

Refugee Council's response to Home Office Consultation on Juxtaposed Controls Implementation, Dover-Calais, November 2002



1. The Refugee Council

- 1.1 The Refugee Council is the largest non-governmental organisation supporting asylum seekers and refugees in the UK and promoting refugee rights in the UK and abroad. Our members range from small refugee-run community organisations to international NGOs, such as Christian Aid, Save the Children and Oxfam.
- 1.2 We are grateful for the opportunity to respond to November's consultation paper on the Implementation of Juxtaposed Controls, a measure which will cause hardship to people in need of protection and throw into question the UK's commitment to the international protection regime.
- 1.3 Juxtaposed controls are full immigration controls performed outside the UK by British immigration staff. They already take place on Eurostar trains, under the Channel Tunnel Agreement. France has agreed to allow them to be extended to passengers embarking in Calais and other French ports as part of the deal to close the Sangatte centre. The 2002 NIA Act gives the Home Secretary the power to do this, not just in France but in any port in the European Economic Area.

2. Principal concerns

- 2.1 The Refugee Council recognises the UK's right to control its borders and decide who may enter the country. However, policies aimed at tackling illegal immigration must respect the UK's commitments to the 1951 refugee convention and international human rights law.
- 2.2 Juxtaposed controls are the latest addition to a range of measures aimed at preventing 'illegal immigrants' from reaching the UK with scant regard to the needs of those who may be in need of protection and who may have links to Britain. Others include:
 - visa requirements, including on nationals of all major refugee-producing countries;
 - carriers liability and civil penalty fines; airline liaison officers in ports of departure;
 - hi-tech equipment to detect stowaways on either side of the Channel;
 - physical barriers, such as security fences around terminals in France;
 - pressure on countries of transit to intercept irregular migrants heading for Europe.
- 2.3 Juxtaposed controls effectively shift border controls from England to France. This paper argues that they will make it even harder for people in need of protection to reach sanctuary in the UK and may force them to:
 - accept a lower standard of protection
 - remain separated from families and communities,
 - find other routes to the UK, at greater risk to themselves or others.
- 2.4 The Refugee Council has seen no evidence that greater use of juxtaposed controls will have the intended effect of reducing overall illegal immigration to the UK, yet it has serious long-term implications for the international protection regime. As one element of a barrage of measures designed to obstruct people from gaining access to and seeking asylum on UK territory, juxtaposed controls:
 - violate the principle of good faith that the UK must exercise as a signatory to the 1951 Refugee Convention
 - threaten the structure of the international asylum regime by undermining the spirit of shared responsibility on which it is founded.

3. Purpose of juxtaposed controls

- 3.1 The Consultation paper states that juxtaposed controls in Calais form part of a package of measures *"to deal with the effects of illegal migration through Northern France to the UK, which includes the closure of the Sangatte Red Cross Centre. Such action is urgently needed to stem the flow of illegal immigrants and asylum seekers who are currently being drawn to Northern France by the prospect of being able to cross the Channel to the United Kingdom. (para 2.2)"* The Draft Regulatory Impact Assessment (Appendix F) describes them as *"one of a range of measures [...] which will contribute to the reduction in numbers of clandestine entrants, inadmissible passengers and asylum seekers travelling to the UK."*
- 3.2 The Refugee Council is concerned that asylum seekers are grouped together with 'clandestine entrants', 'inadmissible travellers', and 'illegal immigrants', without any acknowledgement of the difficulties that a person fleeing persecution may have in obtaining a passport or visas nor of the right of refugees, under the 1951 refugee convention not to be penalised for entering a country of asylum illegally. We fear that this measure is being introduced precisely because of the protection from prosecution and *refoulement* enjoyed by refugees, once they set foot on UK soil. Asylum seekers may well be the primary target.
- 3.3 Existing UK legislation allows ferry companies, airlines and other carriers to be fined for any passengers who arrive in the UK without correct documentation or as stowaways. As a result, those companies go to great lengths to ensure that passengers hold valid documents and conduct stringent searches prior to departure. While companies can claim refunds if the passenger is subsequently recognised as a refugee (at the Home Secretary's discretion), the controls they impose do not discriminate between those who need protection and those who do not. Nor should this be the role of private companies: States sign international treaties such as the Refugee Convention and should not 'sub-contract' that responsibility.
- 3.4 The juxtaposed controls agreement enables UK immigration officers to conduct similar checks. If the intention is to take back under UK control what is rightfully a State responsibility, then, in that respect only, it is to be welcomed.
- 3.5 A more significant change is that immigration officers will have the power to make full immigration decisions on passengers travelling to the UK. It is clear from the experience at Prague airport that this will include interviewing passengers to check that, even if they hold valid passports and visas (when required), they are genuinely travelling to the UK for the stated purpose. If for example, a person had valid documentation to enter as a visitor, but said they intended to claim asylum, they would be refused leave to enter the UK, irrespective of the merits of their claim. If the immigration officer even suspected that they intended to apply for asylum, they would be refused leave to enter.
- 3.6 The target of these juxtaposed controls is not 'clandestines', but people travelling quite openly in full view of the authorities. Nor is the aim to single out people who have been accused of exploiting the asylum system, people whose subsequent asylum claims prove to be unfounded. All asylum seekers are targeted, including those who need protection and who have ties to the UK.
- 3.7 The extract of the Consultation paper quoted above mentions the closure of the Red Cross centre at Sangatte as one of the other measures to combat illegal immigration from Northern France. Researchers found that most people in the camp fled their

