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Chapter 1 *Madeleine Byrne* "Fortifying Europe: Poland and Slovakia Under The Dublin System"

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FORTIFYING EUROPE: POLAND AND SLOVAKIA UNDER THE DUBLIN SYSTEM

Madeleine Byrne

This paper will consider whether Mike King's 'buffer zone' thesis has relevance when considering the experience of Poland and Slovakia under the Dublin system, which requires the return of asylum seekers to their first country of entry into the European Union (EU).

The paper will first offer an analysis of the principal elements of King's thesis. These are the 'domino effect' created by bilateral readmission agreements; the significance of non-state actors in the framing of asylum policy, what King describes as the "dynamic 'reshuffling' of geo-political groupings", and his conception of the buffer zone as a series of concentric circles of influence.

It will then scrutinize the Dublin II Regulation to argue that King's thesis remains relevant when considering Poland and Slovakia's asylum policy for two reasons. It illustrates the asymmetrical relationship between these 2004 accession states and the EU, while manifesting a tension between state sovereignty and supranational governance.

This article seeks to explore Mike King's notion of the 'buffer zone' in light of immigration policy and practice within the European Union (EU). In particular, it will assess whether King's concept has continuing relevance with regard to the asylum policies in Poland and Slovakia. This analysis is structured as follows. Section I analyses three principal elements of King's buffer zone thesis, first developed in 1994. These are the 'domino effect' created by bilateral readmission agreements; the significance of non-state actors in the framing of asylum policy, what King describes as the "dynamic 'reshuffling' of geo-political groupings", and his conception of the buffer zone as a series of concentric circles of influence.

Section II scrutinizes the impact of the Dublin II Regulation on Poland and Slovakia in terms of King's thesis. The importance of Poland and Slovakia within the contemporary EU asylum regime cannot be understated as both nations now form the Union's eastern border. Moreover, they offer an

interesting counterpoint to each other. Poland was a 'trailblazer' in terms of its early bilateral agreement with Germany that has provided the foundations for broader EU cooperation on asylum policy and led to developments towards a common asylum system. While Slovakia has the lowest refugee recognition rate in the Union, which I will suggest reflect an asylum system under stress.

Central to King's thesis is that the 'buffer zone' protects the more powerful partner's interests to the detriment of the weaker party's interests.¹ There is evidence that Poland and Slovakia resisted implementing elements of the *acquis communautaire*, which they could see would lead to an unequal distribution of the asylum burden within their borders and potentially undermine the development of strong bilateral relations with their neighbours.²

Both countries also face challenges resulting from the introduction of 'restrictive' immigration policies as a result of their accession to the EU. These include logistical difficulties, arising from increased reception requirements, and concerns about their self-image as nations traditionally welcoming of refugees, or where the politics of immigration have largely been a marginal concern.³

¹ Heather Grabbe, 'The Shape Edges of Europe: Extending Schengen Eastwards', *International Affairs*, Vol. 76. No. 3, (July 2000) p.521; FFM (*Forschungsgesellschaft Flücht und Migration*) 'EU Asylum and Immigration Policies in Central and Eastern Europe: The "domino" effect,' www.ffm-berlin.de/domino-pdf December 1997, p.1 accessed 8 September 2006. See also Claire Wallace and Dariusz Stola (eds.), *Patterns of Migration in Central Europe* (Basingstoke: Palgrave, 2001), pp.7-13.

² Grabbe, 'The Sharp Edges of Europe' p.526; Peter Vermeesch, 'EU enlargement and immigration policy in Poland and Slovakia' *Communist and Post-Communist Studies*, Vol.38, No. 1, 2005, pp. 84-86; Margit Besseney Williams, 'On Europe's Edge: New and Old Borders in Central and Eastern Europe' Paper presented at "The New Faces of Europe", University of Florida, Centre for European Studies, Paris, 18-19 February 2005.

³ See Helmut Dietrich, *Etat d'urgence pour les réfugiés*, <http://www.ffm-berlin.de/etaturgence.html> (2005) In: Plein Droit, Nr 65 (2005), accessed 26 September 2006. Holmes and Zagorski have identified a relative lack of xenophobic attitudes among Poles. When asked about the benefits and threats created by foreigners, around two-thirds mentioned benefits. However, a majority (56 %) believed Poland did not need more migrants and almost half (48 %) only wanted refugees to remain on a temporary basis. Leslie Holmes and Krzysztof Zagorski, 'Polish Attitudes Towards Foreigners: Migration and People-Smuggling, an Analysis of Recent Survey Data', Unpublished paper presented at the 7th AACPS Conference, ANU, Canberra, 4-5 February 2005, pp.7 & 10. Karol Zbořil, director of the Slovak Refugee Council noted that in Slovakia there were 'no signs of the extreme negative attitudes (towards asylum seekers and refugees), which exist in other parts of Europe' (cited in Alice Szczepaniková, Marek Čaněk and Jan Grill (eds.), *Migration Processes in Central and Eastern Europe: Unpacking the Diversity* (Prague: Multicultural Centre Prague, 2006), p.66

Buffer Zone Or ‘Middle Zone’?

The terms ‘buffer’ or ‘buffer zone’ have traditionally applied to a small independent states or groups of states lying between two or more larger rival military powers.⁴ Collinson suggests that is unsurprising that a term previously used to describe Central and Eastern Europe’s geopolitical interwar status (when it was a ‘politico-military buffer’ between Germany and Russia and then later between NATO and Warsaw Pact countries) is again being applied to the region. Within Central and Eastern Europe (CEE) however, the term is politically sensitive. Not only does it imply a dependency on the West, as Kürti notes, but risks reinforcing a sense of ‘otherness (and) backwardness’ in the region.⁵

As a result of these sensitivities, Stola prefers to characterize CEE as a ‘middle zone’ not ‘buffer zone’ between East and West.⁶ Historians have used the term ‘middle zone’ to indicate the region’s status in the interwar period, but also during the Hapsburg Empire.⁷ However, the term evades consideration of the key element of the ‘buffer zone’ thesis; that is the power imbalance between the states seeking to institute it and their perceived need for ‘protection’ from unwanted asylum seekers or other potential immigrants. It is for this reason that I believe that the term ‘buffer zone’ has continuing value in discussions about contemporary EU asylum policy. As I will seek to demonstrate here, CEE is continuing to provide a ‘protective’ role within the Dublin system.

FORTIFICATION AND ‘FORTRESS EUROPE’: THE EU AND ITS ‘BUFFER ZONE’

In 1994, Professor Mike King from the University of Birmingham presented a paper at a European Consortium for Political Research (ECPR) planning session in Madrid called ‘Conceptualising “Fortress Europe”: a consideration of the processes of inclusion and exclusion’.⁸ In the paper,

⁴ Sarah Collinson, ‘Visa Requirements, Carrier Sanctions, ‘Safe Third Countries’ and ‘Readmission’: the Development of an Asylum ‘Buffer Zone’ in Europe, *Transactions of the Institute of British Geographers*, New Series, Vol. 21, No.1 (1996) p.79.

