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**Refugee Law in theory and practice:
The case study of Sangatte**

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Annex 1: Map of the centre of Sangatte

Annex 2: Summary

In the last decades European Member States have faced the growing complexity of the problem of refugees on their territories. The number of refugees and asylum seekers rose significantly at exactly the same time as discussions between states towards new forms of cooperation within the European Union. Member States felt the need to open discussions and agreed on matters such as police cooperation, internal security, and access to territories, asylum and immigration.

Unfortunately, from then on asylum issues were to be mixed with questions related to immigration¹. The consequences of which blurred the line between security measures to prevent illegal immigration from the borders of the European Union and the need to ensure protection to the people in need of it.

Facing these two important questions, Member States tried to develop common policies taking both issues into consideration. Following the Schengen Convention, EU Member States amended the Treaty establishing the European Community and replaced it by the Treaty of Amsterdam adopted in 1997. They agreed to commit themselves towards creating an “area of freedom, security and justice”. For the first time, Member States agreed on setting common standards for asylum based on solidarity and shared responsibility.

In 1999, at a special European summit in Tampere, Finland, European leaders gave political directions to the legislative process of standard-setting and proudly spoke of their shared commitment to freedom, based on human rights, democratic institutions and the rule of law². The Summit conclusions underlined a common European Asylum system based on the full and inclusive application of the 1951 Convention on refugees, thus ensuring that nobody is sent back to persecution. Common policies on asylum and migration would offer

¹ The issues are closely related but should be treated separately.

² Tampere European Council, 15 and 16 October 1999, *Conclusions of the Presidency*, www.europarl.eu.int/summits/tam_en.htm, 01/07/03.

guarantees to those who seek protection in or access to the European Union while taking into account at the same time the need to combat illegal immigration.

Their commitment was recalled during the Laeken summit which took place in 2001 in Belgium as well as recently during the Council meeting which took place in June 2003 in Thessaloniki, Greece.

Meanwhile, at the period when all these statements and good wills were nicely being written and put on paper, major incidents appeared on the ground, in each of the member states' territory.

Problems of detention and abuse have remained of common practice and unexpected disturbances have kept arising away from the awareness of the common European people.

As such, one of the most relevant examples of these problems Europe has had to face and deal with was the Centre of Sangatte, in France, a few kilometres away from the Channel tunnel.

The existence of the centre was the main focus of a three-years long political disagreement between England and France but also within Europe.

It had opened in 1999 as a humanitarian response to the problem of hundreds of people wandering in the streets of the Calais region after having failed in reaching the UK illegally to ask for asylum.

It remains unexpected and unthinkable to find such a centre in a developed and supposed to be wealthy country, especially France, the would-be land of human rights. Unfortunately Sangatte remains only one example among many others all around Europe. Of course the Sangatte experience has its own specificities, as will be defined in this paper.

A lot of ink has been used to point out and denounce the situation of Sangatte. Articles and reports were written but these remained

insufficient and did not find any echo among the French and European political arenas.

I shall present here my own contribution to the problem of the centre of Sangatte because one should not forget the plight of the people who travelled through it.

The main aim of the paper is to show the discrepancy between theory and practice of European governments in refugee law and human rights instruments in general.

To this matter a practical example will be focused on, which description will help point out and question the main problems of nowadays European policies on illegal immigration and asylum policies. This will eventually show that while discussions about a common asylum policy are taking place, States' practice in general are developing on their own, on another level, without major concern to the agreed goals of Europe.

The research also stands as a response and an explanation of one of the most famous sentences used by the Director of the centre, Michel Derr, to describe the situation in Sangatte: "Un non-lieu pour des gens de non-droit". It appears difficult to translate exactly the meaning of the sentence but it means as a whole, a " place called nowhere for people with no rights". But "un non-lieu" also refers to the judicial term "non-suit". The people of Sangatte were not given a proper place to live but most important they were not given any status under national and international law. They eventually ended in an inadequate situation without any protection and no rights at all.

It is important to say that this paper is based on a field experience in the centre. This volunteer work lasted a month as a whole, between June and July 2001. Probably not sufficient enough to understand the whole picture of the problem, but a month living with the people in the centre, sharing their everyday life, and which, as such, was enriched by many different experiences.

As such this paper stands in the memory of all these people that had to travel through the centre, about 67,000 of them in three years, and of all these children who it is hoped have recovered their smile since then. The commitment of some people working in the field should also be reminded, in our case the French Red Cross staff who eventually tried its best to help people that had been forgotten by governments in quest of political enrichment.

The first two chapters will be of a descriptive kind. They will exclusively focus on the Centre of Sangatte. The reasons for its opening will be discussed by first setting the environment of the centre and then explaining the political situation that led the French authorities to decide of the creation of such a shelter. In this matter, a short description of the setting of the centre as well as describe its overall functioning will be given.

The second part will focus on the population hosted in the centre. It is of high relevance to know who they were exactly and how they eventually ended being sheltered in the centre. The reasons of their stay in Sangatte will be discussed and eventually their status under international law in France, the receiving country, will be questioned in regards to refugee instruments.

The third chapter will discuss the responsibilities of France towards these people. The country's obligations under refugee law and human rights instruments will be put in question and the extent to which it failed in fulfilling its obligations considered.

The fourth part will mainly be concerned with the involvement of the international community in resolving the problematic issue and existence of such a centre. A review of the most relevant actors will be given and their exact involvement in the political dispute considered.

Eventually the last chapter will deal with European policy as a whole. The theories and practices of States will be looked at. The main

evolutions towards the creation of a European asylum policy as well as the difficulties of its implementation considering States' actual practices will be discussed.

1. The centre of Sangatte

The centre of Sangatte was created to respond to a situation no longer acceptable for the people, both for the ones living in the “Calaisis” region and for the foreigners arriving everyday with only one goal in mind: clandestinely reaching England in one way or another.

It was also the consequence of the strategic status of the area, but not only. Foreigners had to face new difficulties in crossing the borders. Both the new European legislation as well as the political will to control entries into Europe made it harder for the people to travel from Calais to Dover. A tightening of the controls was set up at the source of the flows, in Calais, to prevent foreigners from entering the United Kingdom.

This situation led the people to wander in the streets trying to survive until they eventually managed to cross the Channel.

In this chapter we will try to give a description of the centre and explain its organisation by first focusing on the history that led to its opening. Then we will look at the basic services provided in the centre and the personnel working there.

1.1. Opening of the centre

In order to understand the environment and the context of the establishment of the centre, some historical elements will first be recalled. Then the specific conditions of its opening will be looked at.

1.1.1. Historical background

The creation of the centre of Sangatte was the result of a long “history of migrations” due to the strategic geographical position of the town Calais. It is indeed the nearest point of the old continent to the English coast. Only 34 kilometres separate the two coasts-only half an hour by train or by boat³. Thus the traffic is very dense. Boats and trains take people, trucks and cars from one land to the other. One boat crosses every 20 seconds, each one of them able to transport up to 85 trucks and about 15 hoverspeed as well as 12 TGVs cross the Channel (from Calais to Dover) each day⁴. This intense activity gives many different means and multiple accesses for people who want to reach England.

However, in the last decades, it had become harder and harder for foreigners to reach “the Promised Land” and settle because of the tightening of controls in Calais and the region.

In the mid-80s, a small group of foreigners, mostly Vietnamese and Pakistani faced great difficulties in trying to reach England. These were replaced a few years later by people arriving from Eastern Europe after the fall of the Berlin Wall as well as by Sri Lankan Tamils⁵.

It was only in 1994, that a small French Calais-based association, “la belle étoile”, called for attention to these people that were refused entry to England. Unfortunately, by then, no special measure was to be taken.

And the story went on. In October 1997, about 40 Gypsies coming from Czech Republic asked asylum to the British authorities

³ I. Monnin, *Enquête sur les trafiquants d'hommes in Immigration clandestine, filières mafieuses, prostitution...*, in Le Nouvel Observateur, Dossier n°1902, 19/04/01.

