

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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Introduction¹

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.² 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.³ 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

¹ 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.

² 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).

³ '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.⁴ 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*,⁵ 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.⁶

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-

⁴ 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.

⁵ *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.

⁶ 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',⁷ as a 'new asylum paradigm',⁸ and as a shift from 'asylum policy' to 'refugee policy'.⁹ 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,¹⁰ 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

⁷ Oxfam (2005)

⁸ Crisp (2003)

⁹ 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.

¹⁰ 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,¹¹ 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.¹² 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.¹³ 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.¹⁴ 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*.¹⁵ UNHCR's role has largely been as an

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

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

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

¹⁴ 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.¹⁶ That common logic can be described in a number of ways: 'Separating purchaser from provider',¹⁷ 'common but *differentiated* responsibility-sharing',¹⁸ or the 'Japanese position'¹⁹— 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

¹⁵ 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.

¹⁶ Schuster (2005).

¹⁷ 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).

¹⁸ 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.

¹⁹ 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.²⁰ 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.²¹

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.²²

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

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

²¹ 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.

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

'cooperated with'²³ and Amnesty International to talk of a 'carrot and stick' approach.²⁴ 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'²⁵ and the 'migration-development nexus'²⁶ demonstrate growing awareness of the emerging interconnections across migration, development, security and humanitarianism.²⁷ There have also been growing calls for greater policy coherence or 'joined-up' governance in order to address the growing complexity created by globalisation.²⁸ 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.

²³ 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 50th Anniversary Conference, *New Development Threats and Promises*, 5 July 2005.

²⁴ 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

²⁵ 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).

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

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

²⁸ 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.²⁹ 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.³⁰ 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.³¹

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.³² 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

²⁹ 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.

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

³¹ 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.

³² 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.³³ 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.³⁴ 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

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

³⁴ 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; Schuster (2005), pp. 11-16.

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

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.³⁶ 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.³⁷ While African states

³⁵ 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".

³⁶ 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.

³⁷ 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.³⁸ 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.³⁹

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.⁴⁰

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.⁴¹ 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.

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

³⁹ Oxfam (2005)

⁴⁰ 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.

⁴¹ 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 2004,⁴² 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.⁴³

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.⁴⁴ 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

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

⁴³ Schuster (2005), p. 11.

⁴⁴ 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.⁴⁵

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.⁴⁶ 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.⁴⁷

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".⁴⁸ 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

⁴⁵ 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).

⁴⁶ 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.

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

⁴⁸ 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.⁴⁹ 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.⁵⁰

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.⁵¹ 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.⁵² 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'.⁵³

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*

⁴⁹ 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.

⁵⁰ Interviews with UNHCR staff.

⁵¹ Schuster (2005), pp. 9-10.

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

⁵³ 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.⁵⁴ 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.⁵⁵ 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 is '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

⁵⁴ Martin (1993)

⁵⁵ 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 seekers⁵⁶ and the African Group's response to the targeting development assistance debate in Convention Plus⁵⁷ 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.⁵⁸ 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*.⁵⁹ 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.⁶⁰

⁵⁶ 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.

⁵⁷ 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).

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

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

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

Isolated partnerships

The European approach also assumes that there are no '*knock-on effects*' from bilateral arrangements, either affecting, firstly, other states' policies or, secondly, other aspects of those states' domestic or international politics. In other words, there is a form of '*ceteris paribus*' assumption, that each individual cooperative arrangement has little influence on other areas of the refugee regime.

In the first instance, the approach assumes a partnership with one African state will have no impact on the policy response of other states in Africa. It ignores the possible implications of *inter-state competition*. For example, in the 'additionality' debates on TDA there has been a perception of selectivity. Given donor states' proclaimed reluctance to commit additional resources over and above what is already part of the humanitarian or development 'pot', African states have feared the shifting of development assistance from one recipient country to another to another. States which have received TDA, such as Zambia and Uganda, have been regarded by other African states as privileged partners competing away resources from the rest of the Continent.⁶¹ This suspicion has reduced engagement with ideas such as DAR. As has been highlighted in the example of the Tanzanian proposals for 'safe havens' in Burundi, the *rhetoric* of the North may also be replicated in the South, creating just such a knock-on effect.

In the second instance, the approach assumes that there is no affect on other areas of domestic politics; that the domestic debate on asylum and immigration, and other areas, will remain largely unaffected as a result of cooperative agreements. However, in reality the initiatives seem to have led to *domestic resource displacement*. Indeed, there have been contradictions resulting from the unintended consequences caused by selectivity and 'divide and rule'. For example, alongside Uganda's 'partnership' with Denmark on the Ugandan Self-Reliance Strategy (SRS), UNHCR's overall programme funding has been reduced. Yet, the Ugandan Government has entered into partnership because otherwise another state might have taken the DAR pilot opportunity it was offered. Consequently, overall protection in Uganda has been compromised and resources have been channelled away from protection in Northern Uganda towards Government buildings in Kampala funded by the Danish Government.⁶²

⁶¹ Interviews with African state representatives.

⁶² Information provided by informal discussions with UNHCR staff.

Part 2: 'The African Perspective'

In stark contrast with the European assumptions about the state of refugee protection in Africa, an increasing range of authors have argued that there is a crisis of asylum in Africa.⁶³ African states host more refugees, in more complex and insecure conditions, with less international assistance, and with fewer possibilities to find lasting solutions, than at any time since the UNHCR first expanded its operations into Africa in 1957. In response to these challenges, host countries across Africa place limits on the asylum they offer to refugees. Some states have limited the quantity of asylum by closing their borders, rejecting asylum seekers at the frontier, and, in exceptional cases, by carrying out mass expulsions. Other states are limiting the quality of asylum they provide and containing refugees in isolated and insecure camps, cutting them off from local communities and making them fully dependent on international assistance.⁶⁴ Host countries today often cite the sheer number of refugees, their prolonged stay, lack of support from donor governments and a range of security concerns as a justification for placing restrictions on the asylum they offer.

The case of Tanzania

The case of Tanzania offers perhaps the most dramatic example of the changing nature of asylum in Africa. Soon after achieving independence in 1962, Tanzania established a reputation as one of the most hospitable countries of asylum in Africa, if not the world. Through the 1960s and 1970s, Tanzania hosted tens of thousands of refugees fleeing both wars of national liberation in Southern Africa and post-colonial conflict and repression in neighbouring states, including Rwanda and Burundi.⁶⁵ Refugees were seen to receive a generous welcome, with the Government of Tanzania providing ample land for refugee settlements.⁶⁶ Refugees were encouraged to achieve self-sufficiency, and many entered the

⁶³ For an overview of the changing nature of asylum in Africa, see: Rutinwa, B (1999) "The end of asylum? The changing nature of refugee policies in Africa", *New Issues in Refugee Research*, Working Paper No. 5, Geneva: UNHC; and Crisp, J (2000), "Africa's refugees: patterns, problems and policy challenges", *New Issues in Refugee Research*, Working Paper No. 28, Geneva: UNHCR.

⁶⁴ This practice has recently been characterized as 'refugee warehousing'. See: Smith, M (2004), "Warehousing Refugees: A Denial of Rights, a Waste of Humanity", in *World Refugee Survey 2004*, Washington: USCR, June 2004.

⁶⁵ See: Holborn, L (1975) *Refugees: A Problem of Our Time: The work of the United Nations High Commissioner for Refugees, 1951 – 1972*, Netchen, NJ: The Scarecrow Press, Inc., p. 1145 – 1192.