⁵ Wallace and Stola, *Patterns of Migration in Central Europe*, p.73.

⁶ Ibid, pp.84-105.

⁷ Ibid, p.86.

⁸ Mike King, ‘Fortress Europe: The Inclusion and Exclusion of Migrants, Asylum Seekers and Refugees’ *Studies in Crime, Order and Policing Occasional Paper no. 6*, Leicester, Centre for the Study of Public Order.

King expressed his unease with the idea of a ‘Fortress Europe’ as a static entity, in which the opening up of external borders mirrored the introduction of compensatory measures of control.⁹ King elsewhere stated that ‘Fortress Europe’ was seen as a ‘structure for the *réfoulement*¹⁰ of immigrants, refugees and asylum seekers, a citadel with the drawbridge closed, a geopolitical space with firmly shut doors, an iron curtain.’¹¹ King identified two primary difficulties with the ‘Fortress Europe’ concept. First, it usually only referred to the Schengen and EU area as a whole. Second, it over-emphasised exclusionary controls, policies and effects immediately external to that area.¹²

Rather than one single ‘Fortress’, King suggested that what instead existed in the EU were processes of ‘Fortification’. Exclusionary border policies did not only create an environment of ‘insiders’ and ‘outsiders’, but an evolving dynamic sustained by relationships of inclusion and exclusion. Moreover, King argued that the restrictive policies of inner Europe were causing a ‘ripple of corresponding controls’ on the borders of outer-Europe that he called the ‘domino effect’.¹³ Drawing on Gramsci’s notion of the state being a relatively defenceless ‘outer ditch’, without its ‘fortress’ and ‘earthworks’, King suggested the metaphorical perimeter walls of the EU fortress expanded and incorporated those on the margins.¹⁴

Two pieces of legislation provided the outer limits of this process of Fortification – the 1951 *Geneva Convention on the Status of Refugees* and the 1993 amendment of the Federal Constitution of Germany that enacted the principle of the ‘safe country principle’.¹⁵ In this respect, the ‘buffer zone’ is as much a consequence of legislation as geography. As Christiansen and Jorgensen state:

⁹ Ibid, p.1.

¹⁰ This term relates to the return of refugees to countries where they may face persecution based on their race, religion, nationality and other factors identified by the 1951 *Geneva Convention Relating to the Status of Refugees*.

¹¹ *Structure de réfolement des immigrants, des réfugiés et des demandeurs d’asile; une citadelle dont le pont-levis est fermé, un espace géopolitique aux portes obstinément closes, un rideau de fer*. Mike King, ‘Contrôles: frontières, identités: Les enjeux autour de l’immigration et de l’asile’ *Cultures et conflits* no. 26-27 (1997) pp.35-49 (<http://www.conflits.org/document361.html>).

¹² King, ‘Fortress’, p.1.

¹³ King, ‘Policing Refugees and Asylum Seekers in “Greater Europe”: towards a reconceptualisation of control’, in M. Anderson and M. den Boer (eds.), *Policing Across National Boundaries* (London: Pinter Press, 1994), p.70.

¹⁴ King, ‘Policing’, p.71.

¹⁵ King, ‘Contrôles’.

The walls around the alleged 'Fortress Europe' [do not define] at one stroke, territory and *raison d'être* of the polity. Instead, membership and space, which are defined by different policies overlap. The walls 'erected' by individual policies intersect.¹⁶

Here, notions of a fixed 'border' (or territory) come under challenge, not only via mechanisms of control – the *police à distance*¹⁷, which prevents certain third-country nationals considered to be a 'flight risk' from entering the EU – but in the way such mechanisms are internalized into the domestic legislation of third countries. As Rigo notes, within the EU borders, there are no longer lines between territorial units that define separate sovereignties, but rather areas where sovereignty is shared among different actors and occasionally private agents.¹⁸

The 'Domino Effect' and Bilateral Readmission Agreements

Readmission agreements allow for the return of irregular immigrants to the second state, these immigrants being either citizens, or third country nationals that have transited through the former state's territory. Though generally associated with EU immigration policy debates in the 1990s, such agreements are not new. Bi-lateral arrangements between France and Germany, Austria, the Benelux countries and Switzerland, were instituted in the 1960s.¹⁹

Readmission agreements within the EU have in the past taken many forms. Some were bi-lateral, others multi-lateral; mono-directional or reciprocal. Such agreements either allowed for the readmission of nationals or (rejected and otherwise) transited asylum-seekers and/or clandestine immigrants.²⁰ Most agreements ensured that the two nations accepted citizens and non-citizens of either territory. In contrast the readmission agreements of the 1990s, King suggests, were largely mono-directional,

¹⁶ Cited in Enrica Rigo, 'Citizens and foreigners in the enlarged Europe' Draft paper, presented at 'Implications of Enlargement for the Rule of Law and Constitutionalism in Post-Communist Legal Orders', European University Institute, Florence 28-29 November, 2003, p.12.

¹⁷ 'Policing at a distance' describes the preventative policing function of staff at consulates and embassies who determine which nationalities can get access to EU territory. See Didier Bigo and Elspeth Guild, *Controlling Frontiers: Free Movement Into and Within Europe* (Aldershot: Ashgate, 2005), p.235.

¹⁸ Rigo, 'Citizens', p.2.

¹⁹ King, 'Fortress' p.8

²⁰ Ibid.

that is from the western European states to CEE and supplemented by generous aid packages.²¹

Germany acted as a pioneer in terms of these 'new' readmission agreements with its *Governmental Agreement on Co-operation in Matters referring to Migration Movements* signed with Poland in 1992.²² The agreement modified an earlier agreement between Poland and the Schengen states, signed in 1991, which did little to impede the unauthorized movement of people, especially to Germany.²³ The impact on Poland as a result of its readmission agreement with Germany can be seen in statistics from 1996. During that year the Polish Border Guards accepted the readmission of 9,655 'illegal immigrants' from Germany – an increase of 6 % compared to the previous year.²⁴ The largest numbers came from Moldova and Armenia, but also included in the group were people from major asylum-producing countries: Afghanistan, Sri Lanka, Iraq, Russia and Pakistan.²⁵ In contrast, Germany accepted the return of 118 aliens from Poland in the same period.

More broadly, the significance of the German-Polish agreement lies in its embodiment of the 'safe first entry' principle that provided the basis for the Dublin system. Under this principle certain countries are 'safe', which means that asylum seekers can seek protection there. It also denies the possibility of either country's nationals lodging asylum claims as all EU Member States are considered 'safe'. In 1993, Germany amended its Federal Constitution to institute the principle of 'safe-first countries of entry'. This modification was, according to Rigo, enacted with the aim of regulating the arrival of asylum seekers from Poland and the Czech Republic.²⁶

As a result of this principle, applications by asylum seekers coming to Germany from a 'safe' third country were considered to be manifestly

²¹ The Germany-Poland agreement was concluded in 1993 after Germany agreed to a payment of DM120 million; while the readmission agreement with Romania took effect in 1992 on payment of DM 30 million for 'resettlement costs'. King, 'Policing', p.80.

