 4: 4, 1992; W. Courtland Robinson, *Terms of refuge: the Indochinese exodus and the international response* (London: Zed, 1998); Astri Shurke, 'Burden sharing during refugee emergencies: the logic of collective versus national action', *Journal of Refugee Studies* 11: 4, 1998.

⁴⁰ UNHCR, *International conference on Central American refugees: report to the Secretary General*, 1989, and UNHCR, *Comprehensive and regional approaches to refugee problems*, EC/1994/SCP/CRP.3, 3 May 1994.

Agenda for Protection noted that there is a need for 'more coherence in integrating voluntary repatriation, local integration, and resettlement, whenever feasible, into one comprehensive approach, implemented in close cooperation among countries of origin, host States, UNHCR and its humanitarian and development partners, especially NGOs, as well as refugees'.⁴¹

Developing the three durable solutions

Recent developments in the formulation and application of the three durable solutions should be incorporated in future comprehensive solutions to protracted refugee situations. First, there is a need to improve *local integration* prospects within the region of refugee origin. Referred to by some as the 'forgotten solution',⁴² local integration was paid comparatively little attention by UNHCR throughout the 1990s, when both UNHCR and donor states were focused on immediate responses to large refugee emergencies. As a consequence, host states in the regions of refugee origin are now opposed to local integration for refugees, viewing the presence of refugees on their territory as temporary, and expecting that every refugee entering their territory will either repatriate to his or her country of origin or be resettled in a third country.

There has, however, recently been a recognition that refugees cannot be held indefinitely in camps, and that 'the promotion of self-reliance of refugees is an important means to avoid dependency, take advantage of the initiative and potential contributions of refugees, and prepare them for durable solutions.'⁴³ In this way, UNHCR has recently placed increased emphasis on improving prospects for durable solutions in the region of origin through development aid focused on refugee-populated areas. As High Commissioner, Ruud Lubbers has been exploring ways of targeting development assistance to countries hosting large refugee populations over protracted periods. In a recent statement to European ministers of justice and home affairs, he outlined two possible approaches: development assistance for refugees (DAR) and development through local integration (DLI).⁴⁴ These initiatives take an important step towards the development of a more holistic approach by developing the linkages between refugee issues and national and regional development agendas. While lessons need to be drawn from past efforts to merge refugee and development issues, especially in Africa,⁴⁵ EU states, individually and collectively, should recognize the benefits of such an approach.

Second, there have been significant recent developments in *resettlement* policy and practice. Resettlement has been increasingly recognized as a valuable tool of protection for individual refugees, as a potential durable solution for groups

⁴¹ Preamble, Goal 5, *Agenda for Protection*.

⁴² Karen Jacobsen, *The forgotten solution: local integration for refugees in developing countries*, New Issues in Refugee Research, working paper no. 45, UNHCR, July 2001.

⁴³ Preamble, Goal 5, *Agenda for Protection*.

⁴⁴ Lubbers's statement at Veria, 28 March 2003.

⁴⁵ See Barry N. Stein, 'ICARA II: burden sharing and durable solutions', in John R. Rogge, ed., *Refugees: a third world dilemma* (Totowa, NJ: Rowman & Littlefield, 1987).

of refugees, and as a tangible expression of international solidarity with countries of first asylum. To this end, there has been some consideration of how resettlement, used strategically, may enhance the protection and local integration prospects of those refugees not resettled. Resettlement is also increasingly seen as an important component of any comprehensive solution for protracted refugee situations.⁴⁶ Indeed, the High Commissioner has placed increased stress on expanding resettlement activities, arguing that 'resettlement—on a much bigger scale than today—must be part and parcel of any comprehensive approach.'⁴⁷

There are, however, a number of significant constraints on global resettlement efforts which must be addressed before resettlement can play the role envisioned by the High Commissioner. As detailed by the present authors in their research findings on processing in the regions, current resettlement efforts are limited as a result of programme constraints, resource constraints and procedural constraints.⁴⁸ The overwhelming majority of refugees in protracted refugee situations could be eligible for resettlement, but a lack of resettlement opportunities and of resettlement staff to prepare submissions, and inefficiencies in the process of preparing and submitting a resettlement case, have resulted in the underuse of this durable solution. In light of the role that resettlement has played in past comprehensive solutions, notably the CPA, it is clear that these constraints must be addressed before comprehensive solutions may be effectively undertaken.

