



On the Record for Refugees

Special Issue: The Threat to Asylum in the North

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From the AP Editorial Desk

The recent meeting of UNHCR's Executive Committee in Geneva was marked by criticism of asylum policy as practiced in western states, particularly Europe, where support for the 1951 Refugee Convention has traditionally been strongest. In this two-part issue, *On the Record* examines different aspects of the debate.

This is the fifth issue in the current series of *On the Record*. The sixth and final issue in this series (which will be *Repatriation, Reintegration and Reviewing the Results of Excom*) will be issued shortly.

Highlights

Part One:

- **Refugee Advocates Vow Assault on Fortress Europe**
- **Trafficking People into the United Kingdom**
- **The Netherlands – Waiting in the Queue**
- **Sweden – Fighting Chain Refoulement**

Part Two:

- **Refugee Advocates Launch Campaign Against the Detention of Asylum Seekers**
- **Canadians Generous, But Families Being Split**
- **The United States Uses County Jails for Detention**
- **Privatizing Deportation from Australia**

Refugee Advocates Vow Assault on Fortress Europe

As Europe moves towards a single asylum policy, will it reinforce the ramparts of Fortress Europe or provide a refuge for those fleeing turbulence and persecution? IAIN GUEST sets out some of the issues that divide European governments and their critics.

In a time of war and disaster elsewhere in the world, it is ironic that the battle over asylum is most acute in the heartland of Europe – one of the safest regions of the world and the cradle of the 1951 Refugee Convention.

Refugee advocates feel that European governments are fashioning a unified asylum policy that views refugees as a threat to Europe's prosperity and aims to keep them as far away as possible. This, refugee advocates say, threatens the foundations of the 1951 system of refugee protection.

1998 opened with a major row over the leak of a confidential "action plan" on Iraqi Kurds by the K4 committee of the European Commission, which oversees the coordination of police and security matters. The plan was prepared after 3,000 Kurds unexpectedly arrived in Turkey, raising fears that they would move on to western Europe.

The Action Plan portrayed the Kurds almost exclusively as a security threat, and called for more effective police control and deterrence – including the coordinated finger-printing of asylum seekers. It also called for the creation of "safe areas" within the region and recommended European Union (EU) funding for reception centers inside Turkey.

Six months later in July, in its capacity as President of the European Union, the Austrian government circulated a confidential strategy paper on asylum and immigration. It also emphasized the need to control rather than admit refugees, and even raised questions about the relevance of the 1951 Convention.

The July paper was disowned by 13 of the 14 EU governments. But there is profound concern that they only disavowed the paper after it was leaked, and that it reflects their true thinking. Coupled with the fact that many governments are enacting tough national laws on immigration and asylum, and even reducing the social benefits of asylum-seekers, this seems to point to a regime based on deterrence instead of compassion.

All of this amounts to a profound challenge for UNHCR, which is keen to shift the debate on asylum in Europe back to a firm legal foundation and away from ad hoc solutions. How far can UNHCR go in protesting – and still retain a seat at the governmental discussions?

Issues of Disagreement

European governments and refugee advocates differ on their interpretation of several key issues.

Interpreting Statistics. According to a survey of 23 European countries by the European Council for Refugees and Exiles (ECRE), 277,576 applications for asylum were registered in 1997, compared to 254,316 in 1996. The number applying to Ireland rose by 229%. Italy also experienced a huge jump of 145%, when 17,000 Albanians arrived fleeing turmoil in that country. But Germany – which takes in more refugees than the rest of Europe combined – registered a decline.

Seventeen countries experienced an increase in 1997, while six experienced a fall. The overall figure, however, was still far less than the 438,191 asylum seekers who applied in Germany in 1992.

No one would dispute that a sharp increase in arrivals can create a sharp political reaction, and throw off the best-laid plans. Holland, for example, has experienced a sharp increase in recent months which far exceeds the 1998 quota for refugees set by the government. Most come from Iraq and Afghanistan, and almost none have documents. (See accompanying story).