country of origin because of persecution or conflict.¹ The vast majority were from countries, such as Iraq and Afghanistan, whose nationals have mostly been found to be in need of protection, when they have claimed asylum in the UK. The UK implicitly recognised their protection needs by inviting 1,000 Iraqis and 200 Afghans to the UK in order to facilitate the closure of the centre. The Afghans were selected because they had close family in the UK.

3.8 James Munro, Assistant Director of the Immigration Service told the High Court that juxtaposed controls, like visas, were simply a way of dealing with 'asylum overload':

"When, for example, Colombia and Ecuador were included as visa states, this was directly in response to an increase in the number of those nationals coming directly to the United Kingdom in order to apply for asylum. A similar aim is present in the juxtaposed controls in France, where asylum seekers are refused leave to enter." (European Roma Rights Centre vs Immigration Officer at Prague Airport and the SSHD, 08/10/2002)

3.9 It seems that, because of 'overload' of the asylum system the government has shifted its focus on increasing removals to preventing asylum seekers from arriving in the UK, irrespective of their need for protection or ties to the UK. Or, as the Home Secretary put it:

"The change that has made a difference today is the shifting of the border controls from England to the French coast. We have shifted the immigration and security check and ensured that people will not get here. Stopping people entering clandestinely has to make more sense than trying to process them and send them back whence they came." (Hansard 2 Dec 2002: Column 614)

3.10 The function of the asylum system must be to provide protection to those in need. If that system is not functioning properly, the solution cannot be to deny access to those for whom it was designed. Indeed, UNHCR refers to the 1969 Vienna Convention on the Law of Treaties in stating,

*"States may not discharge themselves of [responsibilities under the 1951 refugee convention] by moving border control away from their own frontiers or by invoking the inadequacies in, or the provisions of, their internal laws."*²

3.11 The Refugee Council's view is that the problems of the UK's asylum system lie in the system's own deficiencies rather than in the number of asylum applications³. Policies that focus on deterrence and barriers to protection are neither principled nor effective. The solution is not further restricted controls, but a multi-faceted approach with the following priorities:

- fair, efficient and high quality initial determination of those who need protection
- a fair system of international responsibility-sharing that takes into account asylum seekers' links to a particular country
- a holistic approach to countries of origin to tackle the reasons why refugees have to flee.

¹ *Des étrangers en situation de « transit » au Centre d'Hébergement et d'Accueil d'Urgence Humanitaire de Sangatte*, Smaïn Laacher, Centre d'Etude des Mouvements Sociaux (CNRS-EHESS), June 2002

² *Reconciling Migration Control and Refugee Protection in the European Union: A UNHCR Perspective*.

³ *The Nationality, Immigration and Asylum Act 2002: changes to the asylum system in the UK*, Refugee Council, December 2002

4. Effectiveness

- 4.1 The Home Office has provided little evidence to show that the barriers erected by the UK so far have had any significant effect on the overall number of people entering the UK illegally. Research for the Home Office, as yet unpublished, indicates that individual EU member states' asylum and migration control policies have little effect on the number of asylum applications. Policies of deterrence, such as withdrawal of support to in-country applicants have little or no effect. Pre-entry controls appear slightly more effective, but, at most, deflect some people to another EU country and only for a limited period⁴.
- 4.2 The draft regulatory impact assessment (Appendix F) asserts that "*existing juxtaposed controls have proved successful in helping to reduce illegal immigration to the UK*" citing the reduction by 90% in "*the large number of inadequately documented passengers arriving at Waterloo.*" Yet, para 2.2 of the consultation document notes that existing juxtaposed controls have contributed to a 'steadily increasing' number of IDAs (inadequately documented passengers) and clandestines arriving from Calais.
- 4.3 As measures are taken to close off a particular route desperate people look for alternatives. When, for example, the carriers liability and civil penalty policies made travel in the back of a lorry riskier, people started attempting to board freight trains at the Coquelles terminal.
- 4.4 How would a person desperately seeking protection in the UK react to juxtaposed controls i.e. the prospect of being interviewed in France by a British immigration officer who was instructed to refuse entry to anyone who asked for asylum and anyone they even suspected of intending to do so? An otherwise law-abiding refugee travelling with valid documents might feel forced to conceal themselves in the back of a lorry, jump on the roof of a Eurostar train or even attempt to cross the Channel on a li-lo – all of which have been tried, at great risk to the individuals and to others.
- 4.5 By the same token, a person in this situation may feel themselves compelled to make use of the services of the human smugglers who make it their business to offer desperate people alternative routes, profiting from the demand created by the UK's policies.
- 4.6 The consultation document lists as one of the resulting benefits a "*significant reduction in the number of asylum seekers requiring support in the Kent region.*" This is misleading, because asylum seekers are dispersed throughout the UK.