⁶⁶ See: Gasarasi, C (1984), *The Tripartite Approach to the Resettlement and Integration of Rural Refugees in Tanzania*, Research report no. 71, (Uppsala: The Scandinavian Institute of African Studies).

Tanzanian workforce. The government's 1980 decision to naturalize some 36,000 Rwandan refugees is frequently highlighted as but one example of the quality of Tanzania's hospitality.⁶⁷

This reputation changed dramatically in the context of renewed conflict and genocide in the Great Lakes Region. Tanzania received hundreds of thousands of refugees from Burundi and Rwanda, causing Tanzania's refugee population to climb from 292,100 at the end of 1992 to 883,300 at the end of 1994.⁶⁸ This mass influx of refugees resulted in a number of pressures on refugee-populated areas in Western Tanzania, including increased crime and insecurity, environmental degradation, and shocks to the local economy and communities.⁶⁹ The Government also claimed by the end of 1995 that international assistance to refugees in Tanzania was diminishing, resulting in a significant burden on the host state. In response to these concerns, and in the midst of the country's first multi-party Presidential elections, Tanzania ended its long-standing 'open-door' asylum policy, and closed its border with Burundi on 31 March 1995 to prevent the arrival of additional refugees. A greater blow to Tanzania's reputation as a generous country of asylum came in December 1996, when the Government ordered the expulsion of the overwhelming majority of the Rwandan refugee population, resulting in "widespread dismay in the humanitarian world"⁷⁰ and charges of violations of international refugee and human rights law.⁷¹

For some long-time observers of Tanzanian refugee policy, this change in policy can "only be described as a sea-change."⁷² In the years following the expulsion of the Rwandan

⁶⁷ See: Gasarasi, C (1990), "The Mass Naturalization and Further Integration of Rwandese Refugees in Tanzania: Process, Problems and Prospects", *Journal of Refugee Studies*, Vol. 3, no. 2. It is important to note that "Tanzania and Botswana remain the only sub-Saharan African countries to date which have granted permanent residency and citizenship to some of their refugees..." Rogge, J (1994), "Repatriation of Refugees", in Allen, T and Morsink, H (eds.), *When Refugees Go Home*, (London: James Currey), p. 20.

⁶⁸ UNHCR (2000), *The State of the World's Refugees: Fifty Years of Humanitarian Action*, (Oxford: Oxford University Press), p. 312.

⁶⁹ See: Brahim, J (1995), "Refugee Crisis in the Great Lakes Region: How Tanzania was affected and her response", paper presented at the International Workshop on Refugee Crisis in the Great Lakes Region, Arusha, 16 – 19 August; Green, R (1994), "That They May be Whole Again: Off-setting Refugee Influx Burdens on Ngara and Karagwe Districts", Dar es Salaam: UNICEF, September; and Musoke, I (1997), "From Hospitality to Total Hostility: Peasant Response to the Influx of Rwandan and Burundian Refugees in the Kagera and Kigoma Regions of Tanzania", paper presented at the Annual Seminar on the Problem of Refugees in Eastern and Central Africa, Demographic Training Unit, University of Dar es Salaam, 5 – 6 June.

⁷⁰ Mahiga, A (1997), "A Change of Direction for Tanzania", *Refugees*, No. 110, Winter, p. 14.

⁷¹ See: Amnesty International (AI), "Rwanda: Human rights overlooked in mass repatriation": AI Index: AFR/47/02/97, January 1997; and Human Rights Watch (HRW), "Press Release: Human Rights Watch/Africa Calls on Tanzanian Government and UNHCR to Respect International Law", New York, 17 December 1996.

⁷² Interview with senior NGO representative, Dar es Salaam, 30 March 2004.

refugees, it has been clear that the objective of the government has not been to return to a *status quo ante*. Instead, the period 1997 to 2004 has seen the formulation and implementation of a series of increasingly restrictive refugee policies by the Government.

By December 1997, one year after the expulsion of the Rwandan refugees, Tanzania continued to host approximately 295,000 refugees, 230,000 of which were from Burundi.⁷³ In response to rising security concerns within the camps and in the refugee populated areas, coupled with allegations from the Burundian government that rebels were based in and around the refugee camps, “the Tanzanian government ordered the army to round-up all foreigners living outside the refugee camps, asserting that this was necessary to protect Tanzanian citizens living close to the border with Burundi.”⁷⁴ The new policy, of “rounding-up all refugees on the grounds that some may pose a security threat,”⁷⁵ was indicative of a new blanket approach to refugees, especially to Burundian refugees. This approach was rooted in reports that Burundian armed elements were active in Western Tanzania, and that the ensuing threat was therefore best addressed by confining all Burundians to camps. This lack of differentiation between Burundians engaged in armed activities and Burundian refugees was further reinforced by the *prima facie* refugee status given to all Burundians. As a result of the lack of individual status determination, it was easier to paint all Burundian refugees with the same brush and collectively securitize the Burundian refugee population.

This increasingly securitized view of refugees motivated the passing of more restrictive refugee legislation in 1998.⁷⁶ According to one observer, the primary objective of the 1998 Act was to “signal disengagement from the Open Door policy of the Nyerere administration, with a view to making Tanzania a less attractive destination for asylum seekers” while at the same time assuring the local population that the government was “determined to address the problem of seemingly endless refugee influxes which are a direct cause of insecurity, environmental degradation, unemployment, moral decadence and electoral tensions.”⁷⁷

⁷³ US Committee for Refugees, “Tanzania”, in *World Refugee Survey 1998*, January 1998.

⁷⁴ Human Rights Watch (HRW) (1999), “In the Name of Security: Forced Round-Ups of Refugees in Tanzania”, New York: HRW, Vol. 11, no. 4, July, p. 1.

⁷⁵ *Ibid*, p. 3. Emphasis in original.

⁷⁶ See: United Republic of Tanzania (1999), “The Refugees Act, 1998”, Dar es Salaam; Kamanga, K (2005), “The (Tanzania) Refugees Act of 1998: Some Legal and Policy Implications”, *Journal of Refugee Studies*, Vol. 18, no. 1; and Kamanga, K (2002), “International Refugee Law in East Africa: An Evolving Regime”, *Georgetown Journal of International Affairs*, Winter/Spring.

⁷⁷ Kamanga (2005), p. 104.

Government restrictions on refugees, especially Burundian refugees, continued after the coming into force of the Act in February 1999, leading to intensified 'round-up' campaigns. According to Amnesty International, a "written announcement was issued by the Tanzanian military authorities in Kagera region, northwestern Tanzania, ordering all Burundian and Rwandan refugees [to] go to refugee camps" in late 1999.⁷⁸ As a result of these round-ups, and the consequent increase in camp populations, coupled with funding shortfalls to the refugee programme, "refugee camps suffered overcrowding and short-term food shortages" in 1999 and 2000.⁷⁹ This in turn led to an increase in crime in and around the camps as some refugees turned to illegal activities to cope with the shortfall in assistance. For example, in May 2000, seven Burundian refugees were arrested for robbing a local hospital.⁸⁰ At the same time, UNHCR reported that "forced repatriations occurred 'more or less daily' in the first half of the year as authorities prepared for a presidential election in October."⁸¹ On 29 October 2000, Mkapa was re-elected President with 71.7% of the vote, while CCM returned to government with 244 seats. Both results represent significant electoral gains for the ruling party over the 1995 elections.