UNHCR and resettlement countries have taken steps to address some of these constraints. Resettlement hubs are being developed in regions in Africa with particular resettlement needs. Resettlement countries are funding additional resettlement posts and temporary deployments to prepare resettlement submissions. Resettlement training is improving the quality of individual submissions. Finally, the Resettlement Section in UNHCR headquarters is actively supporting efforts to improve resettlement planning and practice in field offices.

European states, collectively and independently, can play a vital role, not only by supporting these initiatives but also by making available additional resettlement quotas. Stressing the need for additional resettlement opportunities, delegates to the 2001 Annual Tripartite Consultations on Resettlement in Geneva encouraged the expansion of resettlement in the EU. UNHCR has argued that additional resettlement opportunities are essential if resettlement is to play an effective part in addressing the durable solution needs of refugees, and that 'a fresh look should be taken at the useful role that fair and global resettlement quotas might play in helping to realise a world of law and in giving practical meaning to the need to offer durable solutions to refugees under the UNHCR mandate.'⁴⁹ This position was given greater prominence by a 2001

⁴⁶ See UNHCR, 'Strengthening and expanding resettlement today: dilemmas, challenges and opportunities', Global Consultations on International Protection, 4th meeting, EC/GC/02/7, 25 April 2002.

⁴⁷ Lubbers's statement at Veria, 28 March 2003.

⁴⁸ See ECRE and USCR, *Responding to the asylum and access challenge*, p. 37–42.

⁴⁹ UNHCR, 'Background note for the agenda item: strategic utilization of resettlement to enhance asylum and protection prospects', Annual Tripartite Consultations on Resettlement, Geneva, 20 June 2001, para. 20. The caution was, however, expressed that such a system must be viewed as 'a complement to other protection and assistance efforts and not as a substitute for asylum': *ibid.*, para. 21.

statement from the Executive Committee of the High Commissioner's Programme, which encouraged 'initiatives directed at diversifying resettlement opportunities by increasing the number of resettlement countries, thereby sharing resettlement needs more widely, and meeting increased resettlement needs'.⁵⁰

A number of European countries already run well-established resettlement programmes.⁵¹ Spain and Ireland began resettling refugees in 2000/1, and the UK plans on resettling 500 refugees a year starting in 2003. While these programmes provide protection and a durable solution to a number of vulnerable refugees and their families, their effectiveness would be significantly magnified if they were part of an EU-wide resettlement programme. Such a programme could aim to resettle 100,000 refugees a year, making a significant contribution to the resolution of protracted refugee situations. Offering durable solutions in this way would further provide a more manageable means of seeking protection in Europe for those refugees who cannot remain in their country of first asylum and who cannot return to their country of origin. Finally, an EU-wide resettlement programme could act as a burden-sharing mechanism within the EU. In response to claims by some EU member states that they receive a disproportionate share of Europe's asylum seekers, the allocation of responsibility for the EU resettlement quota could serve as a burden-sharing mechanism that counterbalances differences in annual asylum numbers.

Third, the solution that is likely to be most appropriate for the majority of the world's refugees, and certainly the solution that is most preferred by many states, is *repatriation*. In the 1990s, there was a clear move by states and UNHCR from voluntary repatriation to involuntary return'.⁵² Pressures from host states have, on a number of occasions, resulted in what may be termed 'premature' repatriations. Repatriation to Angola, Burundi and Liberia, for example, has demonstrated that premature repatriation followed by further displacement and return to exile can be more traumatic for refugees and more costly for the refugee protection regime than delaying the repatriation until conditions are favourable.