5. Impact on refugees travelling to the UK from France

- 5.1 The reality is that Europe's open borders allow people, once inside the EU's 'Schengen' area of free movement, to travel to France, Germany or elsewhere to seek asylum, relatively unhindered and unobserved. As the UK remains outside Schengen and there are limited routes across the Channel, those heading for the UK are held up in northern France. These represent only a small minority of Europe's asylum seekers, but they are rendered highly visible by the UK's particular geographical and political situation and attract disproportionate media and political attention.
- 5.2 While much is made of spurious 'pull factors' to the UK, such as the work concession, which was abolished last summer, potential 'push factors' in France are overlooked.

⁴ Roger Zetter, speaking at "Bridging the Information Gaps", London, March 2001, about his research *An Assessment of the Impact of Asylum Policies in Europe: A Feasibility Study*.

According to French NGOs, delays in access to French asylum procedures can result in asylum seekers being left destitute for ten months or more; a shortfall of 15,000 accommodation places mean that many asylum seekers remain homeless; financial support for those living independently is capped at a maximum of one year, although the asylum procedure often takes much longer. It should be noted that, nevertheless, when France's 30,000 applications for "territorial asylum" are taken into account, the number of asylum applications France receives is comparable to the UK.

- 5.3 This is not to suggest that people in need of protection should be allowed to choose their country of asylum according to the nature of support offered, rather that support arrangements should be to a similar standard, consistent with international human rights norms, wherever a person applies for asylum in Europe. The recently agreed EU directive that aims to create such a level playing field offers far too much latitude to States and sets a minimum standard that is too low.
- 5.4 Similarly, for some people there is a 'protection gap' between France and the UK. France, for example, unlike almost all other signatories to the refugee convention, has not recognised as refugees people fleeing persecution from sources other than the State, even where their governments are unwilling or unable to protect them (France has indicated its intention to change this policy). Many people who are not recognised as refugees, but who qualify for protection under the European Convention on Human Rights are not granted asylum, but left in a legal limbo as '*sans papiers*'. Again, the principled approach should be to push for common EU standards, consistent with member states human rights obligations, rather than to deny access to protection and bring down standards in the UK.
- 5.5 Home Office research shows, however, that asylum seekers tend to have little influence over their country of final destination, as they are forced to depend on human smugglers. Those who are able to exercise some choice, have little knowledge of UK immigration or asylum procedures before arriving in the UK, nor of entitlements to benefits, the availability of work or how UK policies compare to those of other EU countries.⁵ The main reasons for wishing to reach the UK are family, community or historical ties and a positive impression of the country as respectful of human rights.
- 5.6 Whatever compelling reasons people in need of protection may have for wishing to reach the UK, however, the consultation document makes it clear that they are expected to make that application to the French authorities⁶. Those who do not seek an alternative route to the UK will be forced to accept a different, sometimes lower standard of protection and separation from family members and communities.

6. Consequences for refugee protection

- 6.1 The consultation document asserts that this arrangement is consistent with the 1951 refugee convention and the Dublin Convention. The Dublin Convention itself, however, is widely seen to be deeply flawed, not least by the House of Lords EU Committee, which has urged the government to consider an alternative means of identifying the state responsible for making an asylum claim. The EU regulation that will replace Dublin is based on the same flawed principle of assigning responsibility for a determining an asylum claim to the state which failed to prevent the asylum seeker from entering the EU.

⁵ Understanding the decision-making of asylum seekers, V.Robinson, University of Wales, July 2002

⁶ 3.3 "If any person requested asylum or other protection while in the control zone, that person would be directed to make any application to the authorities of the host State".