²² Rigo, 'Implications', p.6.

²³ Ibid.

²⁴ Peter Futo and Thomas A. Tass, *Apprehension Statistics from Border Guards of Central and Eastern Europe: a Resource for Measuring Illegal Immigration?*, June 2001, p.69. Available at http://www.uni-corvinas.hu/~pfuto/ICMD_Apprehension_Statistics_methods.doc

²⁵ Ibid.

²⁶ Rigo, 'Implications', p.5.

unfounded, the logic being that they could have applied for asylum during their journey. Such asylum seekers are either denied entry or, if identified on German territory, deported. Soon after Germany changed its Constitution, other EU Member States adopted the principle, which meant that all countries bordering the Union were now considered 'safe', thereby creating the buffer zone.

Collinson acknowledges confusion about terms used to denote the so-called 'safe third country' principle, in that other terms used include 'first host country'; 'host third country', 'safe first country' and 'safe first country of entry', yet as the UNHCR noted all terms denote the idea of 'protection elsewhere'.²⁷ At the 1992 London meeting of the *Ad Hoc* Group on Immigration, EU ministers agreed to a resolution in which applications of asylum seekers found to have passed through, or spent time in, a country where they could have sought protection would not be examined and that the applicant may be sent to that country.²⁸ Designed to resolve the issue of 'refugees in orbit' – that is asylum applicants for whom no Member State takes responsibility – the resolution provided the foundations for the so-called Dublin Convention ('Convention Determining the State Responsible for Examining Applications for Asylum') signed by Member States in 1990.²⁹

This safe first country principle leads to what King described as the 'knock-on' or 'domino effect' in which CEE states conclude bilateral readmission agreements with countries further to the east and south.³⁰ Poland and Bulgaria, for instance, signed a readmission agreement in 1993 which provided that Bulgaria accept all Bulgarian asylum seekers sent to Poland from Germany, alongside all Bulgarians caught trying to enter Poland illegally. Poland also signed agreements with Poland and Moldova (1994), Croatia (1994), Romania (1993), the Czech Republic (1993), Greece (1994), Hungary (1994) and Ukraine (1993).³¹ Statistics from 1996 indicate the 'domino effect' of Poland's agreements with third countries. Two thousand three hundred and fifty one foreign nationals were expelled

²⁷ Collinson, 'Visa Requirements' p.83.

²⁸ Ibid.

²⁹ Ibid.

³⁰ King, 'Fortress' p.10.

³¹ Futo and Tass, *Apprehension Statistics* p.69 Slovakia had signed readmission agreements with Austria, Benelux, Bulgaria, Croatia, the Czech Republic, Hungary, Poland, Romania, Slovenia and Ukraine (ibid, p.82).

from Polish territory in that year: 887 went to Ukraine, 561 to Romania, 432 to Bulgaria, 357 to Moldova and 50 to Lithuania.³²

A 'dynamic "reshuffling"': non-state actors and EU asylum policy

Within the immigration and asylum area, matters that were typically the preserve of EU national governments have become the domain of 'transgovernmental cooperation' with little involvement of EU institutions.³³ Ministerial officials – particularly those from the ministries of the interior – law-enforcement agencies and other bureaucratic actors now take precedence, particularly in such 'sensitive' matters as border control strategies.

Grabbe has noted the rise of so-called 'micro-security' threats within the EU, in the absence of Cold War 'macro-security' concerns, which concerned 'state-controlled and politically driven threats from national militaries'.³⁴ Such micro-level risks, Grabbe writes, are embodied by private individuals so that the 'fear of tanks and missiles arriving from across the Iron Curtain has been supplanted by anxiety about uncontrolled immigration and cross-border crime'.³⁵ When defining the 'buffer zone' within the asylum and immigration policy context, Collinson states that it refers to an identifiable geographic zone 'protecting' by non-military means, the powerful and essentially stable western EU states from a perceived non-military security threat deriving from a proximate region of economic and political instability.³⁶

Within these post-Cold War geopolitical realities distinctions between defence, security and internal affairs become blurred, allowing transgovernmental groups a 'high degree of autonomy and secrecy' to pursue their agendas, 'relatively independent of, and sometimes even contrary to the chiefs of government'.³⁷ The most salient example of this, according to Lavenex, is the Schengen group. In 1985, the Schengen agreement focused on the abolition of internal border controls and had no

³² Ibid, p.69.

³³ Sandra Lavenex, 'The Europeanisation of Refugee Policies: Normative Challenges and Institutional Legacies' *Journal of Common Market Studies* Vol. 39, No. 5, (December 2001), p.854.

³⁴ Grabbe, 'The Sharp Edges of Europe' p.520.

³⁵ Ibid.

³⁶ Collinson, 'Visa Requirements' p.79.

³⁷ Lavenex, 'The Europeanisation of Refugee Policies' p.858.

mention of asylum-seekers and refugees. By 1990, the second agreement contained only one article of the 142 on the free movement of persons, whereas 36 considered immigration.³⁸

According to Guiraudon, the relationship between policy development, especially that involving potentially controversial subjects such as the treatment of undocumented arrivals, inevitably excludes traditional actors, such as heads of governments. From the early to mid-1980s, asylum matters emerged in meetings by supranational groups (or ‘clubs’) involving civil servants and police officials, such as the Club of Bern and STAR group.³⁹ The Club of Bern and STAR Group predated the formal *Ad Hoc* Group on Immigration and were based on established ‘security clubs’.⁴⁰ These groups involved civil servants and police dedicated to other policing issues, such as terrorism and drugs, but quickly became involved in immigration control.

Not only did enhanced international co-operation on migration and asylum issues shift policy formation from the scrutiny of national judiciaries, it allowed for increased collaboration with non-EU actors, such as sending and transit countries, which Collinson dates from a 1977 program when France offered financial incentives for migrants to leave and 1980 when it entered an agreement with Algeria for migrants to return.⁴¹

Moreover, Guiraudon writes that discussions on asylum policy excluded the European Commission’s Social Affairs Directorate which was seen to be ‘old-fashioned’ and ‘maximalist’ while also having more input from pro-migrant NGOs and the European Parliament.⁴² Didier Bigo and Elspeth Guild note that on a more ‘mundane’ level this shift reflects the lobbying efforts of a coalition of internal security professionals (in particular, customs and border police) fearful of losing their jobs in an era of disappearing border controls.⁴³

³⁸ Ibid.

³⁹ Virginie Guiraudon, ‘European Integration and Migration Policy: Vertical Policy-making as Venue Shopping’ *Journal of Common Market Studies*, Vol. 38. No 2, (June 2000), p. 254.