There is a clear need to recognize that repatriation is not simply the process of returning home; that is, repatriation must be durable. Sustained international support is required to ensure that the preconditions for effective and secure repatriation exist, including a monitored peace agreement and international commitment to ensuring the sustainability of that peace. As recent frustrations with the repatriation of Afghan refugees from Pakistan and Iran have clearly illustrated, refugees are reluctant to return to their country of origin if there is continued insecurity and an apparent decline in international support. In this

⁵⁰ Executive Committee of the High Commissioner's Programme, Conclusion on International Protection, no. 90 (LII), 2001.

⁵¹ In 2001, those countries (with their quotas) were: Denmark (517), Finland (750), the Netherlands (500), Norway (1,500), and Sweden (1,375).

⁵² See B. S. Chimni, *From resettlement to involuntary repatriation: a critical history of durable solutions to refugee problems*, New Issues in Refugee Research, working paper no. 2, UNHCR, May 1999; Michael Barutciski, 'Developments: involuntary repatriation when refugee protection is no longer necessary: moving forward after the 48th session of the Executive Committee', *International Journal of Refugee Law* 10: 1/2, 1998.

light, UNHCR has encouraged states to invest in more sustainable return and reintegration programmes, revolving around the '4 Rs': repatriation, reintegration, rehabilitation and reconstruction.

External engagement in failed and failing states

The most effective way of encouraging and sustaining repatriation is to address the root causes of the initial flight. In many cases, addressing root causes means engaging the question of failed and failing states. It is important for Western states to understand the importance, cost effectiveness and significance of dealing with the root causes of refugee movements, especially armed conflict. To promote repatriation and indeed to prevent future refugee movements, states, individually and collectively, should consider in greater detail not only the extent to which their foreign, development, security and financial policies may contribute to refugee-producing conflict, but also how these policies may be brought to bear on the root causes of refugee movements.

Instead, in recent years the international community has focused on refugee emergencies, delivering humanitarian assistance to refugees and war-affected populations, and encouraging large-scale repatriation programmes in high-profile regions such as the Balkans, the African Great Lakes or Afghanistan. International attention and assistance are in large part a reflection of politics, geostrategic interests, and fickle international donor and media priorities. Donor governments give vastly disproportionate amounts of aid to a few well-known refugee crises and correspondingly trivial amounts to the less well-publicized situations.

The present authors' field research underscored the fact that Western governments do not have effective policies to address the often deplorable situations for refugees and asylum seekers in regional host countries. The EU, for example, administers development programmes inside Somalia, but spends hardly anything to secure better protection or improve the environment for the more than 250,000 Somali refugees in neighbouring countries. The involvement of the European Community Humanitarian Office (ECHO) in these regions is limited exclusively to projects in countries of origin and to non-refugee emergency projects in countries of first asylum. Such a disjunction in programming diminishes the potential impact ECHO may have in rebuilding host countries, addressing the burdens borne by those countries, encouraging self-sufficiency within the refugee population, and targeting its programmes on development and relief initiatives that lay a foundation for durable solutions. To ensure that fully effect programmes are being realized, agencies like ECHO need to respond to the refugee problem in a more holistic and interconnected way.

There is also an urgent need to identify how the various aspects of a state's foreign, development, assistance, trade and security policies may be harmonized to promote comprehensive solutions. There is a need to engage failed states to restore stability, promote reconstruction, and support effective governance and respect for human rights. There is a need to engage in failing states to support

conflict resolution and management mechanisms, regional approaches to peace-keeping and intervention, and peace negotiations that include consideration for the solution of refugee movements caused by the conflict. There is a need to engage in host states, to ensure refugee self-sufficiency and to recognize refugee populations as important elements of peace negotiations and as stakeholders in the process of reconciliation and reconstruction.