At the same time, the refugee population continued to climb, surpassing 500,000 by the end of 2001, including 350,000 Burundian refugees, confirming Tanzania as the country with the highest refugee population in Africa.⁸² In response to what it perceived to be an "unending refugee problem",⁸³ the Tanzanian government began to press for the early repatriation of Burundian refugees. During a meeting of the Tripartite Commission for Voluntary Repatriation to Burundi in early April 2002, however, UNHCR representatives, concerned about continued insecurity in Burundi, did not agree to promote repatriation to refugees. Instead, UNHCR agreed only to facilitate the return of refugees wishing to return to North and Central Burundi. Both Tanzania and Burundi condemned UNHCR's position,

⁷⁸ Amnesty International (AI) (2000), "Great Lakes Region: Refugees denied protection", AI Index: AFR 2 February 2000, May, p. 1.

⁷⁹ US Committee for Refugees, "Tanzania", in *World Refugee Survey 2000*, June 2000. In 2001, USCR reported that "budget shortfalls for UNHCR and about 15 other humanitarian agencies forced curtailment of numerous assistance programs besides food. By October [2000], UN agencies received less than half of the funding they requested." US Committee for Refugees, "Tanzania", in *World Refugee Survey 2001*, June 2001.

⁸⁰ USCR, June 2001.

⁸¹ Cited in USCR, June 2001.

⁸² USCR, June 2002.

⁸³ Based on interview in Dar es Salaam, April 2004.

and the politics of repatriation have subsequently been a recurring point of tension between UNHCR and the governments of Burundi and Tanzania.⁸⁴

Notwithstanding UNHCR's position, it is estimated that some 85,000 refugees repatriated from Tanzania to Burundi in 2003.⁸⁵ Given that these returns coincided with sustained crime and insecurity, additional reductions in food rations, and increased restrictions on refugees' freedom of movement and economic activity, a number of refugee advocates questioned the voluntary nature of the repatriations and suggested that conditions in the camps had become so unbearable that many refugees felt compelled to repatriate to Burundi, notwithstanding the prevailing insecurity in their country of origin.⁸⁶ There was a general feeling that while Tanzania could not expel the Burundians as it had the Rwandans in 1996, for fear of further damaging relations with the donor community, it could pursue the same objective through different means. According to one repatriating Burundian refugee: "I know the war is not over yet and the country is not safe yet, but we have no life in Tanzania."⁸⁷

The government's push for repatriation increased in February 2003, when the Deputy Minister of Home reported that Burundian refugees from 1972 would also be expected to repatriate.⁸⁸ This statement most clearly illustrates the government's change in policy in the last forty years. When the Burundian refugees arrived in 1972, they were received and settled on underdeveloped land as part of Nyerere's *ujamaa* development strategy. The objective was for them to become self-sufficient and integrate into Tanzanian society, with settlement leading to naturalization being the preferred solution for refugees. Thirty years after their arrival, the official government position has made a clear about-face. As claimed by the National Refugee Policy of September 2003, "the government has always considered voluntary repatriation of refugees to be the best solution to the refugee

⁸⁴ Interview with UNHCR staff, Dar es Salaam, March 2004.

⁸⁵ US Committee for Refugees, "Tanzania", in *World Refugee Survey 2004*, June 2004.

⁸⁶ See: IRIN, "Burundi-Tanzania: IRIN special report on returning Burundian refugees", 8 May 2002. Agencies to have raised concerns about the repatriations include the International Council of Voluntary Agencies, Refugee Council USA, Amnesty International, Refugees International, Human Rights Watch and TCRS. See: IRIN, 4 April 2002; IRIN, 5 May 2002; IRIN, 15 May 2003; and Refugees International, "Policy Recommendations: Burundian Refugees in Tanzania: Between a Rock and a Hard Place", 18 June 2003.

⁸⁷ Cited in IRIN, 10 October 2003.

⁸⁸ Speaking to IRIN, John Chiligati, the Deputy Minister of Home Affairs is quoted as saying: "There are Burundians that have been in Tanzania for over 30 years, but they are still refugees. They have been fearing the situation at home, but we are hoping that the situation in Burundi will improve and they can be convinced to go back." Cited in: IRIN, 27 February 2003.

problem.”⁸⁹ More critically, the National Refugee Policy also called for the creation of ‘safe-zones’ in countries of origin as a substitute for refugees seeking asylum in Tanzania.⁹⁰

Two months after the release of the National Policy, the UN High Commissioner for Refugees, Ruud Lubbers, visited Tanzania and “appealed to the government of Tanzania to continue its tradition of hospitality to refugees by reviewing its new policy restricting the movement of refugees.”⁹¹ Far from reconsidering its policy, the government sought to promote it, and hosted an “International Conference on Review of International Principles of Protection and Support” in Dar es Salaam in September 2003. The conference, attended by representatives from a number of African states, addressed the international dimensions of Tanzania’s new refugee policy, including calls for greater burden sharing between Western countries and African host states and the creation of safe zones in countries of origin as a substitute for asylum. Speaking at the Conference, the Tanzanian Minister of Home Affairs explained that “Tanzania is of the opinion that the international community should work out a strategy through which safe havens will be created for refugees within the borders of a country in civil strife.”⁹²

While the conference did not endorse the principle of safe zones,⁹³ it is important to emphasise how the proposal for the creation of these safe zones was seen by Tanzania as the next logical step in the ‘evolution’ of international refugee protection. Tanzanian officials felt that the asylum policies of Western states had led to a greater portion of the global refugee burden being shifted on to Tanzania. Tanzania therefore felt justified in not only placing restrictions on the asylum it offered to refugees, but in shifting the refugee burden onto the country of origin. While this is an extreme example of the changing nature of refugee protection in Africa, it does illustrate that Western states cannot expect African countries to both accept an increased refugee burden and maintain a certain quality and quantity of asylum for those refugees. Instead, a ‘knock-on effect’ is possible, where the

⁸⁹ United Republic of Tanzania, Ministry of Home Affairs, “The National Refugee Policy”, Dar es Salaam, September 2003, p. 7.

⁹⁰ See: Tanzania, September 2003. It is important to note that the formulation of the policy was the result of a three-year exercise, funded by the European Union, to develop a coherent national refugee policy. See: Mchome, S (ed.) (2001), “Abstracts and Recommendations from the Second Workshop for the study conducted for the Prime Minister’s Office, under the Special Programme for Refugee Affected Areas (SPRAA), within the European Union funded ‘Review of Refugee Related Policies and Laws’ project”, Dar es Salaam: Centre for the Study of Forced Migration.

⁹¹ IRIN, 11 November 2003.

⁹² Cited in IRIN, 15 September 2003. It is important to note that the Tanzanian proposal for the creation of safe zones in countries of origin was first proposed in 1995 by the Minister of Foreign Affairs. See: Tanzania, Ministry of Foreign Affairs, 1995.

⁹³ See: IRIN, 19 September 2003.

shifting of responsibility for refugee protection from the global North to the global South could result in the shifting of responsibility from countries of first asylum to countries of origin, with disastrous consequences for refugee protection.

Justifications of host states for restricting asylum

A wide range of host states in Africa have pursued asylum policies similar to Tanzania's in recent years, pointing to three justifications for imposing restrictions on the asylum they offer. Firstly, states highlight the scale of the problem, and argue that the sheer number of refugees on their territory and the protracted nature of their stay makes the problem simply too big for their limited state capacity. Secondly, government officials claim that the presence of refugees has resulted in a number of security concerns for the host state. Finally, many governments argue that the presence of refugees has placed a strain on the environment, local economy and public services, and that they have carried a significant refugee burden for too long. Coupled with declining donor engagement, government officials now feel that they are justified in containing the refugee populations in isolated camps. This section will consider each of these justifications in turn.