⁴⁰ Gallya Lahav, *Immigration and Politics in the New Europe: Reinventing Borders* (Cambridge: Cambridge University Press, 2004), p.62.

⁴¹ Sarah Collinson, *Europe and International Migration* (London: Royal Institute of International Affairs, 1994), p.57.

⁴² Guiraudon, ‘European Integration’, pp.262-264.

⁴³ Bigo and Guild, *Controlling Frontiers*, pp.67-68.

The involvement of non-state actors enacts what I understand to be King’s description of the ‘dynamic “reshuffling” of geo-political groupings’. Not only are asylum seekers transported to a potential ‘no-man’s land’ where they risk detention and deportation, but the formation of asylum policy occurs within a context that has little scrutiny, judicial oversight or popular input and is shaped by the interests of the various non-state actors.

The Budapest Forum planning meetings for the Phare programme exemplify this new process, with its dependence upon non-state actors. The European Commission-funded Phare programme was established to assist CEE candidate countries ready for their accession to the Union. One of its projects included the modernization and extension of Poland’s eastern border.⁴⁴

Following the 15-16 February meetings of the Budapest Ministerial Conference, an informal Budapest Forum was established, at the request of the German Government.⁴⁵ According to the Berlin-based migration research organization, FFM, the meetings were notable in two respects; in the ‘informal character’ of the Budapest Forum and the key role played by non-governmental organizations.⁴⁶ Groups, such as the International Organization for Migration (IOM) and the International Centre for Migration Policy Development (ICMPD) which had commercial interests in the area were involved in the policy and program development.⁴⁷

The IOM, an inter-state body funded by 59 governments and private organizations and sponsors, moved from its original role as a provider of ‘repatriations’ – or deportations – to an organization that advises CEE governments on how to incorporate EU member state specifications on effective border control and end ‘illegal immigration’ from the eastern passage.

Similarly, NATO became involved in coordinating meetings for CEE governments on immigration control. In September 1996, a seminar of the NATO North Atlantic Cooperation Council was held in Warsaw called ‘Economic Aspects of the Impact of Migration and Refugees on State

⁴⁴ Rigo, ‘Implications’, p.8.

⁴⁵ Ibid. p.4.

⁴⁶ Ibid.

⁴⁷ Ibid.

Security.’⁴⁸ Attending the meeting were representatives from most of the former Soviet Union and Yugoslav states, which have not yet become members of the Council of Europe.

The Berlin-based NGO, FFM argues that NATO’s involvement reflects a desire to extend its sphere of operations in migration policy, following the post-1989 revision from external threats to domestic issues. While Grabbe has noted that in light of the involvement of such organizations and groups and establishment of such extra-EU fora, as the Budapest Forum, it is unsurprising that ‘the implications for regional development of extending EU border regimes have so far been little discussed’.⁴⁹

The EU ‘buffer zone’ as circles of influence

To understand the Fortification process, King put forward the idea of the EU as an entity of a series of concentric circles. On the one hand, these circles impacted from the centre onto the periphery against the external area and on the other hand within the internal area itself.

To illustrate this, King developed a diagram in the centre of which was ‘inner Europe’, which consisted of the Benelux states and base of European Commission and then various circles, radiating out in terms of their relative influence and power.

Not only did King’s diagram mimic the broad outlines of the European Union’s geographic and political reality – with EU power at the centre and less powerful states located on the periphery – it also worked as a metaphor. Radiating out from the centre, the layering referred to networking processes of control, which involved an ‘intensification of penetration’.⁵⁰ Yet, King also acknowledged that this reality was not as ‘simple’ as this. As a result of these restrictive policies, a series of ‘buffer zones’ emerged. Such ‘buffer zones’ included mechanisms designed to benefit the flow of labour, albeit within a hierarchy of layering of access and advantage.⁵¹ Most readmission agreements, which allow the return of irregular immigrants to a third country of transit or entry, include incentives

⁴⁸ Ibid. p.7.

⁴⁹ Grabbe, ‘The Sharp Edges of Europe’ p.526.

⁵⁰ King, ‘Fortress’, p.4.

⁵¹ Ibid.

such as enhanced access to the destination country’s labour market or financial compensation. Poland signed the 1993 Poland-Germany readmission agreement, for instance, to obtain visa-free entry for Polish citizens in Germany.⁵²

However, as we will see through the following analysis of Poland and Slovakia’s asylum and immigration policies, their status as a de facto ‘buffer zone’ for the western countries of the EU has led to considerable political and social challenges. Not only on the level of international relations and national self-image, but as a destination for asylum applicants.

The following section will focus upon the Dublin II Regulation and its impact upon Poland and Slovakia. Considerable logistical challenges have emerged as a result of the Regulation’s practice of returning asylum applicants to their first country of entry, not least of which is the difficulty of guaranteeing humane reception conditions for asylum applicants and adequate support during the application process.

The UNHCR noted in 2004 that while CEE states had made considerable progress in their development of asylum systems, the region’s capacity for determining claims and integrating refugees remained ‘very limited’.⁵³ Raymond Gill, Director of the Bureau for Europe, UNHCR noted that in some new Member States there were only 10 or 15 asylum assessors and that a decade ago the countries had no asylum system at all. He added that if large numbers of asylum seekers were returned to these states the ‘still fragile systems of new member states could easily be overwhelmed’ and if procedures were ‘pushed to the point of collapse’, this could lead to a lowering of protection standards and increase in irregular movement between EU states.

Two factors suggest that Poland and Slovakia are struggling with the demands placed on them as a result of the Dublin system. The first is the high rate of absconding among so-called ‘Dublin returnees’, which in CEE ranged between 30 and 70 per cent during the first instance procedure of

⁵² Vermeesch, ‘EU enlargement’ p.80.

⁵³ Raymond Gill, ‘The Emerging European Refugee Policy: Does it Live up to the Standards of the Geneva Convention? *Cicero Foundation: International Seminar on Refugee and Migration Policy in the European Union* (18 November 2004) p.7.

their claim assessment⁵⁴. The second factor is the low rate of recognition of asylum claims. In the first six months of 2004, approximately 6,400 applicants for asylum were made in Slovakia, the highest number in the country's history and representing a 90 % increase on 2003; and yet Slovakia granted asylum to only two refugees over the same period.⁵⁵

THE IMPACT OF THE DUBLIN II REGULATION ON POLAND AND SLOVAKIA

Background to the Dublin system

On 18 February 2003, the European Council replaced the Dublin Convention with the Dublin II Regulation. The Regulation is binding on all Member States, with the exception of Denmark; while an agreement with the Republic of Iceland and the Kingdom of Norway made the instrument binding on these states also. As with the Dublin Convention, its principal objective is to determine which Member State is responsible for the assessment of asylum applications. The Regulation replaced the Convention following criticism it was 'unworkable', expensive and unwieldy.⁵⁶

Problems with the Dublin Convention, as identified by the European Commission, included its limited scope - it only referred to asylum seekers warranting protection under the *Geneva Convention* - difficulties of securing evidence relating to Member State responsibility; delays in effecting transfers and processing requests; costs; an absence of judicial oversight by the European Court of Justice and differences in member state policies and practices and issues relating to family reunion.⁵⁷ To remedy these difficulties, the Dublin II Regulation allowed member states to pool resources under the *Geneva Convention* and other international instruments;

⁵⁴ UNHCR, "Aktuálne informácie" <http://www.unhcr.sk/Default.aspx?catID=194>, accessed 1 October 2006.