⁴ www.seafrance.fr/fr/la_flotte/seafrance_nord-pas-de-calais.php, ww9.poferries.com, www.hoverspeed.co.uk/schedules/fareschedules.pdf, 06/06/03.

⁵ GISTI, *Des milliers de fantômes en camp, la création du camp de Sangatte*, www.gisti.org/docs/actions/2000/sangatte/synthese.html, 03/03/03.

and were turned back at the tunnel terminal, before even reaching the island. Charity groups then took care of them until negotiations led to the acceptance of half of them by the British government. The other half remained in France.

One year later, in October 1998, young Kosovars fleeing the Serbian army arrived, soon followed by whole families in the beginning of the following year.

The charity groups taking care of them and providing them with basic needs, i.e. food and blankets, asked the French authorities to open a warehouse where they could stay overnight.

Thanks to their constant pressure, actions were taken to open centres to receive them but these attempts remained unsuccessful.

The first camp opened in May 2000 and only lasted a month. It opened every night and closed in the morning⁶. About 200 foreigners, most of them Kosovars arrived every night.

But on June 4th, 2000, the local authorities suddenly decided to close it and all the people were thrown back to the streets. They started settling in public parks, taking advantage of whatever they could find to build up emergency shelters. Public parks slowly took the shape of “shanty towns”.

When the authorities discovered these settlements, they decided to open a centre in Sangatte. The first centre was only meant to last 10 days.

1.1.2. The centre of Sangatte

The centre we will talk about in this paper opened on September 24th, 1999, thanks again to the continuous pressure of charity groups.

⁶ GISTI, *Une situation née il y a quatorze ans, entretien avec Véronique Désenclos*, 12 octobre 2000, www.gisti.org, 03/03/03.

The prefect decided to requisition a land owned by the company Eurotunnel, 10 kilometres far from the city of Calais and 4 kilometres from the Channel tunnel and the boat terminal.

The population and migration division of the Ministry of Labour and Solidarity set up a budget and eventually gave the French Red Cross the overall responsibility of the centre⁷.

A first attempt at creating a shared management of the centre by various Non-Governmental Organisations had led to a confuse situation. The idea was withdrawn after a few weeks and the overall management of the centre given to only one of them, the French Red Cross.

The centre's name was: "Centre d'Hébergement et d'Accueil d'Urgence Humanitaire de la Croix Rouge Francaise", the CHAUH; "accomodation and humanitarian emergency reception centre of the French Red Cross".

The mandate of the centre was said to be renewed every now and then on the basis of three to six months terms. As a whole the centre remained opened for three years and three months.

The centre is a huge corrugated-iron warehouse formerly used as storage for construction tools and materials to build the Channel tunnel. Its size is worth 25,000 square metres.

In the centre the housing was organised as follows: there were 18 portakabins able to host about 25 persons, including one for the French Red Cross personnel. 20 tents could receive up to 12 people each and 10 others, resembling military tents, could host 20 people. As a whole, around 865 persons could be hosted in the centre. Families and women were usually given places in the portakabins whereas singles were located under the tents.

⁷ V. Carrère, *Sangatte, un toit pour des fantômes*, www.adri.fr/HM/articles/1238/1238/art.html, 03/03/03

1.2. The equipment and services provided

The overall organisation of the centre should now be looked at by first explaining the welcoming procedure. Then some of the basic services provided in the centre will be considered.

1.2.1. The welcoming

As the people arrived in a state of complete exhaustion, the welcoming procedure decided upon remained very simple. It consisted in two main different stages.

The first one consisted in fulfilling a basic line of a simple questionnaire with the name, surname, year of birth and nationality. Each person could eventually fill in the case profession and level of studies.

This information was only to be used by the French Red Cross to establish daily, monthly and yearly statistics on the population hosted in the centre.

Still, as no identity papers were asked, it remained very hard to rely on the information given. People were afraid of giving any personal data and it was rather common to give another nationality in order not to be sent back home in case of a control of identity papers.

The second stage consisted in giving to the people arriving some information about the Red Cross and on the overall organisation of the centre. The basic rules to be followed, such as the opening hours of the canteen, showers, medical service, and times of distribution of basic needs products were presented.

Eventually they were all given two blankets and a place to sleep either in the portakabins or under the tents.

1.2.1. The basic services

Life in the centre was regulated by the basic services provided by the Red Cross: food, hygiene and the distributions of clothes.

It was said that about 2500 meals were distributed each day in the two canteens situated at the far end of the centre. There, people could benefit from three meals each day, to be taken at regular hours. People thus gathered in long waiting lines.

It was the moment when the Red Cross staff counted the number of people as this was considered to be the most suitable time to know how many people was living in the centre but still remained obsolete. After each meal the number of adults and children was given to the riot police (CRS), which remained the only information given to them.

The hot water for the showers was also opened following a regular schedule; a few hours in the morning and in the evening.

There were only 14 toilets as well as 14 showers for the whole hosted population of the centre. Some other Turkish toilets were to be built.

Distributions of hygienic products also took place twice a day, in the morning and in the afternoon. It was first decided that people would be given a kit containing shampoo, soap, toothbrush and toothpaste, toilet paper and razorblades. But it was soon decided to lift these kits considered to be too wasteful and distribute each item separately.

As most people arrived with nothing else but what they were wearing, clothes and shoes' distributions also took place two times a week.

1.2.2. The medical service

Another very important aspect for the good running of the centre was the medical service.

The medical staff was composed of two nurses working everyday and a number of doctors working voluntarily half a day every week. Some nurse students also came for a few weeks to help the staff as part of their internship. As a whole, the medical staff could provide consultations everyday. The overall staff could take care of the whole population's health problems. Outside opening hours of the nursery and the health centre, the rest of the staff was in charge of fulfilling the basics. And in cases of more complicated problems, the people were taken to the nearby hospital in Calais where they could be taken care of more effectively.

1.3. The personnel

Nothing could have been done without the constant commitment and care of the personnel. As a whole, about 50 members shared the overall organisation of the centre, without counting volunteers regularly coming to give a hand. A presentation of the personnel and the divisions of their tasks will be given. And their relationships with the people hosted as well as with the external actors will be considered.

1.3.1. Division of personnel

The management team was composed of a director, an assistant director and a secretary, their office being at the entrance of the centre.

A person was responsible of the overall logistics and technical management and was responsible of five teams of six people. Their working hours were divided as follows: they worked six days a week in shifts of two morning, two afternoons and two nights that enabled them provide a 24 hours attendance. They were in charge of maintaining the whole centre clean, checking and mending all places and equipments and distributing clothes. Other important tasks consisted in maintaining order within the centre and fulfilling all tasks at night such as welcoming new arrivals.

A team of six persons worked everyday to welcome people during the day and register them. They were also in charged of the overall relations with the external environment. Another team of seven persons was in charge of providing them food.

Another very important team was composed of two translators in charge of the mediation. One spoke various “European languages” such as English, Portuguese, German and Italian and the other one spoke English and Farsi, the language spoken in Iran and part of Afghanistan. They intervened daily on a more personal basis, receiving individuals and small groups of people in their office to inform them about administrative procedures concerning asylum and voluntary repatriation. They also informed them on the different rules of the centre.

Eventually a special office of the International Organisation for Migration (IOM), was set to take the voluntary repatriation in charge. A member worked daily in the centre to inform all persons interested about the possibilities to return home⁸.

⁸ The role of the IOM will be discussed further in section 4.

1.3.2. The relationships with the people hosted

We have to say that one of the main strength of the organisation within the centre was the accessibility of the Red Cross staff to the people hosted. Foreigners could indeed access all staff members at any time of the day, in their offices or in the rest of the centre. The same applied during the night even if fewer staff was present.

On the other hand, one of the main weaknesses of the centre remained the language difficulties. The staff unfortunately did not speak that much of English, putting all other languages aside. Thus it was sometimes difficult to build a real dialogue. The result was that a mixed language was set with some Arabic, Farsi and English words. In the end everybody could somehow understand each other.