Numbers and protracted refugee situations

Notwithstanding the problematic nature of refugee statistics in Africa,⁹⁴ it is clear that there were more refugees in Africa during the 1990s than in previous decades, and that solutions to these refugee populations were more elusive. As a result, more refugees remained in the region for longer periods of time. In fact, the overwhelming majority of refugees in Africa have been in exile for five or more years, with no prospects of a solution to their plight.⁹⁵ According to UNHCR, there were 22 so-called "protracted refugee situations" in Africa at the end of 2003, involving some 2.3 million refugees.

⁹⁴ See, Crisp, J (1999), "Who has counted the refugees? UNHCR and the politics of numbers", *New Issues in Refugee Research*, Working Paper No. 12, Geneva: UNHCR.

⁹⁵ See: Crisp, J (2003), "No solutions in sight: the problem of protracted refugee situations in Africa", *New Issues in Refugee Research*, Working Paper No. 75, Geneva: UNHCR.

Table 1: Major Protracted Refugee Situations in Africa, as of 31 December 2003⁹⁶

Region/country of asylum	Country of Origin	Total
Central Africa and the Great Lakes		1,000,000
Burundi	Dem. Rep. of the Congo	41,000
Central African Republic	Sudan	36,000
Chad	Sudan	110,000
Dem. Rep. of the Congo	Angola	120,000
Dem. Rep. of the Congo	Sudan	45,000
Rwanda	Dem. Rep. of the Congo	35,000
United Rep. of Tanzania	Burundi	490,000
United Rep. of Tanzania	Dem. Rep. of the Congo	150,000
East and Horn of Africa		670,000
Djibouti	Somalia	25,000
Ethiopia	Sudan	95,000
Kenya	Somalia	150,000
Kenya	Sudan	63,000
Sudan	Eritrea	110,000
Uganda	Sudan	200,000
Southern Africa		220,000
Zambia	Angola	160,000
Zambia	Dem. Rep. of the Congo	58,000
West Africa		330,000
Cameroon	Chad	39,000
Côte d'Ivoire	Liberia	74,000
Ghana	Liberia	42,000
Guinea	Liberia	150,000
Guinea	Sierra Leone	25,000
AFRICA		2,300,000

This means that over 80% of refugees in Africa are in protracted refugee situations.⁹⁷ As illustrated by Table 1, the largest host countries on the continent are Tanzania, Kenya, Uganda, Zambia and Guinea. Some of these countries have hosted large refugee populations for over a decade. For example, Guinea has hosted over 100,000 Liberian refugees since 1989, while Tanzania has hosted over 180,000 Burundian refugees since 1972. At the same time, such situations are lasting longer than before. UNHCR estimates that the average duration of major refugee situations has increased from 9 years in 1993 to 17 years in 2003.⁹⁸ As these situations become increasingly protracted, and as solutions remain elusive, host governments come to perceive the hosting of these populations as an unending burden.

⁹⁶ UNHCR, ExCom, 10 June 2004, Appendix 1.

⁹⁷ See: UNHCR, Executive Committee of the High Commissioner's Programme (ExCom), "Protracted Refugee Situations", EC/54/CRP.14, 10 June 2004.

⁹⁸ UNHCR, ExCom, 10 June 2004, p. 2.

Security concerns

A number of African host states have also come to argue that the hosting of refugees has resulted in a range of security concerns for the state. In the case of Tanzania, refugee-related security concerns relate to allegations that Burundian armed elements are based in and around the camps, and the belief that the presence of refugees has facilitated the flow of small arms into Tanzania. For example, President Mkapa stated in 2003 that "the truth is that the proliferation of small arms is a result of refugees entering our country, a problem which is beyond our capacity to solve."⁹⁹

But to what extent are these perceived security concerns actually caused by the presence of refugees? For many, the link is spurious. In fact, there is limited evidence linking refugees, as opposed to Burundians more generally, to many of the security concerns expressed by Tanzania. For example, while the evidence linking refugees to the flow of small arms is weak, it would appear that this has done little to affect the perception that a link does exist, especially after the President's public declaration in 2003.¹⁰⁰ Given the authority of the President in Tanzanian society, however, Mkapa's 'speech act' linking refugees to small arms has made this linkage 'true' for government representatives, notwithstanding the evidence to the contrary.

The presence of refugees may, however, also result in a number of indirect security concerns. First, the prolonged presence of refugees may lead to tensions with the local population, especially when the local population perceives that the refugees are receiving preferential treatment. Evidence from Kibondo, Tanzania, suggests that this kind of grievance is on the increase, notwithstanding recent cutbacks in the camps. Studies have recently highlighted the poor state of Tanzania's social services as a result of economic decline and the pressures of structural adjustment.¹⁰¹ As a result, Tanzanians are now receiving a lower level of services at a higher cost to the user. Coupled with the relatively high levels of services in the refugee camps, this can be a source of significant resentment against the refugees.

⁹⁹ Cited in IRIN, 1 September 2003.

¹⁰⁰ Interview with representative of diplomatic community, Dar es Salaam, 1 April 2004.

¹⁰¹ See: Wangwe, S and Van Arkadie, B (2000), *Overcoming Constraints on Tanzanian Growth: Policy Challenges Facing the Third Phase Government*, Dar es Salaam: Mkuki na Nyota Publishers, for the Economic and Social Research Foundation; and Temu, A and Due, J (2000) "The business environment in Tanzania after Socialism: challenges of reforming banks, parastatals, taxation and the civil service", *Journal of Modern African Studies*, Vol. 38, no. 4.

A second way that the presence of refugees may indirectly cause security concerns is through increased competition over scarce resources with the local community. This is a growing concern given the impact of large refugee populations on the local environment, and access to firewood and water. Reduced funding for environmental programmes in many refugee-populated areas in Africa could exacerbate these tensions.

More generally, there is growing tendency in counties like Tanzania to blame refugees for an increase in illegal activities such as theft and prostitution. Given that the government's restrictive policies have made refugees fully dependent on international assistance, refugees must turn to coping mechanisms to survive when this assistance is interrupted. A recent WFP survey in Western Tanzania found that almost 1 in 10 (8%) of households surveyed admitted that they engage in prostitution or theft as a coping mechanism. According to one refugee in Kanembwa camp, near Kibondo, "there are now very few legal ways of supplementing what refugees receive to be able to feed their families."¹⁰² In this sense, it may be concluded that problems with burden sharing and reductions in international assistance to encamped refugees may cause a rise in illegal activities. There is, however, a danger of blaming all crime and insecurity on refugees. While one Member of Parliament claimed that "87% of all armed robbery in Kibondo involves a refugee,"¹⁰³ crime statistics from Kibondo do not support this claim. Between January and December 2000, 59 out of 232 cases of robbery (25%) in Kibondo were attributed to refugees. Given that the refugees account for 25% of the local population, "the proportion of refugee cases is almost the same as the proportion of refugees in relation to the total population."¹⁰⁴

Donor fatigue and failures of burden sharing

Also common to a number of African states is the perception that the presence of refugees results in a range of additional burdens on the environment, local services, infrastructure, and the local economy. Reductions in donor assistance for long-term refugee assistance programmes heightens these concerns, and leads to claims of a failure of international solidarity and burden sharing – one of the most pressing issues for refugee protection in Africa today.

¹⁰² Interview with refugee community representative, Kanembwa Camp, April 2004.

¹⁰³ Interview with Tanzanian Member of Parliament, Dar es Salaam, March 2004.

¹⁰⁴ Rutinwa, B and Kamanga, K (2003), "The Impact of the Presence of Refugees in Northwestern Tanzania", Report by the Centre for the Study of Forced Migration, University of Dar es Salaam, p. 15-16.