⁵⁵ ERF (European Refugee Fund) et. al, *Information and Cooperation Forum (ICF) Final Country Report: Slovak Republic*, submitted to the European Commission, 28 February, 2005.

⁵⁶ Helen O'Nions states that that the Dublin Convention was 'haphazard, subject to severe delays (and) problematic' in the way it placed a disproportionate burden on the poor countries of southern Europe and forced the applicant to spend a great deal of time in transit (O'Nions, 'The Erosion of the Right to Seek Asylum', [2006] 2 *Web JCLI*. Available at <http://webjcli.ncl.ac.uk/2006/issue2/onions2.html>).

⁵⁷ House of Lords, <http://www.publications.parliament.uk/pa/ld/200102/ldselect/lducom/100/10003.htm>, accessed 2 October 2006.

allowed Member States to determine State responsibility for claim assessment and reject a claim if elsewhere found to be unfounded. However, the Regulation still only applied to asylum-seekers within definitions provided by the *Geneva Convention*.

EU Member States claimed that the Dublin Convention did not stop the problem of 'asylum shopping' – that is the lodgement of multiple asylum applications in various Member States. As a result, Eurodac, an EU-wide database containing fingerprints of asylum seekers aged over 14, illegal entrants and other irregular immigrants, was introduced. According to European Commission figures, Eurodac has found that 7 per cent of all asylum seekers made multiple applications since its establishment in 2003.⁵⁸

The Dublin II Regulation's principal impact on countries in CEE lies in its reinforcement of the Dublin Convention's 'basic rule' that the responsibility for the assessment of asylum applications lay with the Member State 'which played the greatest part in the applicant's entry into or residence on the territories of the Member States, subject to exceptions designed to protect family unity'.⁵⁹ What this means in practice is that asylum-seekers must lodge their application in the first EU country they arrive in, if not they will be returned to another Member State if it can be shown that they have either passed through the border of that State (by air, sea or land) or made another application in another Member State.⁶⁰

Of the approximately 240,000 (237,840) asylum applications lodged in the EU-25 in 2005, the UNHCR estimates that 15 % were subject to the Dublin II Regulation.⁶¹ The Dublin system is built upon requests by Member States to accept the return of asylum seekers, either on the basis of their earlier entry into that country or other connections. These requests are called 'outgoing requests' – that is from one Member State to another – or

⁵⁸ The Eurodac system has so far collected the fingerprints of 246,902 asylum seekers and those of 7,585 illegal border entrants and 16,814 people in Member States in an irregular basis. <http://europa.ed/rapid/pressreleasesAction>, accessed 15 October 2006.

⁵⁹ Commission's Explanatory Memorandum para 2.2 cited in House of Lords, <http://www.publications.parliament.uk/pa/ld/200102/ldselect/lducom/100/10003.htm>, accessed 2 October 2006.

⁶⁰ Irish Refugee Council, 'Information Note on the Dublin II Regulation' *Legal Policy in the EU Context: Information Note* No. 4, June 2004, <http://www.irishrefugeecouncil.ie>.

⁶¹ 'Introduction', UNHCR, *The Dublin II Regulation: A UNHCR Discussion Paper*, Geneva, April, 2006.

'incoming requests' in terms of the State registering the demand. The UNHCR found that in the first six months of 2005, incoming requests were highest among Member States located at the southern and eastern edges of Europe.⁶² Such transfers far exceeded outgoing transfers in Poland and Slovakia. This was also the case in Greece, Hungary, Italy and Spain.⁶³

The impact of the Dublin II Regulation on Poland and Slovakia

Following the accession of CEE Member States in 2004, human rights organizations expressed concern that these developments would lead to a 'flood' of asylum applicants in CEE, which the countries would be badly placed to manage.⁶⁴ According to Human Rights Watch:

[F]ew of the new member countries have asylum systems in place that can offer full and fair asylum determination procedures; detention regimes that comport with international standards; and policies in place to ensure that no person is sent back to a place where her or his life or freedom is threatened.⁶⁵

Rigo has identified the process where CEE countries introduced restrictive immigration policies and legislation prior to their accession, or potential accession in the case of Romania and Bulgaria, to the EU.⁶⁶ Identifying this as a form of Europeanization, Rigo notes that in states where asylum systems were either largely *laissez-faire*, or non-existent, restrictive legislation has been introduced which undermines the rights of asylum seekers as guaranteed by European and international human rights law and exceeds that in place in most EU Member States.

Poland and Slovakia exemplify this trend to a certain extent. Yet, in relation to the Dublin II Regulation, the 'score-card' is mixed, with both countries in some instances showing initiative in areas lacking in other Member States. In Slovakia, for instance, all asylum seekers receive health care comparable to that of Slovak citizens; while Poland offers assistance to

⁶² Ibid.

⁶³ Ibid.

⁶⁴ According to the UNHCR, in 2004 there was a significant rise in applications the new Member States, in contrast to the decline in the rest of the EU. In Cyprus, applications rose by 499 %, Malta 49 %, Slovakia 46 %; in contrast, there were reductions in the Czech Republic (46 % and other EU Member States, such as the UK at 36 % and Germany 30 %) (*The State of the World's Refugees: Human Displacement in the New Millennium* (Oxford: Oxford University Press, 2006, p 250).

⁶⁵ Human Rights Watch, cited in ERF, *Information and Cooperation Forum (ICF) Final Country Report: Slovak Republic* p.14.

⁶⁶ Rigo 'Implications', pp.10-11. See also Vermeesch, "EU enlargement", p.84.

separated children asylum seekers to locate other family members in other Member States.⁶⁷ Poland has, moreover, requested other Member States to take responsibility of cases on humanitarian grounds, even if States have generally rebuffed these requests.⁶⁸

Non-governmental organizations working in the area have been critical of the operation of the Dublin II Regulation since its inception in 2003, tallying a range of governmental errors and efforts by Member States to evade their responsibility in terms of international human rights law; in this respect, the challenges faced by Poland and Slovakia offer further examples of a system under apparent stress.

In order to assess the significance of the Dublin system for Poland and Slovakia, I will consider the challenges both countries face amid a context of falling asylum applications in both countries. In Slovakia, for instance, asylum applications fell sharply by approximately 75 % 2004-2005. Even though it is difficult to determine concrete reasons for this development, it appears that the decrease stems from flaws in the application and settlement systems, arguably reflected in the fact that Slovakia has the lowest recognition rate in the Union. If so, this development has broader significance in terms of the protections guaranteed returned asylum seekers under the Dublin system.