Considering the bad conditions of receptions in France, people were not willing to stay in the country. However they did agree that the personnel was somehow raising the level of the situation because of their commitment to the cause of migrants and their faithfulness to the core principles of the Red Cross.

It was also difficult to establish long-term or even short-term relationships with the people because most of them only stayed for a few days and then would disappear. If the Red Cross staff did not have any news, it was supposed that they had managed to cross illegally to Britain. As such one could never expect to meet the same people the next day.

1.3.3. The relationships with external actors

Security at the centre was to be provided by the French government⁹. The police in front of the camp does not check their papers. They only checked cars with non-local registration plates as part of the measures taken against people smuggling. It seemed that

⁹ M-F. Borel, *Red Cross appeal to European Union after Sangatte death*, Red Cross, Red Crescent-News, 18/04/02, www.ifrc.org/docs/news/02/041801/, 30/06/03.

they themselves did not wish to be there. They stayed in their van outside in the field just next to the centre and waited for long hours in case something important happened. They worked in rounds and assured 24 hours presence and stayed in the region of Calais for only a few weeks and were then replaced by other contingents coming from all around the country.

Relationship with the main hospital of Calais also remained difficult.

When some persons could not be treated in the centre, they were transferred to the hospital where they could be provided with better treatment. Other persons who had been injured during their attempt to cross to the UK were also treated at the hospital.

Main difficulties arose when the patients did not speak English nor French. Problems of communication were usually expected as doctors were unable to explain them their health problems exactly and provide them with enough information about their treatment. The Red Cross staff eventually visited the patients at the hospital and gave them some psychological comfort.

The relationships between the people hosted in the centre and the people living in the village of Sangatte and Calais had also remained very tense during these three years. The latter blamed the first for the increase of insecurity in the area. This statement was counter-argued by many people and figures showed the contrary. However it remained true that many migrants did cross some of the people's fields and destroyed some of the fences to make their way to the train and boat terminals. As a consequence, some of the locals created an association to denounce the presence of so many illegals and pressured the government to act against the existence of the centre.

However some individuals as well as some companies of the Calis area used to bring some goods like clothes, packs of water for the new born babies, medicine and hygienic items. At the end it

showed that some people understood the plight of the people living in Sangatte and found ways of helping the Red Cross.

The region is indeed a strategic point for people who want to reach England, their Promised Land as well as their way out to the Anglo-Saxon world.

However the tightening of the controls in the last decades led to an unacceptable situation. People wandered in the streets without having anywhere to go, and lacking all forms of protection.

This problem was settled through the creation of the centre of Sangatte where people could stop for a few days or more on their way to England.

All people were gathered altogether in this shelter. However as part of the French political will, the services they were provided with remained very basic. The very name of the centre “Centre d’Hébergement et d’Accueil d’Urgence Humanitaire” does constantly remind us of the main purpose of the centre only to remain an emergency response. As such it was a provisional response that lasted over three years.

The relationships of the centre and the people hosted with the overall external environment remained very tense. The presence of so many foreigners was always considered as non-desirable in the little and quiet seaside town of Sangatte. To a certain extent, it led to some fevers of xenophobia from the people living in the area, even if they did contribute to the region’s economy.

2. The peopled hosted

Now that an overview of the overall organisation of the centre was given, it would be interesting to look deeper at the specificities and characteristics of the people it was hosting during its three years of existence. Thus, in order to understand who the people of Sangatte were, we first have to know who they were before arriving in the centre.

Sangatte was opened to respond to the humanitarian need of Kosovars escaping from the war. Since then and during its three years of functioning, other people coming from other parts of the world replaced them. Initially opened to receive from 200 to 300 foreigners, the centre, which has a capacity of 865 places, usually hosted around 1,500 persons.

In this chapter there will be an attempt at defining who the people of Sangatte were and the reasons why they arrived in the centre and also to show how they viewed their journey to England. Eventually the various existing statuses under international and national laws will be reviewed and considered as possibly applicable to the people hosted in Sangatte.

2.1. Who are they when they arrive?

In order to know more about the people staying in Sangatte, it is important to take into account some important elements such as their origins, the group ages they belonged to as well as their gender division. Eventually a presentation of their former social status back in their home country will be given.

To this purpose two recent studies¹⁰ will be referred to. The first one is from Smain Laacher on "Des étrangers en situation de 'transit' au Centre d'hébergement et d'Accueil d'Urgence Humanitaire de Sangatte" and the second one is "Fact-Finding Meetings: Analyse de données" from Muriel Thorens, a member of the IOM.

2.1.1. Countries of origin

If we consider these studies, we can see that most of the people hosted in the centre arrived from two main countries: Afghanistan and Iraq. The respective figures are 54.9% for the first nationality and 33.5% for the second¹¹; respectively 34% and 24% in the second study¹². Most of them were fleeing from war and political repression as well as a state of permanent insecurity. As a whole we can say that the population of Sangatte was echoing the tensions of the world. Violence, repression and war created new flows of refugees of which many who had decided to flee to England were to travel through Sangatte.

The people from the first country were mainly Tadjik, 25%, whereas the ones coming from Iraq were mostly Kurds, 26.8%¹³.

Another important figure shows that most of these people were Muslims, 94.6%¹⁴.

2.1.2. Group age and gender

The demographic representation of the population of the centre had two main characteristics: youth and masculinity.

¹⁰ Another study was led by the French organization, GISTI, which will be used for other purposes.

¹¹ S. Laacher, on the basis of 284 persons interviewed, p.16.

¹² M. Thorens, on the basis of 66 persons interviewed, p.3.

¹³ S. Laacher, idem, p.16.

¹⁴ S. Laacher, idem, p.17.

Indeed the average age was between 25 and 27 years old. The whole population of the centre mostly being under the age of thirty-five¹⁵.

Compared to the population normally received in refugee camps, usually composed of women and children, men stood for 89% of the population of Sangatte¹⁶.

It is also important to note that within this over representation of men, 67% were singles, 15% were married and had arrived together with their families whereas 15% had not. Their families would have eventually joined them once they had managed to settle in Europe.

2.1.3. Social status

Another of their important characteristics lies in the level of studies and the kind of occupation they had in their country before eventually deciding upon fleeing. 26.1% were graduated from university and 14% had the equivalent for the Baccalauréat¹⁷. As a whole, almost all of them had attended school in their home country.

18.3% were students and 30.6% were craft workers or had to do with trade, 13% were workers and 12% had intellectual or liberal occupations. For the two main nationalities of the centre, around 40% of them had been to school up to the Baccalauréat and part to university, 43% of Iraqis and 37% of Afghans¹⁸. We can thus conclude that most of them were trying to escape from a life they could no longer stand. They wanted to rebuild a new life based on good conditions of living for them and their children. They wanted to gain back an activity, whether studies or occupation, one that their home country could no longer provide them with.

It can also be deduced, from the two main characteristics of the people hosted, youth and masculinity, that the persons arriving in

¹⁵ M. Thorens, idem, p.4.

¹⁶ M. Thorens, p.2.

¹⁷ S. Laacher, idem, p.19.

¹⁸ S. Laacher, idem, p.19.

Sangatte were often the first members of the family to escape from the country. They went off and scouted around to see what could happen in Europe and weigh the possibilities and perspectives for a new life. As such they needed to be quite young to be able to survive and overcome all difficulties to be found during the journey.

Of course not only single men were in the centre; families also arrived which usually added more difficulties in the illegal crossing of the Channel. As a whole about a hundred different nationalities had to live altogether in the centre¹⁹, people coming from Afghanistan and Iraq but not only. They also came from other parts of the world in conflict or from underdeveloped countries. Unexpectedly, there were also people coming from Western countries such as American, English and French nationals. Sangatte had become a shelter for all sufferings and thus hosted people in very different but still dramatic situations²⁰.