The significance of burden sharing for refugee protection is best understood in relation to the principle of *non-refoulement*, the prohibition on expelling or returning of a refugee “in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened.”¹⁰⁵ As argued by commentators on international refugee law, this prohibition is binding not only on states party to the 1951 Convention relating to the Status of Refugees (1951 Convention) but has also become a principle of customary international law.¹⁰⁶ As such, there is general agreement that the obligation to not forcibly return refugees to a country where they fear persecution is binding not only on states that are a party to the 1951 Convention, but on all states in the international system.¹⁰⁷ As such, this obligation is generally seen as the “foundation stone of international protection” for refugees.¹⁰⁸

Given the customary norm to not *refoule* refugees, states are generally understood to have a responsibility to offer, at minimum, temporary protection to refugees entering their territory. As a result, the responsibility to host refugees falls primarily on those states neighbouring the refugee-producing country. Most states consequently host refugees due to “the accident of geography.”¹⁰⁹ As a result, there is an uneven distribution of refugees between countries, which results in “some countries bearing a disproportionate share of the refugee burden, while others bear little or none of these responsibilities.”¹¹⁰

To address this unequal distribution, there has been a general understanding since the inception of the international refugee protection regime that the problem of refugees is a global problem, and that there is consequently an international responsibility to uphold the principle of *non-refoulement* by assisting those states hosting large refugee populations. As argued by Fonteyne:

¹⁰⁵ Article 33(1), 1951 Convention relating to the Status of Refugees, Text: 189 *UN Treaty Series* 150, Entry into force: 22 April 1954. It is important to note that state practice in recent years has led to the progressive development of the principle of *non-refoulement*. According to Goodwin-Gill, “by and large, States in their practice and in their recorded views, have recognized that *non-refoulement* applies to the moment at which asylum seekers present themselves for entry.” Goodwin-Gill, G (1996), *The Refugee in International Law*, Second Edition, (Oxford: Clarendon Press), p. 123 – 124.

¹⁰⁶ See, for example: Goodwin-Gill, 1996; and Hathaway, J (1991), *The Law of Refugee Status*, (Toronto: Butterworths). For an explanation of custom as a source of international law, see: Akehurst, M (1970), *A Modern Introduction to International Law*, Sixth Edition, (London: Routledge), p. 25-34.

¹⁰⁷ See: Goodwin-Gill (1996), pp. 167-171.

¹⁰⁸ *Ibid*, p. 30.

¹⁰⁹ 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, p. 141.

¹¹⁰ Rutinwa (1999), p. 6.

Burden-sharing, certainly in cases of large-scale refugee movements, is a virtual *sine qua non* for the effective operation of a comprehensive *non-refoulement* policy intended to ensure safe haven for all fugitives from political persecution or other man-made or natural disasters.¹¹¹

Some have argued that in recognizing the implicit link between the obligation to not *refoule* refugees and the need for international assistance to support those states that host large refugee populations, the drafters of the 1951 Convention understood that “if the burden became too much to bear, countries of asylum may be forced not to respect the principle of *non-refoulement*.”¹¹² As cautioned by Chimni, “when the link between the two principles [of burden sharing and refugee protection] is snapped what you will witness is the devaluation of the core protection principles, in particular of *non-refoulement*.”¹¹³

A growing number of host states in Africa believe that this link is under significant strain, and have warned the international community that a lack of burden sharing will lead to additional pressures on the willingness of African states to host refugees. While African states have generally not sought to extract burden sharing commitments from the donor community by preventing the arrival of refugees, in contrast with the actions of Southeast Asian states in the 1980s and Macedonia in 1999, individually and collectively they have frequently reminded the international community of the need to buttress refugee protection with adequate burden sharing. Some states, like Tanzania, have noted that it is only willing to continue hosting refugees if the international community demonstrates its willingness to provide the necessary support.¹¹⁴ As argued by a group representing African states in multilateral negotiations with donor governments in Geneva in March 2004, there is a concern among African governments that donor governments are losing sight of “the principle of international solidarity with those states who carry the heaviest burden of refugee protection,” which, they cautioned, could “lead to greater suffering and insecurity of millions.”¹¹⁵

¹¹¹ Fonteyne, J.-P (1980), “Burden-Sharing: An analysis of the nature and function of international solidarity in cases of mass influx of refugees”, *The Australian Year Book of International Law*, Vol. 8, p. 175.

¹¹² Kibreab, G (1991), *The State of the Art Review of Refugee Studies in Africa*, Uppsala Papers in Economic History, Research Report No. 26, (Uppsala: Uppsala universitet), p. 31.

¹¹³ Chimni, B.S. (1999), “The Principle of Burden Sharing: Some reflections”, Presentation to the Summer School in Forced Migration, University of Oxford, July, p. 7.

¹¹⁴ See: IRIN, “Tanzania: Mkapa calls for assistance for refugees”, 10 January 2001.

¹¹⁵ Government of South Africa, Permanent Mission to Geneva, “Statement on behalf of the African Group at the First Meeting of the Forum of the HCR on Convention Plus”, Geneva, 12 March 2004.

A number of factors have been seen to add to Africa's refugee burden in recent years. First, as a result of the 'accident of geography', the vast majority of the world's refugees are located in the global South, either neighbouring or in the same region as the refugee-producing countries. This is especially true in the case of Africa. According to the US Committee for Refugees, Africa hosted approximately 3,295,900 (28%) of the world's 11,498,100 refugees and asylum seekers at the end of 2004, while Europe, North America and Oceania hosted some 934,900 (8%).¹¹⁶ In fact, as illustrated by Table 2, Africa has hosted roughly a third of the global refugee population since 1964.

Table 2: Refugee populations: Africa and Global (1954 – 2004)¹¹⁷

Year	Africa	World	Percentage
1954	5,400	1,749,500	0.3%
1964	1,269,600	3,873,600	33%
1974	1,108,600	2,460,600	45%
1984	3,408,100	10,685,400	32%
1994	6,752,200	15,291,400	44%
2004	2,863,400	9,593,000	30%

This pattern of distribution gives rise to concerns about the impact of large refugee populations on poorer states. Many host states argue that the mass arrival and prolonged presence of refugees places a significant burden on the local environment, physical infrastructure, social services, food security, economy, administration and natural resource availability.¹¹⁸ While the nature of the impact of the presence of refugees on a host country needs to be more critically examined, it is important to note here that host states in the global South, especially African host states, have sought to keep the issue on the international agenda through the meetings of ExCom, making the argument that "from the moment of arrival, refugees compete with the local citizens for scarce resources such as

¹¹⁶ US Committee for Refugees (USCR), *World Refugee Survey 2005*, Washington DC: USCR, June 2005, p. 6 – 7.

¹¹⁷ See: UNHCR (2000), *The State of the World's Refugees: Fifty Years of Humanitarian Action*, (Oxford: Oxford University Press), pp. 310-313; and UNHCR (2005), Population and Geographical Data Section, *2004 Global Refugee Trends: Overview of Refugee Populations, New Arrivals, Durable Solutions, Asylum-Seekers, Stateless and other Persons of Concern to UNHCR*, (Geneva: UNHCR), 17 June.