According to Dublin statistics, the direction of transfer requests already suggests a largely mono-directional thrust from west to east. The importance of this lies in the fact that even though the Dublin Convention relies on a broad commitment to the principle of inter-EU 'solidarity', the burden is being felt in the less developed nations to the east and south. In my conclusion, I will argue that as a result of this, King's 'buffer zone' thesis remains relevant.

⁶⁷ ECRE, *Report on the Application of the Dublin II Regulation in Europe* European Legal Network on Asylum (ELENA) March 2006, p.157.

⁶⁸ Ibid. p.160. It has taken this initiative with two other Member States: Greece and Portugal. ECRE noticed that this was 'disappointing (and failed) to reflect the spirit of solidarity' envisaged in the Regulation's preamble, especially since Poland and Greece receive proportionately higher numbers of Dublin returnees than other states.

Asylum applications in Poland and Slovakia (2004-2005)

In the first three quarters of 2005, 3797 people applied for asylum in Poland, when compared to the same period the previous year, this marked a decrease of 26.1 %.⁶⁹ Applicants from the Russian Federation constituted the vast majority (3448 claims) followed by Belarus (55), Ukraine (46), Georgia and Pakistan (33 each).⁷⁰

While in Slovakia during the same period, 2448 people applied for asylum. This demonstrated a sharp decrease in numbers (-73 %) over the same period in 2004. The largest number of applicants in Slovakia came from the Russian Federation (718 claims) India (283), Moldova (258), Georgia (221) Bangladesh (195) and China (179).⁷¹ This figure contrasted with that for 2004, in which the country experienced the highest number of asylum applications in the country's history (11,400 applicants).⁷²

The fall in asylum applications over this period in Poland and Slovakia is striking, and according to the European Refugee Fund (ERF) largely unexpected, especially when compared with the experience of other newly admitted Member States. Asylum claims in Slovenia, for instance, increased by more than 50 % in the same period.⁷³

The 58 % decline in asylum claims registered in Poland between October 2004-March 2005 countered projections made by the Polish authorities of steadily increasing numbers, which were expected to reach 9,000 per annum in 2006.⁷⁴ Similarly, in May 2004 the United Nations High Commissioner for Refugees (UNHCR) convened a task force with the Slovak Ministry of Interior, the Migration Office and Aliens and Border

⁶⁹ UNHCR, "Aktuálne informácie" <http://www.unhcr.sk/Default.aspx?catID=194> , accessed 1 October 2006.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² European Refugee Fund (ERF), *National Report on Slovak Republic* p.3.

⁷³ According to the Budapest office of the UNHCR, in the first three quarters of 2005, 1,320 people applied for asylum in Slovenia, compared with the same period in 2004 this indicated an increase of 55 %. Most of the applicants came from countries in the former Yugoslavia (UNHCR, "Aktuálne informácie" <http://www.unhcr.sk/Default.aspx?catID=194> , accessed 1 October 2006).

⁷⁴ ERF, *National Report on Poland* p.8. The U.S. Committee for Refugees and Human Rights states that in 2004, Poland received 6,900 applications for asylum, 25 % more than in 2002; the largest group came from Russia (5,600) Afghanistan (250), India (240) and Pakistan (150). It notes that Poland is the second favourite destination for asylum seekers from Russia (<http://www.refugees.org/countryreports.aspx?id=154>, accessed 16 October 2006).

Police to find strategies to cope with the expected increase in asylum applications following the country's accession to the EU. The European Commission, International Organization for Migration (IOM) and the U.S. and Dutch embassies agreed to participate in the taskforce, which would issue recommendations on the reception, processing, integration and return of asylum seekers.⁷⁵

Polish authorities have recognized weaknesses in the country's asylum system⁷⁶, which have also been identified by NGOs working in the area. The Budapest regional office of the UNHCR has identified problems in terms of education for asylum-seeker children; a lack of state-funded legal assistance and difficulties relating to medical care and assistance for those with complex needs, in particular for vulnerable groups such as unaccompanied minors, survivors of torture and trauma and pregnant women.⁷⁷

It is believed that as a result of these problems, large numbers of asylum applicants in Poland have either left the territory, or discontinued their claims.⁷⁸ The Polish Office of Repatriation and Aliens has closed the cases of 4,600 applicants who had abandoned their claims, a tenfold increase in two years.⁷⁹ The decline in asylum applications has been most marked in Slovakia, however; falling from a record high of 11,400 applications in 2004 to 2,448 in the first three quarters of 2005.⁸⁰ According to 2003 figures, nearly 10,000 asylum applications were closed as a result of the asylum seekers leaving Slovakia for other destinations.⁸¹ The most

⁷⁵ Ibid.

⁷⁶ According to the ERF, Polish authorities, until 2003 a 'coherent strategy' for the reception and settlement of refugees was absent. Polish reception centres had an 'inadequate' capacity to deal with the increasing number of asylum seekers and the standards were 'insufficient – both in terms of living up to European standards and especially in relation to offering appropriate care for vulnerable groups and families' (ERF, *National Report on Poland* p.14).

⁷⁷ UNHCR, "Aktuálne informácie" <http://www.unhcr.sk/Default.aspx?catID=194>.

⁷⁸ Stola, in contrast, believes that this reflects the "abuse" of the asylum system, in that applicants who are not genuine prefer to abscond during the assessment procedure (Wallace and Stola, *Patterns of Migration*, p.185).

⁷⁹ U.S. Committee for Refugee and Human Rights, <http://www.refugees.org/countryreports.aspx?id=154>, accessed 16 October 2006.

⁸⁰ For an insight into irregular immigration to Slovakia at this time, see Tamsin Smith, 'Smugglers target Slovakia borders', BBC News 11 May 2005.

⁸¹ ERF, *Country report on Slovak Republic*, p.3. As one Syrian asylum seeker, Yasser, told the BBC in 2005: "I didn't deliberately come to stay in Slovakia. I want to be in Western Europe" ('Smugglers target Slovakia').

frequently cited reason for this is the country's extremely low recognition rate of refugee claims, which at 2 % (11 people in 2003) is the lowest in the Union.⁸² In 2004, only 15 people out of nearly 11,400 applicants were found to warrant protection as refugees.