2.2. Sangatte, a staging post on the way to England?

After having defined who the people of Sangatte were before arriving in the centre, it appears important to look at the very circumstances of their stay. After first looking at the way they managed to arrive to the centre, a brief description of their stay will be given and eventually the choice of the United Kingdom as a country of asylum will have to be discussed.

2.2.1. How did they arrive to Sangatte?

We first have to admit that Sangatte was, in one way or another, to be included as part of the journey. People, who had already heard of

¹⁹ Immigration & Nationality Directorate, www.ind.homeoffice.gov.uk/news.asp?NewsID=211, 26/03/03.

²⁰ S. Zappi, *A Sangatte les entretiens individuels menés par le HCR révèlent une multiplicité de parcours dramatiques*, in *Le Monde*, 18/11/02.

it in their home country, from relatives or friends, only came for a stopover of one day or more in order to get some rest and recover enough strength to continue their journey. For the ones who did not know anything about the existence of the centre, they would hear about it on their way to Europe through other travellers or mainly from smugglers. The police, upon their arrival in Calais, also informed some others²¹.

All roads led to Sangatte. Thus it is important to focus now on the journeys that led the people to the centre.

All of them had travelled clandestinely, either only for a part or for the whole journey, depending on their point of departure.

For the people coming from countries at war or with highly repressive governments such as Iraq and Afghanistan, the whole trip was clandestine. They travelled by cars, trucks or on foot but almost using the same routes through Turkey, Iran then Italy and Spain.

For those coming from other countries where travelling was permitted, they sometimes used a visa and travelled by plane up to a certain geographic point and then continued clandestinely.

The journey usually lasted several months and was always filled with danger, and most terrible conditions. For some of them it also meant imprisonment.

Indeed it takes time and especially money to reach Europe. If we consider Smain Laacher's study, 99 of the interviewed persons had paid a maximum of 5,000 Dollars only to arrive to Sangatte, 214 had paid between 5,000 and 10,000 Dollars and 43 paid between 10,000 and 15,000 Dollars. Eventually ten persons had to pay between 10,000 and 50,000 Dollars, essentially members of families²².

²¹ S. Laacher, *idem*, p.53.

²² S. Laacher, *idem*, p.34/35.

Unfortunately the smuggling did not end upon arrival in Sangatte. People also had to pay for their way through England. The known price was between 390 to 580 Euros, about 400 to 600 Dollars²³. The prices had risen tremendously in the last years because it had become harder to cross because of the tightening of police controls.

2.2.2. How long in Sangatte?

The first year of its opening from September 1999, the centre was said to have been hosting about 3,200 persons whereas it hosted 19,000 people the following year.

Such a rise could be explained first by the tightening of the controls in Calais both at the train stations and ports. New police measures had been set in all departure places to prevent people from crossing illegally to England.

First, from June 2001, the UK had been operating immigration controls at all Eurostar stations, in Calais but also in Paris and Lille where the checks resembled the ones done at airports such as identity checks. Then, UK immigration officers were placed in Calais from August 20, 2002. Their main task was to advise the French authorities as to whether the documents were likely to be accepted in the UK.

In Frethun, the Channel tunnel terminal, a new security infrastructure was set. A 4 km long and 3m high double fence, with highly cutting wires was set around the Eurotunnel site and 100 as well as 35 SCNF security personnel were deployed to patrol around the area.

²³P. Smolar, *La police démantèle les réseaux de passeurs de Sangatte*, in *Le Monde*, 30/10/02.

Eventually in September 2002, the UK lent a new system of heart beat detection to the French authorities that enabled them control the presence of people in the trucks²⁴.

Then its success could also be explained by the fact that everybody knew about the centre, locals, European citizens, foreigners and governments. All were aware of its existence. As such it didn't bring more people, as many have argued, but the people were concentrated in one single place and so it became easier to point at them. Thus the only reproach that could have been expressed was that it brought to the open a phenomenon that was previously clandestine and which mainly had to do with the Mafia²⁵.

It was also common that the number of people would rise when the ferry companies would be on strike or during New Year's holidays when the harbours would close. During winters, the number reached peaks of around 2,000 persons hosted in the centre.

As a consequence of the tightening of the controls at the train terminal and harbour, the stay in the centre was of about 21 days whereas it was only of a few days at the very beginning²⁶.

Migrants took desperate measures to enter the UK clandestinely. There were mostly two different ways of crossing to the UK. The first one was through the 50 kilometres passage of the channel tunnel and the second one consisted in hiding in the trucks that were to cross the Channel by boat. In both cases, the migrants had to walk for hours the few kilometres that led to the Eurotunnel terminal or the harbour. They

²⁴Immigration & Nationality Directorate, *UK borders extended-Sangatte to close on 30 December*, www.ind.homeoffice.gov.uk/news.asp?NewsId=211, 26/03/03.

²⁵ S. Zappi, *Les responsables de la Croix-Rouge "demandent à voir les résultats"*, in *Le Monde*, 15/07/02.

²⁶ Gisti, « *Un non-lieu pour des gens de non-droit* », *entretien avec le directeur du centre*, octobre 2000, www.gisti.org, 03/03/03.

sometimes crossed the highway, facing high risks of being bumped into by cars driving at 130 kms speed.

In the first case, one should be in good health so the people using this means were mostly men. They first had to cross the high and secured fence protecting the terminal, then they either hid underneath trucks or in compartments beneath Eurostar trains that travelled at speeds of up to 180 miles per hour. Some others jumped on the train taking risks of high electrocution.

Considering the new tight security measures, a new tactic was used by the migrants. It was a group tactic. People would gather and enter the terminal altogether so as to confuse the police forces not to know by then where to start. While some of them would be arrested, some others would grab the opportunity to cross²⁷.

Families preferred to cross by boat, considered as a less dangerous means. They usually hid in trucks and waited, sometimes for hours, for them to get on the boat.

2.2.3. Why the United Kingdom?

Many asylum seekers preferred to apply for asylum in the UK, where persecution by non-state agents could be considered grounds for asylum, unlike in France.

Many asylum seekers also believed the reception conditions to be better in the UK. The procedures for asylum were believed to be more flexible and easier, there were no identity controls and access to work was easier for foreigners.

Britain also allowed asylum seekers to ask for a work permit after six months if their application had not reached any decision.

²⁷ Called « la tactique de l'assault en groupe », *La police démantèle les réseaux de passeurs de Sangatte*, in *Le Monde*, 30/10/02.

Authorities believed that they could reach a decision within this period of time.

All roads from Sangatte led to the UK. Even the people who did not wish to go to England from the start considered going there after spending a few days in the centre. As many people talked about the UK and of the better possibilities for an eventual resettlement, this led other people to reconsider their options.

Leaving aside all the possibilities of choosing a country of asylum because of its more welcoming conditions of receptions, many other elements have to be taken into account to explain the popularity of the UK among asylum seekers and migrants. It first comprises the language that is one of the most spoken around the globe or at least one that is taught everywhere and considered to be easy to learn.

Then people trying to reach England were mostly looking for some members of their family or from their community. As such the colonial past of England and the existence of the Common Wealth have to be taken into account.

Another important element is that reaching the UK would have enabled migrants going to other Anglo-Saxon countries such as the United States or Canada.

2.3. What status under international law?

After having explained who the people of Sangatte were before arriving and what their wills were upon arrival, it appears relevant to focus on their status regarding international law during their stay in the centre. In order to do so, the different existing statuses under international and national laws will be considered and reviewed in order to see whether they could be applied to the people of Sangatte and thus provide them with any protection.

2.3.1. Refugees

A brief definition of both the statuses of refugees and asylum seekers will be given to see to what extent the people of Sangatte could fall under the scope of any of them as defined by international law. Indeed both statuses are relevant for the hosted people in the centre because they introduce rights and obligations for States to protect them.

Article 1 of the 1951 UN Convention defines a refugee as "a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group or political opinion; and is unwilling to avail himself/herself of the protection of that country, or to return there for fear of persecution".