¹¹⁸ See, for example: UNHCR, ExCom, "Economic and Social Impact of Massive Refugee Populations on Host Developing Countries, as well as Other Countries: A Quantitative Assessment on the Basis of Special Case Studies", EC/48/SC/CRP.40, 3 August 1998; UNHCR, ExCom, "Economic and Social Impact of Refugee Populations on Host Developing Countries as well as Other Countries: Partnerships with Bilateral Development Agencies", EC/52/SC/CRP.10, 31 May 2002; and UNHCR, ExCom, 18 February 2004.

land, water, housing, food and medical services”, and that “over time, their presence leads to more substantial demands on natural resources, education and health facilities, energy, transportation, social services and employment.”¹¹⁹

Concerns related to the impact of the presence of large refugee populations on developing host countries are compounded by the increasingly protracted nature of many refugee situations. As outlined above, the overwhelming majority (80%) of refugees in Africa are in a protracted refugee situation, an unending burden that host states are increasingly reluctant to assume. This reluctance is further exacerbated by the fact that donor states have “made it increasingly clear that they are no longer prepared to support long-term refugee assistance efforts” and have argued that “programmes which have already been in existence for a number of years ... should be brought to an end as rapidly as possible.”¹²⁰ While there is a concern among African host states that the international donor community is less willing to share their refugee burden,¹²¹ there is also a belief that donor governments are biased against refugee programmes in Africa. This belief is rooted in the fact that donor states have demonstrated their willingness to provide generous assistance to refugees in regions that are seen to be more politically relevant. In 1999, at the height of the Kosovo crisis, it was reported that donor contributed about US\$0.11 per refugee per day in Africa, compared to an average of US\$1.23 per refugee per day in the Balkans.¹²² Likewise, generous donor support was received for potential refugee movements in the weeks preceding the US-led invasion of Iraq in 2003, while programmes across Africa were simultaneously forced to make budget cuts.

As a result of this diminished donor engagement, most refugee assistance programmes in Africa have been required to cut 10 – 20% of their budgets. The case of Tanzania provides one example of the implications of these budget cuts. In 2001, UNHCR was forced to reduce its budget in Tanzania by some 20%.¹²³ In 2002, it was reported that the agency was required to “implement critical budget cuts, including US\$ 1 million each in

¹¹⁹ UNHCR, ExCom, “Social and Economic Impact of Large Refugee Populations on Host Developing Countries”, EC/47/SC/CRP.7, 6 January 1997, p. 1.

¹²⁰ Crisp (2000), p. 7.

¹²¹ See: Government of Nigeria, Permanent Mission to Geneva, “Statement of the Africa Group on the Occasion of the Informal Meeting on the ‘Statement of Good Practices on Targeting Development Assistance for Durable Solutions to Forced Displacement’”, Geneva, 28 April 2005.

¹²² Vidal, J (1999), “Black need, but only whites receive: Race appears to be skewing the west’s approach to aid”, *The Guardian (UK)*, 12 August.

¹²³ UNHCR, *UNHCR Global Report 2001*, 2001, p. 137.

the months of June and November” out of a total budget of approximately US\$ 28 million.¹²⁴ Again, in 2003, UNHCR reported that it “struggled to maintain a minimum level of health care, shelter and food assistance to the refugees in the face of reduced budgets.”¹²⁵

Sensitive to these recurring shortfalls in donor support, both governments have stated that they are only willing to continue hosting refugees if the international community is willing to provide the necessary support. As Tanzanian President Benjamin Mkapa recently told a meeting of foreign diplomats in Dar es Salaam, Tanzania’s “sympathy in assisting refugees should be supported by the international community because it was its responsibility.”¹²⁶

Finally, African states have recently expressed concern that donor states, especially European states, are promoting policies of ‘burden shifting’ instead of ‘burden sharing’ through the externalization of asylum. There is concern that the new European logic of co-operation “with regions of origin enabling them to provide effective protection as soon as possible and as closely as possible to the needs of persons in need of international protection”¹²⁷ is leading European states to find ways of shifting the burden of refugee protection back to regions of refugee origin, notably Africa, instead of seeking ways of sharing the refugee burden borne by host states in the developing world. The African Group, representing African host states in multilateral negotiations in Geneva, have recently cautioned that North – South negotiations on refugees “must be about burden sharing rather than burden shifting.”¹²⁸

The combined effect of these various pressures – the unequal global distribution of refugees, the perceived impact of large refugee populations on developing host countries, the increasingly protracted nature of refugee situations, declining donor engagement and concerns about the desire for some donor governments to engage in ‘burden shifting’ – has given added significance to the debate over burden sharing in Africa in recent years. Notwithstanding the mounting evidence that the presence of refugees may constitute both a

¹²⁴ USCR (2003).

¹²⁵ UNHCR (2003), *UNHCR Global Report 2003*, p. 165.

¹²⁶ IRIN, 10 January 2001.

¹²⁷ European Commission, “Communication from the Commission to the Council and the European Parliament: Towards more accessible, equitable and managed asylum systems”, COM(2003) 315 final, Brussels, 3 June 2003, p. 13.

¹²⁸ Government of South Africa, Permanent Mission to Geneva, “Statement on behalf of the African Group at the First Meeting of the Forum of the HCR on Convention Plus”, Geneva, 27 June 2003, p. 1.

burden and a benefit to the host state,¹²⁹ the concern of refugees as an 'unending burden' is the most frequently cited justification by host states for placing limits on the asylum they offer to refugees.

Principled objections of African states

It is striking that instead of addressing these perceived pressures, many donor states and human rights organizations focus on the failure of African countries to uphold their responsibilities under international human rights and refugee law. This has led to allegations of hypocrisy from many African host states, especially in light of restrictive policies in the West. As argued by the government of Tanzania in 1995:

There is a tendency by the International Community when dealing with the refugee crisis to impress upon the weaker countries of asylum to live up to their humanitarian obligations at the expense of their national rights and interest. *The primary duty of a state is to preserve itself and to protect its citizens and their rights. Countries of asylum, be they weak or strong, poor or rich, have a sovereign right to exercise this duty.* The international community must respect this right without bias or double standards.¹³⁰

The decade following this statement has witnessed an increased engagement in the refugee question in Africa, primarily by European actors, but this engagement has been seen by a number of African states not as a desire to lighten Africa's refugee burden, but to increase it. As outlined above, a number of African countries are concerned that recent European proposals will lead to burden-shifting, not burden-sharing, with African host states.

African host states have objected to such a trend for essentially two reasons. First, as outlined above, African states highlight the current inequalities in the global distribution of refugees, and emphasise that any programme that results in fewer African refugees being afforded protection in Europe will necessarily reinforce the current inequality of the international distribution of refugees. Second, African states perceive a significant power imbalance between themselves and donor states. As a result, they lack leverage against donor states, which places them in a position of 'being cooperate with' and unable to counter donor interests, especially given their dependence on donor assistance to refugees.

While African states have highlighted the hypocrisy of the European approach, as emphasized in the Tanzanian statement of 1995, and have emphasized the importance of

¹²⁹ See: Jacobsen, K (2002), "Can refugees benefit the state? Refugee resources and African statebuilding", *Journal of Modern African Studies*, Vol. 40, no. 4.

¹³⁰ Tanzania, Ministry of Foreign Affairs, 1995, p. 7; and Tanzania, 1995, para. 10. Emphasis added.

burden sharing to buttress the principle of *non-refoulement*, they have been unable to effectively oppose the policy priorities of European states. At the level of Geneva, the Africa Group has attempted to express these concerns in multilateral negotiations on refugees. In 2001, the Group argued that:

We as States are all duty-bound to provide protection in accordance with our human rights and refugee law obligations to the refugee communities in our territories, but these standards should also guide us on how we cooperate with one another on the international level. The alternative is dangerous. If we lose sight of our common purpose to deliver protection and assistance to refugees when negotiating multi- or bilateral agreements there is a risk that States would lose sight of the principle of international solidarity with those states who carry the heaviest burden of refugee protection. This in turn would lead to greater suffering and insecurity of millions. Such a response is bound to create more unpredictability.¹³¹

It is important to emphasise that the origins of these concerns pre-date the European initiative to transfer additional refugee protection responsibilities to Africa. As such, they highlight the central importance of understanding the long-standing concerns of African host states during the formulation of any initiative to externalise refugee protection from Europe to Africa. Building on the consideration of the trends in asylum in Africa presented in this section, the following section considers what factors contribute to these trends, and highlight a number of structural factors central to the asylum question in Africa which must be taken into account when considering methods of greater cooperation between Africa and Europe on the question of refugees.