But war and turmoil rarely respect the tidy assumptions of well-ordered countries like the Netherlands, and advocates say that with political will even the most "destabilizing" arrivals can be handled. After trying to interdict Albanians at sea, for example, Italy relented and allowed those who applied for asylum to stay – suggesting that rich, developed countries can absorb refugees in need. Much depends on the way that the statistics are interpreted and "sold" to the public.

The Cause of Refugee Movements. The controversial Austrian paper seemed to suggest that the reason why refugees flee has shifted following the end of the Cold War. Instead of the classic 1951 notion of a "well-founded fear of (state) persecution," says the paper, the reason is more often "inter-ethnic persecution and displacement by non-governmental power-brokers." Neither is found in the 1951 Convention.

How valid is this? One important test-case is to be found in the Serbian province of Kosovo, where over 300,000 ethnic Albanians have been displaced by the Serbian armed forces. As reported in *On the Record* (Issue 1), European governments have declined to give refugees from Kosovo the broad temporary protection afforded to Bosnians since 1992, even though the war is no less intense. Germany and Switzerland have sent them back. But UNHCR has no doubt that the Kosovars fit the definition of refugees in the 1951 Convention, and has said so in several statements. This begs the question: is the Austrian attempt at redefinition another device aimed at ducking Europe's legal obligations?

Illegals. As noted above, governments view asylum seekers as "illegal" because they arrive without documents or use smugglers, traffickers, and organized crime. But advocates reply that it is virtually impossible for persons who are fleeing for their lives to secure visas and other "legitimate documents" in countries like Iraq or Sri Lanka. Even in Istanbul, western embassies are closely watched. And most western countries do not issue visas to persons suspected of "defecting." This is one reason why the 1951 Convention asks governments not to punish asylum seekers as long as they present themselves within a reasonable time and explain the irregularities.

The Policy of Containment

Some of the fiercest arguments concern Europe's efforts to contain asylum seekers in the region they are fleeing or in "safe third countries."

This strategy of containment goes back to the beginning of the 1980s, when European governments responded to the sudden influx of Sri Lankan Tamils by imposing visas. Visas have

since become automatic whenever a country is caught up in unrest that seems likely to generate refugees. The burden of implementing the policy (and returning those without visas) falls on the airlines.

Containment has assumed many different forms in the 1990s. One of the most controversial is the creation of "safe havens" within the region generating refugees. This is modeled on the Kurdish enclave in northern Iraq which was established by Allied troops in 1991 and is still patrolled from the air. The experiment proved disastrous in Bosnia, where the UN Security Council established seven "safe areas" in an effort to protect displaced Bosnians. All seven were mercilessly attacked by the Serbs, and 7,000 Muslims were massacred when the "safe area" of Srebrenica fell in July 1995.

In spite of this, the K4 "action plan" for Kurds showed that the idea of havens is still alive and well in Europe. The plan talked of developing a "regional approach to protection" that could include "safe areas" within the region of origin. This was also termed "internal flight" options. But why would these succeed when others have failed? Even the "safe haven" for Kurds in northern Iraq looks increasingly unsafe: it has been the scene of constant infighting between Kurdish factions and is repeatedly threatened by Iraq. Hence the exodus of Kurds to Turkey. At the end of 1996, the Danish Immigration Service requested that the Foreign Ministry investigate conditions in northern Iraq. The latter found that the situation in the Kurdish enclave remained chaotic and unstable.

The K4 plan also called on the EU to help create "reception centers" in Turkey. But this too, alarmed refugee advocates because Turkey had shown little sympathy for the Kurds. As Bill Frelick of the US Committee for Refugees (USCR) points out, Turkey does not accept refugees from outside Europe, and only gives temporary visas to those who are accepted for resettlement in another country. Applications must be received within five days at a series of centers near the border. In general, Turkey views the Kurds as a threat to Turkey's own security because of their presumed support for Turkey's own Kurdish rebels (PKK). Trying to set up reception centers for Iraqi Kurds in Turkey, say advocates like Frelick, could be a prelude to their refoulement to Iraq. Lately Turkey signaled that it was not interested in setting up such centers if UNHCR was to be involved.