The definition is to be considered as universal. However this very universality has two main consequences. On the one hand it should not be too detailed otherwise State Parties would have problems honouring their obligations and on the other hand, it should not be too precise to widen the scope of its application. As such the definition is considered to be flexible and both the elements of "persecution" and "well-founded fear" know a wide range of interpretations. Furthermore, practice within State Parties show that there are not only differences in interpretation between them but also within the same state considering different situations.

While some countries have decided to widen the definition of the term "refugee", European countries expressed their wish to stick to the definition found in the UN Convention and its Additional Protocol.

Under the Cartagena Declaration, the practice across Latin American countries has included a widened definition of the term, although the document is non-binding²⁸.

African countries have also used a broader definition of the term in the OAU Convention which entered into force in 1974²⁹.

However, the convention remains silent on the procedures for determining refugee status. It leaves it to the discretionary power of states. As such, each state decides for its own procedures that lead to many differences from one country to another.

It is also important to note that the convention does not give any definition of the authors of persecutions. Some states have restricted their understanding only to state agents such as France but most of them have included non-state agents in their definition.

2.3.2. Asylum-seekers

But before being recognised as a refugee, one should always submit an application for asylum before the relevant authorities of the country concerned.

"Asylum seeker" is a general term for a person who has not yet received a decision on his/her claim for refugee status. As a matter of

²⁸ 1984 Cartagena Declaration, Conclusions, paragraph 3 states that *"it is necessary to consider enlarging of the concept of a refugee"* and that *"the definition or concept of a refugee to be recommended for use in the region is one of which, in addition to the containing elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of Human Rights or other circumstances which have seriously disturbed public order."*

²⁹ OAU Convention, article I(2): *"The term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin and nationality."*, United Nations, A compilation of international instruments, vol.II, Regional instruments, ST/HR/1Rev.5(volIII), p.324.

fact not every asylum seeker will eventually be recognised as a refugee under the Convention but fortunately many of them will.

The word “asylum” is not defined in international law but has become an umbrella term for the protection provided by a country to the refugees living on its territory.

Asylum ensures some basic protection to the people such as the right not to be returned (non-refoulement) to their country where their life or freedom could be threatened. This is to be applied for a temporary period and until a solution is eventually found.

If we consider both definitions, we can say that some of the people hosted in the centre could have indeed applied for the refugee status because some of them obviously fulfilled the three pre-conditions. They left their country and so did not wish to enjoy of the protection of their government anymore and had good reasons to fear persecutions.

However, the number of asylum applications in the centre always remained very low.

In this respect and no matter if they did fit in the definition of a refugee, the people of Sangatte could not be considered as refugees as they had not previously applied for asylum.

Still, we can wonder whether they could not be considered as refugees anyway considering the recent evolutions in the definitions of both statuses.

First, under International Law, a person is a refugee as soon as the criteria contained in the definition are fulfilled. However recent interpretations tend to consider that the recognition of a person as a refugee is only declaratory, that is it only states that the person is a refugee. In this view a person is a refugee even before he is recognised

as such. The status alone does not recognise a person as being a refugee.

The term "asylum seeker" has also been the subject of many controversies. It is argued that the term could refer to someone who has not yet submitted an application³⁰. And in this case the definition is highly widened. Some states also consider that asylum seekers should have the same rights as set in the 1951 Convention on refugees.

Some of the people sheltered in Sangatte could have been rejected asylum seekers staying illegally on the French territory. As such, after being detained from two to twelve days and if the expulsion could not be carried within this period of time, the person was then released without documents³¹.

One can thus wonder whether the people of Sangatte were to be considered as refugees or simply as asylum seekers because they for sure wanted to become regular citizens and enjoy the rights these statuses would have provided them with.

2.3.3. Other statuses

Economic migrants are persons who leave their country of origin purely for economic reasons, to seek material improvements in their lives. They take advantage of improved communications of the last decades to seek new lives in other, mostly western countries. As such they still enjoy the protection of their home country and do not fall within the criteria for refugee status under the 1951 Convention³².

³⁰ Inter Parliamentary Union, *Refugee Protection, A guide to International Refugee Law*, 2001, p.48.

³¹F. Liebaut, The Danish Refugee Council, *Legal and social conditions for asylum seekers and refugees in Western European countries*, May 2000, pp. 91-92.

³² Inter Parliamentary Union, *idem*, p.41.

Of course some of the people of the centre could have fallen into this category, such as the people coming from under developed or developing countries such as the ones coming from Marrocco, Tunisia, Eastern countries, etc. Most industrialised countries fear this category of people is as they consider them as a threat to their economic well-being.

But what happens if they decide not to be granted this protection and destroy their identity papers? They then become “undocumented travellers”.

In the last decades, France has had to face the problem of the so-called "sans-papiers", mainly people who arrived illegally on the territory or are now remaining illegally because they were refused the refugee status or had their visa which then had expired. The main problem raised by these people is that some of them can obviously not be reconducted to the borders and returned to their country because of the principle of “non-refoulement” in cases they could face possible threats to their lives.

The composition of the population of Sangatte is a complex matter. The centre has brought together all kinds of different people. "Would-be refugees or asylum seekers", economic migrants, but also rejected asylum seekers and people left aside by the society such as homeless people were living altogether.

One main common feature of all these people consisted in the fact that most of them did not have any papers.

Two main reasons could explain this fact. On the one hand, immigrants who seek admission on the territory may wilfully avoid having the necessary documents or carry false ones and remain in the receiving country in violation of national laws. This is partly to avoid recognition of any status and would prevent the country from sending them back to their home country. On the other hand, inadequate

documents can also be the consequence of institutional deficiency. The reluctance of the state to provide people with kind of status or the absence of official agencies working in the field of immigration or even a lack of information concerning the issues of asylum can lead to absurd situations like Sangatte.

As a consequence, the centre has been a magnet for illegal immigrants over the past three years. Over 67,000 people have passed through it³³.

However most of the people arriving in the centre wished to stay there only the least possible time.

As such the weekly renewal rate was of 1/3 of the overall population³⁴ and several hundreds of people continued to arrive every week³⁵. At the end, Sangatte was to be defined as a fitness centre where people could stay for a few days or more to come back to form³⁶.

However the centre did not provide very good conditions of living.

³³ Immigration and Nationality Directorate, *UK borders extended-Sangatte to close on 30 December*, 02/12/02, www.ind.homeoffice.gov.uk/news.asp?NewsId=211, 26/03/03.

³⁴ S. Laacher, *idem*, p. 9.

³⁵ M-F. Borel, *idem*.

³⁶ "Un centre de remise en forme pour réfugiés."

3. France's obligations and Human rights violations

There is no obligation for a country to allow foreigners on its territory. In this matter, State's sovereignty prevails and a country may decide if and how it will allow non-citizens to enter its territory. The UN Convention on Refugees remains silent on the procedures of entry of its State Parties.

In the case of Sangatte this is not of high relevance because the people were already on the French territory. The problem then was mainly on how to deal with them because their presence was in violation of national law.

Still, to protect refugees, a state should first know who they are. It should be able to differentiate those in need of international protection from other people seeking entry to its territory. In the case of Sangatte, France remained obviously reluctant to identifying the people living there.

The sangatte centre was opened to prevent refugees from having to live in inhumane conditions as well as to avoid xenophobic reactions from the French population living in the area of Calais.

In this chapter, the general conditions of protection of asylum States will be looked at and a special focus on France's violations of its obligations under Human Rights and Refugee instruments considered. Then the very conditions of living in the centre of Sangatte in regards to Human rights standards will be discussed.

3.1. France's obligations

A definition of effective protection is needed to understand the primary obligation of France towards these people. Then the principle of "non-refoulement" will be defined first under the refugee instruments and will then be considered as regards to human rights treaties.

3.1.1. Effective protection

A person who enters the territory of a State party to the Refugee Convention, or who falls under the effective control of those acting on its behalf, engages not only the obligations of that state under the refugee instruments, but also under the obligations of Human Rights Treaties to which that same state is bound. In the European context, this will include obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) as well as other international human rights standards. Thus the state is bound to ensure effective protection of an individual on its territory and should also ensure that basic human rights are guaranteed.