- 6.2 The justification for the requirement for people in need of protection to apply for asylum in France appears to be the common, but false idea that refugees should seek asylum at the first possible opportunity. Experts meeting under the auspices of UNHCR recently concluded: "*There is no obligation under international law for a person to seek international protection at the first effective opportunity*".⁷
- 6.3 The same expert roundtable concluded that bi- or multi-lateral arrangements could be established to encourage and enable asylum-seekers to seek international protection at the first available opportunity. Such arrangements, however, must be consistent with international refugee and human rights law and "*should take into account of meaningful links, such as family connections and other close ties, between an asylum-seeker and a particular country [...] The protection of the family as a natural and fundamental group unit of society is a widely recognised principle of human rights.*" The juxtaposed controls agreement does not take into account the links that asylum-seekers may have with the UK.
- 6.4 More broadly, the Refugee Council would question whether juxtaposed controls are, in fact, consistent with the 1951 Convention, particularly in combination with all the other measures taken by the UK and the EU ostensibly to combat illegal immigration, but which also impede access to protection for those in need.
- 6.5 The Home Office acknowledged in the White Paper, *Secure Borders, Safe Haven*, that it is "*often very difficult for those who do have a well-founded fear of persecution to arrive in the UK legally*". This is something of an understatement. In the absence of 'refugee visas' there is no practical, 'legal' means for a refugee to make their way to the UK. (The 500 places on the proposed resettlement programme, while a welcome development, are negligible compared to world's 12 million refugees).
- 6.6 When the Refugee Convention was being drafted, it was suggested that those who travelled illegally should be disqualified. This idea was rejected, and article 31 was added, which specifically protects refugees from being penalised for travelling illegally, in recognition of the difficulty people facing persecution have in obtaining documentation.
- 6.7 UNHCR has stated that requiring refugees to travel 'legally' is inconsistent with Article 31: "*By requiring a refugee to obtain proper travel documentation before fleeing his or her country seek asylum in another country, States in fact ignore the very problems which give rise to the need for refugee protection and, in effect, deny the possibility of asylum to some refugees.*"⁸
- 6.8 States are bound to interpret Conventions, such as the 1951 Convention, in good faith and in accordance with their objectives and purposes. The combination of the UK's measures to inhibit illegal movement and the absence of legal avenues for people in need of protection violates the principle of good faith, even if the number of refugees who nevertheless manage to reach the UK belies the effectiveness of these policies. If other signatories to the refugee convention were to follow the UK's example, there would be little left of the international protection regime.
- 6.9 The example set by the UK to the rest of the world is an important consideration. The asylum regime is a global safety net. Countries, such as Iran and Jordan, which take a far greater strain may well view the UK as attempting to shirk its obligations. Yet if there is war in Iraq the international community will be depending on those countries to protect many of the 2.2 million people expected to flee the conflict.

⁷ Summary Conclusion on the Concept of "Effective Protection", Lisbon Expert Roundtable, UNHCR, December 2002.

⁸ *Reconciling Migration Control and Refugee Protection in the European Union: A UNHCR Perspective*, October 2000.

- 6.10 This is not to deny the UK's right to control its borders, but merely to suggest that if it extends that right into France or elsewhere, it must, at the very minimum, accept a corresponding responsibility to examine requests for protection.

7. Conclusions and recommendations

- 7.1 The right to extend UK border controls into France should carry with it the responsibility for accepting asylum applications, particularly from people with ties to the UK. The juxtaposed controls agreement ignores any such responsibility.
- 7.2 Measures to tackle illegal immigration, such as the juxtaposed controls agreement, should be balanced by guarantees of access to protection to those in need, as EU leaders affirmed in Tampere in 1999.
- 7.3 If the UK believes that it receives an unfair number of asylum seekers compared to France and other EU states, it should work with its European partners to develop a system for sharing that responsibility fairly between all EU member states, in a way which takes into account asylum seekers' links to a particular country. A useful guide may be figures produced by UNHCR comparing the number of asylum seekers and refugees to host countries' national populations, per capita wealth and surface area; the combined ranking places the UK 7th of the 15 EU countries and 32nd in the world⁹.
- 7.4 Rather than relying on policies of deterrence and non-arrival, which even at their most effective, will do no more than shift the burden elsewhere, a more principled and effective approach to the numbers of people applying for asylum in the UK would be to focus on:
- a) better quality asylum decisions, combined with repatriation of asylum seekers found not to be in need of protection;
 - b) achieving a level playing field across Europe, so that the chances of being offered protection and the corresponding rights and entitlements are the same;
 - c) negotiating with other EU member states a mechanism to share responsibility for asylum seekers fairly and in a way that takes into account asylum seekers' family and other ties to a particular country;
 - d) preventing refugees from having to flee by addressing the root causes e.g. through conflict prevention and resolution in countries of origin, institutional capacity building and the promotion of human rights and good governance;
 - e) ensuring that efforts to tackle 'push factors' are not undermined by other aspects of foreign policy, such as the promotion of arms sales.
 - f) providing political leadership to promote understanding of the reasons why refugees flee and the necessity for the international protection regime.

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⁹ *Selected Indicators Measuring Capacity and Contributions of Host Countries*, UNHCR, Geneva, April 2002.