Safe Third Countries. Europe's grand plan also involves diverting or returning asylum-seekers to "safe third countries." These are primarily Poland, Hungary and the Czech Republic, which are being forced to overhaul their asylum laws and accept an ever-increasing share of asylum seekers in return for joining the EU. There are, in addition, scores of bilateral agreements, like the one between Germany and Poland under which Poland has been paid a lump sum of 120 million DEM dedicated for border controls.

But the question is whether these countries can indeed qualify as "safe third countries." Amnesty International told EXCOM that its researchers had found several asylum seekers detained at Budapest airport for weeks, without even a visit from UNHCR. Marton Ill, from the Hungarian group MEDOC, painted a grim picture of the way Kosovar asylum seekers are detained in seven administrative centers in Hungary – because western Europe will not take them. All this, say advocates, shows the limits to "safe third countries."

Burden-Sharing

The attempts to keep asylum-seekers away from the heartland of Europe have gathered pace with the move towards a single European policy on asylum. This envisages a tough "outer wall" which will be hard to penetrate. Once they are in, every effort will be made to ensure that asylum seekers do not concentrate in countries that provide generous social benefits.

Under two European agreements – the Schengen Convention and (its Europe-wide successor) the Dublin convention – the responsibility for deciding an asylum case will rest with the country of first arrival, even if the asylum seeker has moved on elsewhere in Europe. This is aimed at preventing refugees travelling around Europe "in orbit" until they find a way in.

Coupled with this, social benefits are being made less attractive. In Germany, for example, an amendment to the Social Security Act withdraws social benefits from rejected asylum seekers, even if they cannot immediately return home. This is thought to be aimed at the more than 200,000 Bosnians still in Germany, which the German government is keen to see leave.

According to ECRE, several governments are even reducing the benefits provided to those who receive refugee status. During 1998, Denmark lowered social assistance payments for refugees to 80% of that provided to nationals, and introduced penalties for refugees who refuse to participate fully in compulsory integration programs. This provoked a protest from UNHCR and earned Denmark a rebuke from ECRE at EXCOM.

Counterproductive

Advocates say that these measures are not only unfair, discriminatory and at odds with the legal obligations imposed by the 1951 Convention, but they are also counterproductive.

In the first place, they say, the more obstacles that are placed in the way of asylum seekers, the more likely it is that they will go underground and take advantage of traffickers and other criminals. In other words, Europe's Draconian asylum policies are fuelling organized crime – not exactly the intention of the K4. Second, it greatly increases the need for detention, which is easily the most expensive option. According to ECRE, Germany spends 50 million DM on detaining asylum seekers.

Deterrence backfires in other ways. John Morrison of the British Refugee Council points out that the "safe third country" system actually encourages asylum seekers to destroy their documents because they can only be deported to a "safe third country" if it can be proved (through documents) that they transited the country in question. This is why a small percentage of those who entered the German asylum system in 1994 were actually returned, says Morrison.

Harmonisation. In spite of the talk of harmonization, Europe's asylum policies are rarely consistent when it comes to determining refugee status from the same crisis. Between January and July of this year, when the fighting in Kosovo was at its height, Britain awarded refugee status to 88% of the 3,270 Kosovars that applied to the UK. But Germany's recognition rate for Kosovars was just 2.2%.

There were other anomalies: while Hungary accepted 23% of the Afghans who applied, Poland accepted just 0.42%. Belgium has offered its Bosnians the choice between an unlimited residence permit or return home – but Austria and Germany have ended their temporary protection. Austria recognized 7% of the Iraqis who applied for asylum in 1997 – while the figure for Switzerland was nearer 69%. While Britain recognized 14% of the Algerians, France deported hundreds back to Algeria.