When referring to the term "effective protection", one should understand not only protection against refoulement but also guarantees of primary humanitarian assistance. This also includes access to primary health care and education, access to the labour market or means of subsistence sufficient enough to provide people with an adequate standard of living. It is also argued by some NGOs such as Amnesty International³⁷, that legal status should be included in the definition of effective protection and should be given special attention.

³⁷ Amnesty International, *UK/EU/UNHCR Unlawful and unworkable-Amnesty International's views on the proposals for extra-territorial processing of asylum claims*, AI INDEX: IOR 61/004/2003, 18/06/03 www.ai.int, 30/06/03.

3.1.2. The principle of 'non-refoulement'

The only exception to the general rule of discretionary power and sovereignty of the state to define its own rule on refugee determination lies in the principle of non-refoulement.

A state may not return a refugee, in any manner whatsoever, to the frontiers of its territory or back to his own country where his life or freedom would be threatened³⁸.

This principle also applies when the person has illegally entered the territory. The principle is only to be found as such in the Convention on refugees.

As refugees who flee generally have no time to deal with immigration facilities, the principle of "non-refoulement" should also apply when the person has illegally entered the territory.

The very question of admission and illegal entry is dealt with in article 31 of the Convention³⁹ under which refugees are not required to have come directly from their country of origin, but other countries through which they have passed should also have constituted potential threats to life or freedom. However, as G.S. Goodwill-Gill explains, it still remains unclear whether article 31 could be invoked "in cases where continued flight has been dictated more by the refusal of other countries to grant asylum, or by the operation of exclusionary

³⁸ UN Convention relating to the status of refugees, art. 33(1): « *No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.* ».

³⁹ *Idem*, art. 31(1): "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present on their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

provisions such as those on safe third country, safe country of origin or time limits"⁴⁰.

As the people of Sangatte did not fall under the scope of the refugee Convention, one can first question whether the people eventually wished to show good cause to the authorities or if this was the consequence of an insufficiency on the part of the French authorities. Then one can wonder whether the principle could be applied and if it is referred to in other human rights instruments and which would broaden the scope of the principle and give an alternative or complementary measure of protection against "refoulement".

The principle is not to be found in human rights treaties, i.e. not on the same legal basis as in the Refugee Convention where the grounds for the principle is to be applied in regards to race, religion and some other elements, but it is referred to in a broader sense. The grounds for not returning a person is dealt in article 3 of the Convention Against Torture when there are fears of torture or other inhumane treatments.

As a consequence, France believed these people could not be returned in accordance with article 33 of the 1951 Convention but also with article 3 of the Convention Against Torture⁴¹. In this case, France did fulfil its obligation and justified as such the creation of the centre of Sangatte on the basis of the principle of non-refoulement.

This principle is also to be found in other Human Rights treaties⁴² to which people could have recourse and which offer complementary protection against "refoulement".

⁴⁰ G.S. Goodwill-Gill, *The refugee in international law*, second ed., Oxford 1996, p.152.

⁴¹ Convention Against Torture, art.3 (1): « *No State Party shall expel, return ('refouler') or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.* ».

⁴² Art. 45§4 of the Fourth Geneva Convention, Art. 7 of the International Covenant on Civil and Political Rights.

In such a case, France being a party to the ECHR is also of relevance. It expands the rights of the people living in Sangatte and is complementary to the rights already contained in the Refugee instruments. This indeed broadens the scope of protection of these people, as the convention does not need to establish their status under international law. Indeed there is no need to differentiate between who is a refugee, an asylum seeker or an illegal person. As such they are not entitled to any special protection and should enjoy, at least in principle, the same rights as any other person. Article 4 of the fourth Protocol reinforces the principle of non-refoulement as it prohibits the collective expulsion of aliens.

The Council Resolution on minimum guarantees for asylum procedures reinforces this principle in its article 2 II in which it states that no expulsion measure can be put in place until a decision has been taken on the asylum procedure⁴³.

Furthermore the European Court of Human Rights is not concerned about whether one belongs to a certain category of persons. What is more important is the situation the person would face if expelled and returned to his home country. As such the Court as well as the Commission have imposed further restrictions through their interpretation of the convention. Extradition or expulsion of non-nationals should not interfere with both articles 3⁴⁴ and 8⁴⁵, concerning the prohibition of torture and the respect for private and family life⁴⁶.

⁴³ Council Resolution on minimum guarantees for asylum procedures, Part II, art. 2 : « *In order to ensure effectively the principle of 'non-refoulement', no expulsion measure will be carried out as long as no decision has been taken on the asylum procedure* », June 20, 1995, www.europa.eu.int, Official Journal C274, 19/09/1996, p. 0013-0017, 05/03/03.

⁴⁴ ECHR, article 3: « *No one shall be subjected to torture or to inhumane or degrading treatment* ».

⁴⁵ ECHR, article 8: « *Everyone has the right to respect for his private and family life, his home and his correspondence.* ».

⁴⁶ W. Strasser, in *2d colloquy on the European Convention on Human Rights and the Protection of refugees, asylum seekers and displaced persons*, UNHCR, Proceedings, Strasbourg, 19/20 May 2000, Council of Europe, 2000, p.48.

As the whole we can say that the principle as such can only be found in the refugee instruments but human rights treaties do refer to it on other legal grounds. At the end the result remains the same, no one can be returned.

However none of these instruments guarantee a right to asylum; they only set protection, whether special or general, to all people in need of it.

At the end, France believed that housing these “would-be official refugees” in Sangatte was certainly better than letting them wander in the streets.

3.2. Violations of rights

Apart from the fact that France housed the people altogether in this huge centre, the situation they had to face remained inadequate. And the principle of non-refoulement was not applied in accordance with the general provisions of Human Rights law. Some violations of rights within the centre will also be referred to.

3.2.1. Violations of rights related to asylum

As an explanation to the behaviour of French authorities towards the population of the centre, violations of some of the basic rights regarding asylum contained in the Human Rights instruments will be looked at.

The Universal Declaration states three highly relevant rights for persons seeking asylum. These rights are found in articles 6, 7, 13 and 14.

First, article 14 sets the basic right to seek and enjoy asylum⁴⁷. Then article 6 and 7 state that everyone should be recognised as a person before the law and be equal before it⁴⁸. It seems that the reluctance of France to provide the people living in Sangatte with any status was in violation of these two rights. Eventually article 13 deals with freedom of movement and residence as well as the right to leave one's country⁴⁹.

The Universal Declaration remains a non-binding instrument and its articles should only serve as a guidance for national practices.

However there has been an emerging tendency to refer to asylum procedures and consider it as a right because people fleeing persecutions should be allowed to seek asylum.

The "right to seek asylum" requires that individual asylum seekers have access to fair and efficient procedures for the examination of their claim which include, as a first step, ensuring that information about the possible forms of protection are made available.

Furthermore, several provisions of the Directive on the reception of asylum seekers reinforce this requirement by introducing adequate minimum standards. These include that asylum applicants should be given information and documentation as well as have access to non-governmental organisations and legal advisors⁵⁰.

⁴⁷ UDHR, art. 14(1), "Everyone has the right to seek and enjoy in other countries asylum from persecution."

⁴⁸ UDHR, art. 6, "Everyone has the right to recognition everywhere as a person before the law." and art. 7, "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

⁴⁹ UDHR, art. 13, (1) "Everyone has the right to freedom of movement and residence within the borders of each state." and (2) "Everyone has the right to leave any country, including his own, and to return to his country."

⁵⁰ Directive on minimum standards on the reception of applicants for asylum, Dublin II, COM (2001) 447 final, 26/07/2001.

Illegal migrants arriving on the French territory should be able to have access to the authorities in charge of the asylum system and be informed about the different procedures and kinds of protection the country can offer them. Most people arriving at Sangatte did not know anything about these procedures. And in the cases when the authorities are unable or unwilling to inform the people, non-governmental actors acting on its behalf should be present to present them the system. As the French Red Cross ran the centre, it should have informed them about the possibilities to stay in the country. Unfortunately, as we have already seen, only two persons were in charge of giving information and advice on asylum for an average population of 1,500, which made the requirement difficult to implement.