Responding to the asylum/migration challenge

While comprehensive responses to protracted refugee situations could potentially result in a dramatic reduction in the number of people who will seek to enter Europe, it would be unrealistic to expect that migrants will not continue to seek to come to Europe for a variety of reasons. In a world in which information, goods, money and cultures are increasingly mobile, Europe will continue to attract many migrants and asylum seekers. While a comprehensive approach is likely to reduce the number of people who need to seek safety in Europe as a result of the lack of safety offered to them in their region of origin, there will always be some refugees who cannot be protected in their regions of origin, some people who will flee directly to Europe, and some people who will come to Europe, fleeing not persecution but poverty, and seeking a better opportunity for themselves and their children.

This issue of mixed flows of refugees and migrants must be addressed in light of the interface between asylum, migration and protection in regions of origin. Refugees are increasingly being pushed into the arms of smugglers as a result of inadequate levels of protection in their region of origin. The services of smugglers are progressively becoming more essential to asylum seekers as the barriers to gaining the more secure protection available in Europe are becoming higher and higher. These same high barriers, and a reduction in legal channels for entering Europe for economic reasons, are also increasingly leading more migrants to seek entry through the asylum system.

It is only by taking a three-dimensional approach that EU states will be able successfully to manage current migration pressures and at the same time maintain their open societies. First of all, EU states must continue to strengthen their capacity to fulfil their legal and moral obligations to treat asylum applications in a fair and efficient manner. If at all possible, the EU and its member states and other countries should tackle directly the human rights abuses and violence that cause refugee flight, so that people will not feel compelled to flee their homes. But in situations where policies addressing root causes have failed, and conditions of reception and protection in host states in regions of origin are unacceptable, EU states should be prepared to support refugee flight and to offer asylum to victims of persecution and violence. Under such conditions, asylum in a foreign country becomes the ultimate human right.

At the same time, EU states should more actively consider their labour migration needs, especially in light of an ageing population and the urgent need for

skilled and semi-skilled migrants, and the development of additional legal opportunities to enter Europe for economic reasons. Efforts to manage international migration need to be based on the development needs of the regions, taking into account the interests and concerns of migration-sending countries as well as migration-receiving countries.

Finally, to respond to the needs of people who come to Europe seeking the protection they have not found in their regions of origin, EU states must actively engage in capacity-building in regions of refugee origin, comprehensive solutions for protracted refugee situations, and a reconsideration of how external elements of their policies may engage with the refugee issue in a more comprehensive and holistic way.

There are reasons of state as well as of humanitarian concern why protection should be offered to refugees and asylum seekers and solutions sought to these problems. The current inclination on the part of states to erect new barriers to deter population movements or to try to push their problems on to other countries will not make the refugee problem go away, nor will it ensure a stable political base for international relations. Much as we may prefer to focus our attention closer to home, the persistence of refugee problems makes it impossible for states to ignore the conditions which create forced migration. In the longer term, states must recognize that lasting solutions to the problem of displaced people require a new level of cooperation between sending countries in the South and receiving countries in the North. The international community can and should insist that countries of refugee origin protect their citizens by refraining from actions likely to cause people to become refugees, and by accepting the return of their people without prejudice. However, a sole emphasis on the responsibility of the countries of refugee origin and on prevention of refugee movements risks overshadowing the responsibilities of all governments towards asylum seekers and refugees. Governments everywhere have the responsibility to refrain from imposing or contributing to refugee-generating conditions. This means that asylum states, particularly those in the North, have international obligations too, including the support of human rights, the provision of asylum, restrictions on arms sales to refugee-producing states, and the provision of financial and political support to promote equitable and sustainable development in countries and regions of refugee origin.

In the realms of human rights and forced displacement, international and regional stability and idealism often coincide. Policy-makers need to build on this coincidence of factors to achieve the political will both to address these problems and to develop the institutional capacity to respond more effectively to protracted refugee situations in regions of origin.