How can these governments have such differing views of the same "persecution?" Whatever the answer, these variations show that when it comes to interpreting asylum requests from the same troubled countries, Europe's policy is anything but harmonious. Instead of "harmonizing" their policies of deterrence, governments should harmonize protection. While EU member states are actively working on the harmonization of deflection, protection has been a mess of incoherent national norms ever since co-operation began.

UNHCR's Role

UNHCR officials have watched the trends in Europe with some concern for years. Officials say that they will try to shift the debate back to the firm legal foundation of the 1951 Convention, but they also agree that UNHCR faces a major dilemma. If the agency pushes too hard, and protests too loudly, it risks getting excluded from a debate that is moving very fast indeed and is also secretive. UNHCR has no access whatsoever to the Center for Information, Discussion and Exchange on the Crossing of Borders and Immigration (CIREFI), a group that reports to the K4 group. NGOs will press UNHCR to take a stronger line and supervise the Convention. It all points to an intense few months.

How Europe responds will help to define its own identity, both as a unified region and as the most powerful player in a troubled world. Europe's emphasis on containment at source might be more credible if it showed more commitment to containing the threat to refugees, rather than their arrival in Europe. The K4 vision of containment starts after crisis has struck, and refugees have been uprooted. It is, in a very real sense, shutting the door after the horse has fled. If Europe applied half as much political muscle into preventing crises like the current assault against the Albanians in Kosovo, and into protecting refugees, say advocates, there might not be any refugees in the first place.

In a broader sense, however, the chaotic reality of a refugee crisis is fundamentally at odds with the reassuring imaginary vision of a united Europe that is able to manage and control refugee arrivals. As long as Europe vaunts its own prosperity without being able to help its less privileged neighbors find peace and stability, it must expect to be breached by desperate people seeking refuge.

- Iain Guest is a former UNHCR official and journalist. ECRE: US Committee for Refugees Bill Frelick.

Trafficking People into the United Kingdom

Why do asylum-seekers turn to traffickers and organized crime, even though it is dangerous and illegal? Why do they not often declare themselves immediately on arrival – but prefer to go underground? European security officials are at a loss for an answer. In an attempt to find out, John Morrison profiled 24 refugees in the United Kingdom for the British Refugee Council. These extracts are taken from his report.

The favored clandestine method of overland travel (into Europe) seems to be in the back of a lorry, either in the lorry itself or within a container which might be loaded onto it. Travelling for longer distances in a confined locked space is highly dangerous for stowaways, whether or not the driver is aware of their presence: "After hours of frantic cries for help, 18 Sri Lankans slowly suffocated to death while hidden in a sealed container truck in a deserted car park in western Hungary on July 15, 1995. The driver panicked as he approached the German border, unlocking one compartment before abandoning the lorry."

Apart from crossing the English Channel, ferries and other boats also play a significant role in trans-Mediterranean migration. A lot of attention has been paid in the European media to the movement of Kurdish refugees from Turkey to Italy and Greece using a range of large and small boats. An estimated 20,000 people were caught trying leave Turkey during 1997, according to the Turkish authorities, the majority being Turkish or Iraqi Kurds. "For \$5,000, small boats will carry a passenger across to one of the Greek Islands just off the Turkish coast. From there, fake documents are supplied for passage to Italy." Less affluent Kurdish refugees pay agents much less and attempt to swim across the Meric river directly into mainland Greece.