As the main goal of illegal migrants was to seek and find protection in a country other than their own, the main duty of France was to provide them with some elements of security and protection. It failed in doing so first by sheltering all these people altogether in a huge centre, then by not ensuring that their lives would not be threatened in any ways. People living in the centre had to face many problems which were direct consequences of the over crowdedness. Many nationalities and ethnic groups fighting in their home countries had to learn how to live altogether. This eventually led to some uncontrollable tensions and fights took place between different members of the hosted population.

Another very important matter lies in the fact that France considered the centre only to be a provisional solution and that it did not wish to welcome these people. Thus it applied a policy of “laissez-faire” and most of the time did not act against their attempts to reach England. France let them take very high risks and did not protect their lives. In the year 2002, eleven people sheltered in the centre died during their failed attempts to reach the UK⁵¹. Of course the French

⁵¹ M-F. Borel, *idem*.

government tried to stop them and provided many means to control the train and boat terminals but one could argue that the authorities allowed the creation of such a center while at the same time they prevented them from crossing. France's position on the center remained quiet unclear. Considering this, most people of the centre felt that France did not wish to protect them and thus argued that the situation, as it had become so troublesome and problematic, could amount to inhumane treatment as defined in human rights treaties. France's inaction or lack of will to take action would be considered as in violation of article 7 of the International Covenant on Civil and Political Rights⁵² and article 3 of the ECHR. This point of view could be argued and one could find many pros and cons to such a statement. At least France's inaction led the people to taking high risks for their lives with the tacit approval of the authorities.

3.2.2. Human rights violations in the centre of Sangatte

As no real status as well as no international legal protection was to be given to the people of Sangatte, France believed that the problem needed a humanitarian response. Someone had to make sure that the people had access to basic food, shelter and care. This is also shown in the very name of the centre known to be an emergency humanitarian centre of reception. Thus the services they were provided with remained very basic, as we have shown before. The conditions as a whole remained under the level of the needs.

These conditions of living will be discussed in regards to the Human Rights instruments and considered as possible violations of France's obligations.

Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes "the right of anyone to adequate

⁵² ICCPR, article 7: « *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.* ».

standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions".

As discussed in chapter 1, the centre of Sangatte as it housed many people from different origins and nationalities in this bit warehouse in portakabins and under tents, it seems difficult to believe that the conditions of housing offered by the French Red Cross on behalf of the government were adequate. The tensions that arose between the different peoples housed in sangatte were hardly avoidable because different nationalities which usually fought each other in their home country were to live together and sometimes even in the same portakabin⁵³.

The clothes's distributions also remained below the needs, especially in winter time because of the cold. The French government did not take enough measures to provide the people of Sangatte with adequate standards of living. Neither did it take any measure towards an international cooperation.

France was also unable to fulfil its obligation of respect for private life and family life as referred to in article 17 of the ICCPR⁵⁴ as well as in article 8.1 of the ECHR⁵⁵. It appears that the conditions of housing did not enable the population of Sangatte to have a full respect of their private and family life. And it remains difficult to justify the failure of the government to meet its obligations under article 8.2 of the ECHR which provides a possible "interference[...]in accordance with the law" and when it is "necessary in a democratic society...".

Furthermore the right to medical care as referred to in articles 11 and 13 of the European Social Charter as well as in the revised one

⁵³ The right to housing is also referred to in article 31 of the revised Social Charter, "*to promote access to housing of an adequate standard.*".

⁵⁴ ICCPR, article 17: "*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence....*".

⁵⁵ ECHR, article 8.1: "*Everyone has the right to respect for his private and family life, his home and correspondence.*".

were not completely met. Some medical assistance was provided as explained in chapter 2 but it remained far below the needs and remained insufficient.

Eventually the right to education as defined in article 13 of the ICESCR was not fulfilled either. Firstly children had no possibility to benefit from any form of education nor any access to a playground. Only few volunteers from local NGOs came once or twice a week to the centre to make the children play. For adults no language courses were available nor any training scheme.

As a whole the violations of these basic rights were to be considered as part of the plotical reluctance of the French government to accept these people on its territory. It was believed that if the people were only given only very low standards conditions of living, they would not wish to stay under these very limited conditions.

It embodied the will of the French authorities to keep Sangatte only as a way through something else, i.e. a stop of a few days before reaching England and eventually getting rid of them.

Determination of refugees remains a difficult matter and has not yet been incorporated into the refugee instruments. It continues to be at the discretion of individual states. But sovereignty is never absolute. International relations imply a reasonable and acceptable level of compromise. Thus the refugee instruments try to reconcile state interest with protection.

Moreover the rights and freedoms set in the European Convention are to be applied to all persons including aliens and without discrimination on any grounds.

In the Sangatte case it seems that France had become a welcoming territory against its own will.

The situation in the centre was the direct effect of France's inability to solve the problem of illegal foreigners on its territory: these persons could not be expelled but neither were they officially welcomed. It also shows the political will of the country to see these people going and not stay in France.

Eventually the best policy was not to have any policy⁵⁶. The presence of thousands of illegal foreigners was tolerated only by keeping them undocumented.

Some controversies also arose on the very name of the centre. Some people argued that the centre should be called or have been called a camp because of the conditions of receptions and of living.

It can also be questioned, as some people suggested it, whether, in situations of protection-deficit in welfare and social benefits like in this case, people could refer to the provisions of the European Social Charter, which is now strengthened by a collective complaint mechanism⁵⁷.

⁵⁶ S. Laacher, *idem*, p. 78.

⁵⁷ UNHCR, *Section II, Status of refugees in the country where they seek asylum*, *idem*, p. 63.

4. The involvement of the international community

It is the responsibility of States to protect the people living on its territory. When governments are unwilling or unable to do so, citizens and individuals in general may suffer from serious violations of their basic rights and be forced to leave their homes, and often their families, to seek safety in another country.

In the cases where the receiving country cannot offer them any protection and fulfill their basic rights as refugees or under any other form of protection, the international community should step in to ensure that those basic rights are respected.

In this chapter the response of the international community will be considered and the actions of the different actors relevant to the issue discussed. Then the settlement of the problem that led to the closure of the centre will be looked at in a more detailed way.

4.1 The International community's response

4.1.1. European countries and the “burden-sharing”

Countries of asylum assume the heaviest burden during migration flows. In our case France had to deal with the people sheltered in the center and Great Britain, on its side, had to protect illegal arrivals on its territory.

However refugee problems and flows of illegal persons should be considered as an international issue. And this all the more relevant in the European context, where all Member countries should help restore security and find solutions to problems arising in one of its

neighbouring countries as set by the Amsterdam Treaty which establishes a system of responsibility sharing.

In this matter we can only face the European failure to seek and eventually find responses to the problems of Sangatte.

4.1.2. The UNHCR

Even if the overall management of the centre was given to the French Red Cross, one can wonder whether cooperation between different organisations would not have helped finding better solutions to the problematic issue of Sangatte.

As such one can wonder why the UNHCR had not been involved in the management until the very late settlement on the closure of the centre.

The UNHCR is a humanitarian and non-political organisation mandated by the United Nations to protect refugees and help them find solutions to their plight. The Office was founded in 1950 and was since then expanded from a very small specialised agency to nowadays an organisation able to cope with the growing complexity of the problems of refugees as well as all the people in need of protection in the last decades.