Karol Zbořil, director of the Slovak Refugee Council, acknowledged that integration services provided to refugees in Slovakia were 'formal and basic',⁸³ before adding that the two principal aspects of integration policy – language and vocational training – had been neglected for some time. Criticisms have also been made about conditions in the country's reception and residential centres which have been described as 'congested' and under-staffed, and in the case of the police detention centres, brutal.⁸⁴

According to a draft country report on Slovakia by a European Commission-funded organisation designed to assist EU Member States receive asylum seekers, refugees and displaced persons, the European Refugee Fund (ERF), social workers believed that the fall in asylum applications represented a choice by asylum seekers and traffickers to bypass Slovakia, because of problems in the assessment process.⁸⁵ Another possibility is that prospective asylum seekers are being turned away at the border by the Slovak guards before they are able to make a claim. Slovak police may detain aliens entering or remaining illegally and those awaiting deportation.⁸⁶ Asylum applicants are interviewed at the border, issued a 24-

⁸² ERF, *National Report on Slovak Republic*, p.3.

⁸³ Cited in 'Slovak Assistance for Refugees and Asylum Seekers' in *Migration Processes in Central and Eastern Europe: Unpacking the Diversity*, p.65.

⁸⁴ ERF *Country report on Slovak Republic*, p.16 See also the report into conditions in Slovakia's detention and reception centres by *Organizace pro Pomoc Uprchlíkům* (Organisation for Aid to Refugees) visited 26 May 2004.

⁸⁵ Helena Tužinská from the Ecumenical Council of Churches, Emergency and Development Service, Slovakia, states that the high number of absconders due to the 'low quality' and slow pace of the Slovak assessment system, which can take years. Few 'hope to win the lottery with the statistical rate of 0.3 %' Email correspondence with the author, 16 November 2006. While Dušan Bezak from Slovakia's Jesuit Refugee Service cites difficulties in terms of employment; the fact that the country is still a 'transit country' and has few community networks and support and the high failure rate (of the 800 Chechen cases in 2005, not one received a protection visa). Bezak suggests that applicants prefer to risk remaining illegally in other EU Member States rather than be returned to Slovakia where the situation in their view is 'hopeless' (email correspondence with the author, 16 November 2006).

⁸⁶ Human Rights First, *Country Report Slovak Republic*, <http://www.humanrightsfirst.org/refugees/reports/entry-rev-02/Slovak-Republic.pdf>, accessed 16 October 2006.

hour pass to a reception centre and permitted to file their application with the alien police.

Since most, if not all asylum seekers travelling overland to the EU arrive without authorization, on their arrival in Slovakia and Poland they are at substantial risk of detention or being denied access to territory. In this respect, earlier figures relating to Poland are instructive. According to UNHCR figures for Poland (2001), very few asylum applicants lodged their claims at the border – 14 people on the Russian border, 34 on the Ukrainian border and 523 on the Belarus border. The vast majority was taken into detention, awaiting deportation.⁸⁷

Incoming and outgoing transfer requests under the Dublin system

Statistics for Germany and Poland in 2004 indicate that for both states the largest number of requests for them to accept the return of asylum seekers came from other western EU Member States. In the case of Germany, the majority of requests for it to accept the asylum seekers came from Sweden, France, Belgium and Norway and Austria and for Poland: Germany, Austria and Belgium.⁸⁸ No such clear pattern was apparent in terms of the countries Germany asked to take back asylum seekers (requests were made to Austria, France, Italy, Belgium, Sweden, the Netherlands, Poland and Slovakia).⁸⁹

For Germany there was a striking discrepancy in terms of external and internal requests. Slovakia, for example, made only 16 requests of Germany, but received 409 requests from Germany in return. A similar pattern could be observed with Poland and Germany (12 as compared with 658) and Austria (478 compared with 1,253).⁹⁰ The total number of completed transfers of asylum seekers from Germany was mixed, however; with Poland only receiving 90 people, of the 658 requests made, and Slovakia, 102 of the 409.⁹¹

⁸⁷ FFM, 'The new border regime at the Bug river: the east of Poland and the PHARE programmes' <http://ffm-berlin.de/bugriver.html>, accessed 7 November 2006.

⁸⁸ Ibid, pp.181 and 185.

⁸⁹ Ibid, p.182.

⁹⁰ Ibid.

⁹¹ Ibid.

Figures for Poland, meanwhile, reinforce these patterns, with Austria and Germany lodging the most requests for it to accept the return of asylum seekers (at 432 and 320 respectively).⁹² Outgoing requests for Poland demonstrate the largely mono-directional nature of the Dublin system for CEE. Only France and Lithuania received requests for assistance from Poland in the double digits, the rest were either isolated requests or numbered less than five.⁹³

These statistics indicate a number of trends. First, that western EU Member States made the bulk of outgoing requests for others to accept the return of asylum seekers into their territory. In contrast, the number of outgoing requests by new Member States, including Poland and Slovakia, were negligible. Second, that in traditional destinations for asylum seekers, such as Norway and Sweden, the number of requests for other countries to take back asylum seekers far exceeded the total number of asylum claims lodged in their territory in that period.

In the final six months of 2004, Poland received requests for 1,320 people to be returned to its territory.⁹⁴ During the same period, Poland asked for other Member States to accept 54 people – only 10 of whom were transferred.⁹⁵ Germany received a far higher number of incoming requests (7,463), of which a third (2,681) were transferred to other EU Member States. However, in contrast to Poland it made a comparable number of outgoing requests for help at 6,536 (2,765 were transferred). A similar pattern can be seen with Norway and Sweden⁹⁶ that in both countries outgoing requests far exceeded the number of incoming requests (for Sweden, the figures were almost double).

In the first six months of 2005, non-EU state Norway made the most requests for assistance at almost 6,000 to be followed by Germany, Austria, Belgium, whereas Poland only made 100 requests and Slovakia 138.⁹⁷

⁹² Ibid, p.185. Belgium, the Czech Republic and France were the next largest groups, to be followed by figures for the other Member States in the single digits.

⁹³ Ibid, p.186.

⁹⁴ ECRE, *Report on the Dublin II Regulation in Europe*, p.177.

⁹⁵ Ibid, p.177

⁹⁶ In 2004, Norway received 2,180 incoming requests, and made 3,175 outgoing requests (of which 2,099 were transferred) while Sweden received 3,596. Its outgoing requests were almost double that number at 6,188 and 4,225 were transferred, making it the highest figure in the collected data ECRE, *Report on the Application of the Dublin Regulation* pp.177-178.

⁹⁷ UNHCR, *The Dublin II Regulation* p.72.

Incoming transfer requests were more evenly shared, with Norway and Germany receiving the highest numbers. However, the contrast is still striking when we look at Poland and Slovakia in terms of incoming and outgoing requests. Both states received ten times more incoming requests than they made.

These discrepancies might seem logical, in terms of the movement of asylum seekers into the EU from the east and south. However, there is no clear indication that the ‘burden’ was spread equally among all eastern and southern nations. EU Member States, Portugal, Malta, Slovenia and Lithuania received only a fraction of the number received by Poland and Slovakia.