Although the largest vessels are relatively safe because they are easier to detect in the Adriatic, slightly longer Mediterranean voyages have ended in disaster and resulted in large-scale loss of life. The "Yiohan" collided with and sank a smaller boat onto which it was off-loading its passengers at gunpoint, somewhere between Italy and Malta on Christmas Day 1996. Over 280 migrants, who were locked in the ship's hold, are believed to have drowned; they included 92 Sri Lankans. The captain of the "Yiohan" had been charged with migrant trafficking two years previously. Other Mediterranean routes are important for refugees, including ferry services from North Africa to Italy, France, and Spain, and the small fishing boats ('paternas') that ply the Straits of Gibraltar with a not insignificant risk of drowning their (most often North African) passengers.

The Traffickers- Good and Bad. Some methods of illegal travel, particularly those which are clandestine, will always be of high risk to the migrant's personal safety (i.e. stowing away in the hull of a deep-sea cargo ship). Yet illegal migrants are also extremely vulnerable to additional abuse and degrading treatment at the hands of their agents, other migrants, government officials, criminal organizations, and the crew employed by carriers.

Having said this, it is important to note that many of our case studies suffered no abuse at the hands of the agent, and that in some cases the agent was a close personal friend of the refugee or their family. If any general conclusion can be drawn from the 27 case studies, it is that agents are sometimes viewed as the protector. Most often they are just a service provider, carrying out a business arrangement in exchange for money.

It is very clear that some human trafficking has very little to do with refugee protection and a lot to do with sexual exploitation and other types of degrading treatment. The risk and the reality of rape directly affected two of the case studies: "About one month after I had been in hiding, my mother arranged for a man to take me to Yemen. I went there with him and stayed with him and his girlfriend. Throughout this time he raped me and beat me and told me that if I told his girlfriend or anyone else he would take me to the authorities and I would be sent back to prison in Ethiopia." Ethiopian female A (Case No. 5).

The journeys that refugees make to reach the United Kingdom owe their complexity and their "illegality" to the dominance of the European enforcement agenda over that of individual rights and refugee protection. There has been no systematic monitoring available to this author of the mortality rates associated with human trafficking into Europe. It should be noted, however, that one organization has attributed over 1,000 documented deaths to trafficking and the related policies of enforcement since July 1995.

Arriving in the UK. Refugees who manage to get as far as Britain and arrive illegally by organized means risk discrimination at different stages of the asylum process, based less on the legitimacy of their claim to be a refugee, but more on the means they have used to reach the UK.

During the passage of the 1996 Asylum and Immigration Act, the UK government showed its understanding of the issues facing refugees at the moment of "illegal entry": "We believe that it is easier for them [refugees] to be honest at the point of entry, having fled the danger of their own country, if that is what they have done. But what is unacceptable, and casts doubt on credibility, is an attempt to pass off a fake identity or forged passport as genuine. It is the dishonesty inherent in such an attempt which triggers the accelerated appeal procedure."

One of the main reasons why this assertion by the government lacks credibility is that it ignores the dynamic that human trafficking, now essential for so many refugees, has added to the entry process. It also discounts the very real fears a refugee may have of officialdom and of being returned to persecution without being able to present their case.

From the nationalities profiled in our case studies, Algerian, Chechen, Ethiopian, Sierra Leonean, and Sri Lankan refugees who claim asylum immediately upon arrival risk having to give a full substantive interview immediately. Such interviews raise serious difficulties for many refugees, especially after weeks of travelling and poor advice from their agent.

Without the assistance of a solicitor or a community representative, many refugees might find it difficult to suddenly "open up" to officials after having been asked to engage in deception for so long by their trafficker. "Moreover, some of those most need of protection – the tortured and traumatized – may be among those who find it difficult to articulate even the basis of a claim, until trust is established."

Many refugees are also known to suffer from Post-Traumatic Stress Disorder (PTSD) when they arrive in the UK: "I have seen many refugees who would walk a very long way to avoid having to pass a uniformed person in the street, even if they were a traffic warden such is their fear of uniformed officials of all sorts. Hardly surprising, when they arrive in the UK such individuals –

who are sleep deprived and jetlagged, filled with not unjustified fears about being imprisoned once again – are highly unlikely to approach any of the huge variety of uniformed [or even plain clothes] officials they encounter."