Explaining the nature of the African response¹³²

As outlined above, host states in Africa point to the scale and unending nature of the refugee problem in Africa, the related security concerns, and concerns relating to international solidarity and burden sharing as the primary justifications for placing limits on the asylum they offer to refugees. Crucially, however, the response of states is also the result of a number of variables unrelated to the presence of refugees, but stemming from broader changes in the African political and economic landscape since the 1980s. These changes have resulted in new internal and external challenges to the state in Africa, including economic and political liberalization, the increasingly regional nature of conflict in Africa, and the

¹³¹ Government of South Africa, Permanent Mission to Geneva, "Statement on behalf of the African Group at the First Meeting of the Forum of the HCR on Convention Plus", Geneva, 12 March 2004.

¹³² For a more detailed presentation of the argument of this section, see: James Milner, *The Politics of Asylum in Africa: The cases of Kenya, Tanzania and Guinea*, DPhil thesis, University of Oxford, 2006.

increased imbalance in power relations between African states and the international donor community.

Recent commentators on asylum in Africa have not given sufficient consideration to the relationship between the increasingly restrictive asylum policies being adopted by states during the 1990s and broader political and economic forces in Africa. The predominant perspective of the literature on refugees in Africa in the past decade has been to examine the question of refugees in isolation of such forces, to catalogue violations of refugee protection standards and to examine specific aspects of particular refugee populations. While useful in some respects, such an approach will be limited in its analytical utility when trying to explain the response of states to refugee movements.

Indeed, a more comprehensive understanding of asylum policies in Africa needs to be rooted in a wider understanding of Africa's perceived place on the periphery of the international system.¹³³ Such an approach illustrates how many regimes in contemporary sub-Saharan Africa have a prevailing sense of vulnerability to external shocks and internal challenges. This sense of vulnerability, in turn, leads many regimes in Africa to view the arrival and presence of refugees as a threat to its survival. Faced with such a threat, but under pressure from the international donor community to provide asylum to refugees from neighbouring conflict, African states typically respond by containing the refugee 'problem' on the periphery of the state, and by placing limits on the asylum they offer.

The limited ability of African states to negotiate these tensions are best understood within the context of externally-imposed political and economic liberalization since the end of the Cold War. Given the centrality of political and economic liberalization, compounded by the power imbalance between African states and donor governments and institutions, African states became subject to "a comprehensive superstructure of international accountability."¹³⁴ A number of commentators have argued that the result was an erosion of sovereignty as "Western governments sought to deny African states the freedom to choose the political and economic systems which their leaders believed would best suit their

¹³³ See: Clapham, C (1996), *Africa and the International System: The Politics of State Survival*, (Cambridge: Cambridge University Press); and Ayoob, M (1995), *The Third World Security Predicament: State Making, Regional Conflict and the International System*, (Boulder, CO: Lynne Rienner Publishers).

¹³⁴ Young, C (1999), "The Third Wave of Democratization in Africa: Ambiguities and Contradictions", in Richard Joseph (ed.), *State, Conflict, and Democracy in Africa*, (Boulder, CO: Lynne Rienner Publishers), pp. 34-35.

countries' individual circumstances and needs."¹³⁵ Overall, "neo-liberalism has become the predominant ideology legitimating various policies and delegitimizing others."¹³⁶

Taken together, these changes in the political and economic landscape in Africa since the mid-1980s have resulted in a number of internal and external constraints on the African state today. Internally, the state in Africa is constrained by the effects of democratization and economic liberalization. Externally, African states face the constraints imposed by the neo-liberal consensus and the lack of policy alternatives. The end of the Cold War has meant that they are no longer able to seek alternative external support, and removed whatever geostrategic significance the continent may have had.¹³⁷

It is important to consider how these internal and external constraints have affected the asylum policies of African host states. Given the vulnerability of the African state to external shocks and the power imbalance between African states and the donor community, African states have tried to address this sense of vulnerability and overcome this imbalance when formulating their asylum policies. Given the effects of political and economic liberalization, the diminishing provision of public services as a result of economic liberalization and the introduction of competitive elections have affected asylum policies. Likewise, the process of political and economic liberalization has affected notions of membership in, and the very idea of, the African state. Changes in organizing ideologies witnessed in the past twenty years have resulted in changing notions of membership in the political community of the African state, and the reinforcement of the divisions between member and non-member of that political community. As argued by Herbst, "the wave of democratization sweeping across Africa ... has made citizenship laws even more publicly controversial than in the past, because it suddenly matters a great deal who can and cannot vote."¹³⁸

The implications of these internal and external constraints should be central to any understanding of the asylum question in Africa. In fact, African host states do not approach the arrival and prolonged presence of refugees in a historical or political vacuum, but rather as part of their broader political calculus. As argued by Crisp, it would, therefore, "appear

¹³⁵ Tordoff (2002), p. 237.

¹³⁶ Taylor and Williams (2004), p. 4.

¹³⁷ See: Sommerville, K (1999) "Africa After the Cold War: Frozen Out or Frozen in Time?", in Louise Fawcett and Yezid Sayigh (eds.), *The Third World beyond the Cold War: Continuity and Change*, (Oxford: Oxford University Press).

¹³⁸ Herbst, J (1999) "The Role of Citizenship Laws in Multiethnic Societies: Evidence from Africa", in Richard Joseph (ed.), *State, Conflict, and Democracy in Africa*, (Boulder, CO: Lynne Rienner Publishers), p. 267.

naïve to imagine that the issue can be addressed by simply exhorting African governments and opposition movements ... to treat the continent's refugees with greater respect and consideration."¹³⁹ Such considerations appear, however, to be absent from the formulation of an externalized European asylum policy that directly implicates African host states.

Part 3: Alternative Models of Cooperation

Although the current approaches misrepresent the position of Sub-Saharan African states within the refugee regime, this does not mean that alternatives are not possible. On the contrary, if the European approach to African states, and indeed towards refugee-hosting states in the South, were adapted to better account for the position, perspective and concerns of those states, then genuinely 'win-win' outcomes might be possible, which lead to cooperative outcomes that may ultimately be beneficial for refugee protection. Both European states and African states have interests and constraints on their actions. However, the current approaches only address European interests and do not effectively consider African interests. A new approach must be articulated within which the two sets of interests can be met and 'win-win' outcomes can be developed. To accomplish this, the refugee question must be seen within the broader range of issues enmeshed in North-South cooperation and must address refugee protection on the basis of a needs-based and comprehensive approach. In particular there are a number of recommendation that might address these needs:

A Needs-Based Approach

At the moment, the 'new' European approaches are not being introduced in accordance with the principle of 'additionality'. Rather there appears to be a substitution of core funding for supplementary programmes in areas that address European concerns with the onward movement of refugees. For example, initiatives such as the SPCP and CPA for Somali Refugees are being conceived in the context of reductions in UNHCR's Annual Budget. This is affecting the resources available for food rations and assistance and undermining the trust of African states in both the supplementary programmes and the refugee regime. The African Group in Geneva has therefore repeatedly argued that there is a need to address basic needs *before* additional programmes are introduced:

¹³⁹ Crisp (2000), p. 9.