Assessment of the Dublin system’s impact on Poland and Slovakia

The European Refugee Fund (ERF) has signalled the challenge of the ‘revolving door’ return of asylum seekers to Slovakia as a first point of entry and the consequent pressure this puts on the country’s Migration Office. Not only is there an absence of trained officers, in the period 1992-2003, officer numbers trebled while the caseload increased 112 times, but the country’s capacity to manage the increase is also in doubt. The ERF had heard of one immigrant ‘re-appearing’ in the Slovak system nine times.⁹⁸

There have also been disagreements about responsibility over the ultimate transfer for asylum applicant to their first country of entry. In September, 2005, for instance, an asylum-seeker was transferred from Austria to Poland, after which the decision to transfer him was overturned. The Polish authorities argued that it was the responsibility of the State which overturned the decision to cover the costs (Austria), but Austria failed to respond to the request, leaving the asylum-seeker to pay for the costs himself.⁹⁹

According to the UNHCR regional representation in Budapest, the Dublin II system has resulted in an increase in the number of asylum seekers in reception centres in Poland despite an overall decrease in new applications. Even though the Dublin II Regulation does not explicitly deal with detention, under the Asylum Procedures Directive, Article 7 (3) stipulates

⁹⁸ ERF, *Country report on the Slovak Republic*, p.15.

⁹⁹ UNHCR, *The Dublin II Regulation* p.19.

that asylum seekers can be detained if it proves necessary ‘for legal reasons or reasons of public order (or to) confine a person to a particular place in accordance with national law’.¹⁰⁰

Yet, contradictory data produced by the European Council of Refugees and Exiles (ECRE) suggests that applicants under the Dublin II Regulation are not routinely detained in Poland before their transfer to another state.¹⁰¹ Applicants may be detained if they lodged an application at the border without the right to enter Polish territory, or illegally crossed the border. ECRE also noted that people returned to Poland under the Regulation have a higher chance of being detained if they are a single male.¹⁰² In Slovakia, Dublin II returnees can be detained as a result of illegal border crossing;¹⁰³ however in practice most are not detained.¹⁰⁴

The so-called ‘sovereignty clause’ which allows Member States to offer protection if there is a risk of a violation of the articles banning the return of an asylum seeker to another country which might lead to inhumane or degrading treatment, or punishment under the European Convention on Human Rights (ECHR) appears not to have been applied in any decisions made by authorities in Poland, Belgium, Cyprus, Lithuania, Portugal, Slovenia, Greece.¹⁰⁵

The Dublin procedure’s guaranteed time limits have not been respected in some Member States, with delays being reported in Poland, Italy and Sweden.¹⁰⁶ Time limits for the Regulation are three months for a transfer; one week for a reply on a case; a decision within two months and ultimate transfer to another Member State, six months. If an asylum seeker is imprisoned this incarceration can be extended to one year and if an asylum seeker absconds this time limit can be extended to 18 months.¹⁰⁷ Poland has

¹⁰⁰ Ibid. p.51.

¹⁰¹ ECRE, *Report on the Application of the Dublin II Regulation* p.111.

¹⁰² ECRE, *Report on the Application of the Dublin II Regulation* p.113.

¹⁰³ UNHCR, *The Dublin II Regulation* p.52.

¹⁰⁴ This contrasts with earlier figures relating to the detention of ‘irregular immigrants’ in Slovakia between 2001-2005, where more than 10,000 people were detained, many of whom were apprehended when trying to cross the border (ERF, *Country Report on Slovak Republic* p.15). In 2001, for instance, 4006 people were detained (and the numbers decreased over time from 2387 in 2002 to a relative ‘low’ of 979 in 2005) (ERF, *Country Report on the Slovak Republic*, p.16).

¹⁰⁵ Ibid. p.30.

¹⁰⁶ ECRE, *Report on the Application of the Dublin II Regulation* p.163.

¹⁰⁷ Irish Refugee Council, ‘Information Note on the Dublin II Regulation’.

noted that several people were transferred to Poland outside the time limit, which meant that they had to be returned to the sender state.¹⁰⁸

There have also been problems with age assessment and identity. In one case, Slovak authorities took charge of a person who did not claim to be a minor in Slovakia, but claimed to be a minor elsewhere, despite this they assumed that they were dealing with an adult.¹⁰⁹ In another instance, the brother of an asylum seeker was transferred mistakenly to Poland in January, 2005, after the fingerprints of the person due to be transferred were destroyed. The decision was made on a picture only. Despite sending the wrong person, Germany refused to take him back.¹¹⁰

CONCLUSION

When assessing the relevance of King’s ‘buffer zone’ thesis, two elements are of particular importance. The first is the notion that EU Member States within the ‘buffer zone’ protect other Member States, in this instance from the unwanted arrival of asylum seekers and other irregular immigrants. In terms of the Dublin system this is the case. Not only are Poland and Slovakia – alongside other recently admitted EU Member States – shouldering much of the so-called asylum ‘burden’ in terms of asylum applicants returned to their territory, they also face the prospect of increasing numbers into the future.

The second element of King’s thesis which remains relevant is his claim that the ‘buffer zone’ reinforces an asymmetrical relationship between the parties, which Grabbe has described as similar to that of a ‘client state’ with regard to the CEE nations during the accession proceedings.¹¹¹ Both considerations remain valid in this discussion.

The Dublin system, as demonstrated by the statistics for incoming and outgoing requests for transfers, require more of the less developed Member States in the eastern and southern regions of the EU. Moreover, the fall of asylum applications among the more developed nations is greater than that

¹⁰⁸ UNHCR, *The Dublin II Regulation* p.38.

¹⁰⁹ Ibid p.24.

¹¹⁰ Ibid, p.43.

¹¹¹ Heather Grabbe, ‘European Union Conditionality and the “Acquis Communautaire” *International Political Science Review/Revue internationale de science politique* , Vol.23, No.3, (July 2002), p.266.

in the new Member States suggesting that the Dublin system may be encouraging potential asylum seekers to avoid the EU territory because of problems in the CEE assessment and reception systems. Asylum seekers, it appears, may not be choosing to lodge claims in the knowledge that they will be transferred to CEE, where the likelihood of their receiving protection is largely negligible.

When formulating his 'buffer zone' thesis, King stated that his impetus was to investigate not only the 'what' but the 'why' behind moves to exclude asylum seekers and other irregular immigrants.¹¹² Through the Dublin II Regulation and the earlier bilateral readmission agreements is an emphasis upon exclusionary controls and non-entrée into EU territory. For this reason, despite the advent of post-Cold War geopolitical realities, King's 'buffer zone' thesis remains highly relevant in discussions of EU asylum policy within the EU and on its margins. As Hathaway stated in 1997, states are increasingly seeking to minimize their responsibilities in terms of international asylum law and taking the 'more brutal (yet less visible) step of keeping refugees as far away as possible'.¹¹³

¹¹² King, 'Fortress Europe', p.2.

¹¹³ Cited in O'Nions, 'The Erosion of the Right to Seek Asylum', Available at [2006] 2 *Web JCLI* <http://webjcli.ncl.ac.uk/2006/issue2/onions2.html>

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Madeleine Byrne

Fortifying Europe

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