Passing through immigration control illegally, by continued use of a false document for example, is clearly against the refugee's interests in terms of the current UK asylum procedure. Even if an asylum claim is made only hours after entry into the UK, the claim will be regarded as "in-country" and so there will be no entitlement to welfare benefits. In addition, because of the government's restrictive interpretation of Article 31(1) of the 1951 Convention, doubt will also be cast on the credibility of the asylum claim itself.

Yet there are very good reasons for refugees making in-country claims, not least the desire to seek family and community advice and support before approaching officials. It is also likely that many refugees do not understand the full consequences of their actions, that non-uniformed officials could actually be immigration officers or that they have the right to seek asylum at all. "I didn't know you could just walk in and claim asylum. I stayed here for a year and a half before people told me." Algerian male B (Case No. 2)

Those who have traveled to the UK with an agent or courier may have another reason for not claiming refugee status immediately upon arrival and surrendering their false travel documents to immigration. Because they are at the mercy of the agent: "The agent will give them information which is often false ... [In this case] the agent distanced himself and once they were through customs [and immigration] they met at a coffee shop and the [false] passport was returned. He had a good passport, the agent charged him \$2,000 less on the basis he returned the passport." Community leader discussing Kurdish (Iranian) male A (Case No. 13).

Forged Documents. Good forged documents are expensive and so there is a real incentive for the agent to recycle them as much as possible. Until carriers' liability legislation started to bite, this could have been achieved overseas by collecting documents after exit immigration checks, but before boarding.

Now, with the carrier gate checks under the AGC system, agents or their couriers have three potential strategies:

- to collect documentation during the flight;
- to collect documentation air-side upon arrival before immigration controls;
- to collect documentation after entry into Britain.

It might seem clear that it would be in the refugee's best interests to conform to one of the first two strategies and allow an at-port asylum claim. Couriers would then leave the plane before their clients, usually on a legal EU travel document, and clear immigration before anyone claimed asylum. In such cases, refugees are sometimes instructed by agents to delay leaving the plane or to take a transit to another terminal (i.e. At Heathrow) and so disguise the flight's point of departure. A number of recent practices have attempted to thwart the agent's means of recycling documentation. For example, as part of "passenger profiling" some airlines will photocopy the documentation of passengers in a discriminatory (see quote below) or systematic

way, or they will withhold the documentation of anyone who might be a potential asylum seeker, but with a possible forgery that is not "reasonably apparent" to the carrier (sometimes a suspicion based on no more than skin-color) for the duration of the flight. "At Lisbon Airport, the national airline of Portugal, TAP, has, since October 1991, photocopied the passports of all non-white passengers travelling to the UK, Germany, the U.S. and Canada, since, a spokesman said, they were all 'potential clandestine immigrants'."

False Documents or no Documents. This report has been very clear about how and why it is so difficult for refugees to travel using legal documents at any stage of their journey. On the basis of the testimonies of the case studies, it is evident that convincing fakes of Greek, Portuguese, Czech, Italian, and French passports or ID cards are available at widespread locations, as long as you are in possession of the necessary money and/or the contacts. There are known to be many such documents in circulation, not least because of large scale thefts of blank passports and identity cards from government offices in countries such as Belgium and Italy. One of the major limiting factors seems to be making the ethnicity of the refugee match the "racial stereotype" of known majority or minority communities and so avoid "passenger profiling" (hence the preference for Greek or Italian IDs for Kosovans or Kurds; or even a north European passport for Somalis) Extremely convincing counterfeits or stolen originals are known by western governments to be in extensive circulation around the world and to be of considerable financial value.

- These extracts are from the "Cost of Survival: The trafficking of refugees to the UK" (£9.95 plus Postage and packing) attention of Publications Assistant or write to: Publications Assistant, Refugee Council, 3 Bondway, London SW8 1SJ, UK. The British Refugee Council is coming online November 10.