The African Group wishes to emphasize again that contemporary deficiencies in protection are not related to so-called contemporary challenges but result from inadequate or insufficient respect of existing rules...The lack of adequate funding for the UNHCR's programmes in Africa is equally contributing to the inability of some countries to provide protection to refugees.¹⁴⁰

Where basic needs are not met, the 'new' European approaches are being seen as hypocritical and based on a containment agenda. Unless these basic funding issues are resolved and UNHCR's Annual Budget is adequately supported, African states will continue to be alienated by selectivity and double-standards.

UNHCR Facilitation

Political facilitation and leadership are required if 'win-win' outcome are to emerge from North-South cooperation. UNHCR's Convention Plus initiative attempted to take on this role, trying to identify political opportunities and constraints. However, the initiative largely failed to achieve its substantive aims. Its attempt to develop generic agreements between North and South on its three stands, relating to TDA, ISM and the strategic use of resettlement resulted in frameworks of understanding or 'joint statements' that offer little practical application. Meanwhile, it remains to be seen to what extent the work in these strands will be applied to achieve comprehensive approaches to specific protracted refugee situations. One of the initiative's main failures was its inability to speak to the interests of both North and South simultaneously. Instead, High Commissioner Ruud Lubbers' approach was perceived as Eurocentric by many African states.

Despite these limitations, however, Convention Plus offered an important starting point for identifying UNHCR's potential role as a facilitator for more open and transparent North-South dialogue. In particular, the initiative represents an attempt by UNHCR to identify, appeal to and channel the interests of states in both North and South into cooperative outcomes. The work of the initiative's Secretariat, alongside an informal biannual Forum which promoted open dialogue, offered a starting point through which UNHCR attempted to play catalytic and mediatory role between North and South. The initiative's work implicitly used the concept of issue-linkages in a positive way, attempting to recognise the interconnections between states' interests in areas such as security, development and peace-building, and to channel these into protection and durable solutions for refugees.

¹⁴⁰ Statement on Behalf of the African Group at the Third Convention Plus Forum, 1 October 2004.

It is important that lessons are learnt from this initiative, and that UNHCR continues to play this role of a politically engaged facilitator despite the limitations of Convention Plus. However, the Office needs to assume this role in a manner that tries to distance itself from a Eurocentric agenda. If it can play this facilitating role with greater autonomy from its main donors' interests, this may ultimately also be in the interests of donor states in general and European states in particular because it will help to reduce Southern mistrust of UNHCR-led initiatives. Such a role will require institutional leadership and strategic orientation by UNHCR. Rather than passively following exclusively donor-led initiatives, UNHCR needs to be able to recognise and respond to existing interests across the spectrum of issue-areas and seize opportunities to channel these into protection and solutions. Such an approach demands a greater engagement with politics and the development of a greater strategic and policy analysis capacity within the Organisation.

Comprehensive Solutions to Protracted Refugee Situations

The current European approaches are *ad hoc* and symptoms-focused because they are largely focused on a narrow and short-termist approach to containment. In order to genuinely address the European concern with onward secondary movement while simultaneously meeting the concerns of host states, a more comprehensive approach is needed, which addresses specific situations within their broader context.¹⁴¹ As outlined above, there are over 20 protracted refugee situations in Africa alone, comprising some 2.3 million refugees. Addressing these situations requires a multilateral approach which engages both a range of actors from across the UN system and applies a range of durable solutions in order to provide a lasting solution.¹⁴²

So long as refugees remain in situations of long-term encampment and without the sustained levels of political will required to overcome such situations, onward movement will continue and host states will face a range of security concerns which, when unaddressed, are likely to alienate those host states from willingly cooperating with prospective Northern partner states. The past examples of the International Conference on Refugees in Central America (CIREFCA) and the Comprehensive Plan of Action (CPA) for Indo-Chinese Refugees, both of 1989, remain the most notable successes for such a comprehensive approach based on multilateral cooperation, and it is important that lessons from these past

¹⁴¹ Loescher, G and Milner, J (2003), 'The Missing Link: The Need For Comprehensive Engagement in Regions of Origin', *International Affairs*, 79:3, pp. 583-617.

¹⁴² See: Loescher, G and Milner J (2005), *Protracted Refugee Situations: Protracted Refugee Situations: Domestic and Security Implications*, Adelphi Paper no. 375, London: Routledge, Chapter 4.

experiences are understood and applied to current situations in order to overcome protracted refugee situations.¹⁴³

The Refugee Regime in the Broader Context of North-South Cooperation

States do not approach the refugee question in a vacuum. To be successful, neither should our policy responses. It is important to recognize that all states, whether European or African, perceive the refugee issue within a broader context. The refugee issue is embedded within concerns about security, development, peace-building, and migration, for example. Identifying the constraints to and opportunities for cooperation therefore relies upon an improved understanding of these wider connections. Many African states consider refugee issues alongside issues such as structural adjustment, poverty reduction, democratization and a range of issues that appear unrelated to the refugee regime. Recognising this wider context has implications for cooperation because it allows both states and UNHCR to use linkages across issue-areas in order to channel concerns in other areas into a commitment to protection.

Closing the Geneva-New York Divide

Seeing the refugee regime in its broader context also has implications for how the UN system as a whole should address refugee protection and the search for durable solutions. Currently refugees are largely seen as the responsibility of UNHCR and the work of the Office receives only limited support from the UN Secretariat in New York. Indeed, there is a Geneva-New York divide in the work of UNHCR and the Office's work is rarely central to the considerations of the UN Secretariat in New York. There is a need for responsibility for protection and solutions to be more evenly shared across the UN system. Rather than UNHCR having to play the role of attempting to build inter-agency cooperation in isolation, the Office of the Secretary General and the Secretariat should be leading a more joined-up approach from New York that can develop positive linkages and engage the agencies required to make comprehensive approaches more viable. In particular, DPKO and the new UN Peacebuilding Commission need to have a greater role within finding durable solutions. Placing protection and solutions within this broader context could offer European states a better means to work towards long-term and sustainable solutions.

¹⁴³ Betts, A (2006), 'Comprehensive Plans of Action: Insights from CIREFCA and the Indo-Chinese CPA', *New Issues In Refugee Research*, (UNHCR: Geneva).

Conclusion

The current approaches of European states towards asylum in 'regions of origin' are highly Eurocentric. The proposals which implicate Sub-Saharan African states have been conceived in isolation from consideration of the political and structural realities of asylum in Africa, and with limited attempt to foster meaningful dialogue. By failing to take into account the constraints faced by African states, the current European approaches make numerous false assumptions about the position of African states within the refugee regime.

As the analysis of both the current Geneva-level debate and the case study of Tanzania highlight, the systematic misrepresentation and exclusion of the position of African states from the current debates has potentially serious implications for refugee protection. In particular, assuming that African states can be unproblematically coerced or induced to accept Europe's 'new asylum paradigm' risks exacerbating North-South polarization and alienating Southern states from their commitment to *non-refoulement*. Such an outcome would have serious implications for refugee protection and would also be unlikely to meet the migratory concerns of European states.

A new approach is therefore needed which better accounts for and addresses the realities and diversity of asylum in Africa. Effective approaches cannot simply be based on short-termist strategies of *negative linkages*, *divide and rule* and the hegemonic use of *intermediaries*. Rather, they need to address both specific situations and their underlying causes within a comprehensive and needs-based framework, which identifies the refugee issue as embedded in wider North-South relations. Only once the structural and political position of African states is fully integrated within a transparent debate can 'win-win' outcomes emerge which simultaneously meet the needs of European states, African states, and refugees.