The Netherlands – Waiting in the Queue

Over the last year, the Netherlands has found its tolerance strained by the arrival of tens of thousands of Afghans and Iraqis. Corinne Packer looks at the Dutch response.

Since January of this year alone, an estimated 35,000 to 40,000 individuals have sought asylum in the Netherlands. Of these, 50% to 55% have come from Afghanistan and Iraq. This has produced a pile-up: reception centers are packed and the numbers are rising since even rejected asylum seekers are not being expelled or returned.

The public debate is intense, and the parliament is trying to respond. Among the measures being considered, one would introduce waiting lists for asylum seekers. (At the moment, claimants wait up to 24 hours at a receiving center on arrival.) Second, anyone who has a "Dublin" claim – i.e. can claim asylum in another country – will not be given reception. Third, those rejected could be returned. They could include Bosnians, Iraqis, and Afghans: a new report by the Foreign Ministry, due out soon, is expected to recommend that Iraqis who make false claims or who are rejected be returned to northern Iraq. Afghans will be sent to Peshawar. New legislation is also expected soon, whereby claimants without official documentation will be automatically proclaimed "manifestly unfounded."

Iraqi Asylum Seekers. An estimated 800 to 1,000 Iraqis seek asylum in the Netherlands every month, and the Dutch Government is particularly careful in assessing their claims. Many Kurdish claimants have been found to come from Lebanon, Egypt or other countries in the Middle East.

In order to assess the veracity of the claims, the Dutch Government has established two country desks in Afghanistan and Iraq to supply information, help verify claims and generally monitor the situation in these countries. Second, it is establishing a system of language analysis, similar to that already used by Sweden and Switzerland, intended to confirm the asylum seeker's country of origin of by their language. The system will be in full application by 1999.

Debate over Official Documentation. There have been a number of policy debates in the Netherlands. One involves the absence, destruction or falsification of official documentation. The Dutch government (and some Dutch refugee organizations) believe a considerable number of asylum seekers destroy their own official documentation in the belief that it will assist them in their claim. They then go on to claim it has been stolen, is missing, or has been destroyed by other forces.

In response, the Dutch Government, like a number of other European Governments, has placed the onus on the claimant to prove that he or she has not been responsible for losing their documents. This has caused some concern among a number of NGOs and a voluntary group of experts; firstly, because providing this proof is a very difficult thing for the claimant, and secondly, because it is contrary to the 1951 Refugee Convention which places the burden on the receiving State to prove otherwise. Nonetheless, Dutch policy now states that applications by claimants who cannot prove that their documentation is official, or was truly stolen, will be deemed "unfounded" and the claimant will be refused asylum.

The problem is a delicate one. In the case of Iraqi refugees, for example, many come from northern Iraq. These individuals have no access to, or authority from which to obtain, official documentation. A great number of individuals have fled without documentation or have had it stolen. Those who do possess documents are still under scrutiny, since these may be pre-1991.

Kosovars and Algerians. Another policy debate has revolved around the inevitable limbo in which asylum seekers find themselves when they are being expelled or returned. At present, asylum seekers are granted a formal permit (known as the VVTV). This grants temporary status during their adjudication procedure and enables them to remain in the Netherlands for a maximum of three years. If after three years the Dutch Government deems the country situation to remain dangerous, individuals are officially granted asylum. If the country situation is deemed peaceful and safe, individuals are returned.

The current debate in the Dutch Parliament is over whether indicators can be identified to define "bad," "dangerous," or "ongoing war." Clearly, such situations are not black and white and each country must be considered individually. However, the Parliament feels it is important to recognize basic definitions. At present, this is of particular relevance to asylum seekers from Kosovo and Algeria. The government has failed to issue a VVTV policy for these groups (most likely because there has not been any formal EU decision). As a result, Kosovar and Algerian

asylum seekers are being left in limbo: not returned but not given temporary status in the Netherlands either.

Returns. Now that peace is considered established in Bosnia, the Netherlands has followed Germany's example and decided it is time for Bosnian asylum seekers with temporary status to be sent back. For most of these individuals, the 3-year threshold has arrived or is fast approaching. Permits for temporary status are no longer being issued, yet the individuals are still waiting to be returned. In the meantime, individuals are simply waiting in reception centers, no longer able to pursue education, employment, skills, or language training, etc.

In reality, however, many are not being returned. As a result, individuals whose claims have been rejected generally find themselves in a state of limbo. In the case of Iraqis whose claims for asylum have been rejected individuals would normally be sent back to Iraq. However, these individuals have been left in the Netherlands with no status whatsoever.

Adjudication and Appeal Procedures. Finally, the Dutch Government has tried to improve their system of adjudication to reduce the time needed for applications to be processed. A number of steps will be implemented. For example, decision-making will be improved and made more efficient at the first instance by the adoption of concrete measures. A formal high court will also adjudicate appeals.

- Corinne Packer lives in the Hague. She has written widely on women's issues.

Sweden – Fighting Chain Refoulement

Germany returns Bosnians who sought sanctuary from minority areas in Bosnia, Sweden does not. As a result, hundreds of Bosnians have left Germany for Sweden. Gregor Noll reports on how Sweden is reacting – and how Sweden's dilemma has exposed a loophole in the "burden-sharing" provisions of the Dublin Convention.

Under the Dublin Convention, Germany is obliged to take back Bosnians who first sought sanctuary in Germany, but then moved on to Sweden. It is, however, probable that they would be denied protection in Germany and sent back to Bosnia. In the first half of 1998, only 34 of 2,726 asylum applicants from Bosnia were allowed to stay in Germany. In general, Sweden provides protection to such cases. Their return from Sweden to Germany would thus mean nothing less than chain refoulement, prohibited by Article 33 of the Geneva Convention. This poses a dilemma for Sweden.

The Swedish Aliens Appeals Board has recently referred a pilot case to the Swedish government, hoping for a precedent-setting decision. In the referral document, the tension between the (1951 Refugee) Geneva Convention and the Dublin Convention becomes very clear. The reallocation criteria in the Dublin Convention presuppose that the asylum procedures in all member states will produce the same outcome. In this case, they manifestly do not. But the Aliens Appeals Board considers that the formal (Dublin) agreement should reign supreme, and so advises the government to send the applicants back to Germany.

Interestingly, if the Swedish government sought guidance in the Dublin Convention proper, it would find that Article 2 reaffirms the obligations of all Member states under the Geneva Convention. Even if Dublin allowed member states to process applications formally not under their responsibility, the political dilemma would remain. When a single member state decides prematurely to withdraw protection, those affected will move to another Member State, compelling the latter to choose between its loyalty to international refugee law (Geneva) or to multilateral instruments of migration control (Dublin).

In essence, the Dublin system presupposes a central authority determining protection needs – that is, some form of European Asylum Tribunal, as earlier proposed from within the NGO community. A less ambitious solution would be to give UNHCR the task of commenting on state reports on compliance with the 1951 Convention. This would provide authoritative guidance, although without legally binding effect. At the NGO meetings preceding EXCOM, this was discussed, but senior UNHCR officials did not believe that states were willing to support the idea.

A recent proposal on Temporary Protection from the EU Commission adds another angle. This suggests a mechanism under which the European Council would take common decisions on the "phasing-out" of such protection. The rationale is precisely to inhibit so-called "secondary flows." But the European Council is not a court. Phasing out would become politicized, at the expense of protection. And, finally, a mechanism based on Temporary Protection would not address the clash of the Geneva and Dublin Conventions. Sweden's dilemma would remain as real as ever.

- Gregor Noll is based at the Raoul Wallenberg Institute in Lund, Sweden. He is writing a doctorate on asylum law in the European Union.