The Refugee instruments provide State parties with a legal framework for refugee protection. On its part, the UNHCR was given a mandate to provide international protection to refugees and seek permanent solutions to their problems of resettlement under its Statute adopted by the UN General Assembly in December 1950. Part of its work is to respond to emergency situations involving large flows of refugees, provide information on the refugees' home countries in cases of voluntary repatriation, documenting them on resettlement in second countries of asylum and promote international refugee instruments as well as monitor governments' compliance with international refugee law. In order to meet with the complexity of nowadays problematic and political issue of refugees, the UNHCR's mandate has been extended

by the General Assembly to include responsibility for the protection of other groups of people not covered by the refugee instruments. These are mandate refugees⁵⁸, returnees, stateless persons as well as internally displaced persons. And most important in our case, asylum seekers are also considered to be persons of concern to the UNHCR.

Among the provisions that State Parties to the refugee Convention and Protocol must apply, Article 35 of the convention and Article II of the Protocol state that France should have cooperated with the UNHCR. The agency works in partnership with governments to help share the responsibility of protecting refugees and encourages them to resolve the causes of refugee flows.

The High Commissioner for Refugees remained silent on the issue of Sangatte. Unexpectedly, no reports on the situation were published.

Furthermore, very few elements were available on the exact role and involvement of the UNHCR and especially on the respective roles of the local offices based in Paris and London.

The UNHCR published some articles about the issue of Sangatte and about its concern to see French authorities settle the problem but none of them really gave the agency's point of view and proposals to resolve the issue. As such these documents remain very poor as to explain what was the real concern of the agency towards the people of Sangatte.

Eventually the UNHCR proposed its help to the French government in the process of the closure of the centre. The French authorities accepted the offer. In this sense and in order to be as efficient as possible, the agency sent a team composed of people speaking the relevant languages and coming from the regions

⁵⁸ Mandate refugees are persons considered by the UNHCR to be refugees according to its Statute or under a broader mandate given by the General Assembly, IPU, *Refugee Protection*, idem, p. 22.

concerned to the centre of Sangatte to conduct a registration scheme⁵⁹. This included one to one interviews with all the people living there at that time in November 2002. The aim was to establish the various individual backgrounds and intentions that would enable the UNHCR identify possible solutions to each of the individual situations. As a whole, the team was to provide the people with counselling about their best realistic options.

4.1.3. The International Organisation for Migration (IOM)

One good example to show the UNHCR's inaction in the issue of Sangatte lies in the fact that its role also consists in seeking durable solutions such as voluntary repatriation. One has to conclude that in the case of Sangatte it did not do anything until its involvement in the operation of closure.

As a response to this lack of action, the IOM soon took this element in charge in early 2001.

The IOM is the leading international organisation working with migrants and governments providing humane responses to migration challenges. Established in 1951, the IOM is involved in resettling European migrants and refugees. It is important to note that the IOM is a non-governmental organisation and that its involvement could have been considered to be less problematic in the political issue the centre raised. As an NGO, its freedom of action was to be expected as freer in the political issue that Sangatte raised than would have been the UNHCR, which mostly relies on Member States.

In 2001, a member of the organisation was sent to the centre of Sangatte. An office was set within the centre, at the far end of the warehouse where all persons interested in voluntary repatriation could be received. People had access to the office during working times five

⁵⁹ UNHCR, *UNHCR clarifies role in Sangatte operation*, 27/09/02, UNHCR News stories, www.unhcr.ch/cgi-bin/texis/utx/print?tbl=NEWS&Id=3d947cfe5, 09/04/03.

days a week and could ask for information on the procedures of a possible return to their home country.

Most people seeking information about repatriation were in a desperate situation. They had first left everything back in their home country to try to come to Europe and find better conditions of life. Upon their arrival in Sangatte after a journey of many months, they had to meet the unwelcoming conditions of receptions of France. They also had to deal with the smugglers living in the centre who asked for money to cross the Channel. Also the difficulties in reaching England and the high potential risks of such a crossing left them perplex. The situation they then faced combined with exhaustion and a poor psychological state was then so unbearable that they wished to return home and forget about this difficult chapter of their life.

Unfortunately or fortunately, only few people eventually decided to return home⁶⁰. The first reason for this failure was that the situation in their home country was so dangerous that they were unable to return safely. The second reason consisted in weighing the consequences of the decision to go back home. They could hardly accept their failure in reaching the UK and considered being so close to their goal that they eventually decided to go on with their journey.

4.2. The settlement of the problem of Sangatte

Both the background to the establishment of the Sangatte centre and the apparent success of many in reaching the UK by irregular means show that its closure would not have resolved the problem.

In order to understand the exact context of the closure of the centre, an overview of the agreement decided upon will first be given. Then the procedure of the agreement will be presented and eventually

⁶⁰ No exact figures were found.

some remaining issues of concern after the settlement of the agreement will be discussed.

4.2.1. The agreement

The French authorities believed, until 2002, that closing the centre would not be of any help in stopping illegal immigration flows. It was only in May 2002, with a change of government and Nicolas Sarkozy's entry into office that discussions about the closure of the centre eventually arose. The former government had failed in finding a solution to the problem.

However Nicolas Sarkozy, the Ministry for internal affairs, still followed the former government's idea that closing the centre would end in making more harm than good and believed that the centre could not be closed. The general belief was that it would create more problems than resolve any.

When discussions started about the possibility to close the centre, the justification for it was that the overall situation had changed. The new security measures were to lead to a dead end, fewer people would manage to cross the channel illegally and the centre would know a rise in its population. The prospects of a joint juxtaposed security system between the UK, France and Belgium were also believed to put an end to the illegal migration.

Both countries had continuously been blaming each other. On the one hand the English blamed France for organising the illegal arrival of clandestine people and on the other hand France argued that the U.K. had a too attractive immigration policy compared to other European countries. The U.K. had always been asking for the closing of the centre but N. Sarkozy had put forward the condition of a strengthening of asylum and immigration procedures. Eventually, the U.K. decided to reform their Nationality, Immigration and Asylum Bill to tackle abuse of the system and reduce the pull factors. It reviewed its policy to the lowest and balanced it to the level of most other European countries.

As the precondition of France was to be fulfilled, the centre of Sangatte had no longer any reason to go on. On July 12, 2002, the minister for internal affairs, Mr. Nicolas Sarkozy, and his British counterpart, David Blunkett, announced together the closure of the centre of Sangatte between December 2002 and the end of the first semester 2003⁶¹. This decision was to put an end definitively to the case that had long given rise to tense relationships between France and the U.K.

A joint action to close the centre was decided. It involved both governments and the UNHCR to create a more controlled environment in the centre by registering the people, providing them with advice, helping the ones wishing to return, and finding solutions for all the people of the centre.

Eventually, the agreement on the closure of the centre, the Sangatte Protocol, was signed on December 2d, 2002⁶². It was to be definitely closed by December 30, about four months before the date formerly agreed upon and the centre would be handed back to its owner, Eurotunnel that would be in charge of the dismantling.

The agreement stated that all Iraqis, both Kurds and Arabs, would be brought to U.K with an exceptional entry but only as workers and not as asylum seekers. This work visa would last for four years, and be renewable. The jobs they would be proposed would correspond to their qualifications during the three months of reintegration based on the information collected by the HCR during the interviews led in the previous month in Sangatte. This also concerned Afghans and all people having strong family links in The U.K. The French government

⁶¹ S. Zappi, *Paris et Londres d'accord pour fermer le centre d'accueil de Sangatte*, in *Le Monde*, 15/07/02.

⁶² S. Zappi, *Après l'accord sur la fermeture de Sangatte, MM. Sarkozy et Blunkett annoncent "une nouvelle ère de coopération"*, in *Le Monde*, 04/12/2002.

would take responsibility of all the remaining residents of the Sangatte centre and 300 persons were proposed a work permit⁶³.

4.2.2. The procedure

First the centre was closed to all newcomers on November 5, 2002⁶⁴, ten days before the former decision. From then on, no one could enter the centre anymore. The people already inside could go out of the centre and then back in once they had registered. This constituted a change for them because until then no checks had been put in place and they had been allowed to go in and out as they liked without any restrictions.

But they could still continue to try crossing the Channel illegally, just like before.

The system of badges set by the French Red Cross highly restricted their movements.

In order to give them more chances, the badge would remain active for only three days outside the centre and people who left the centre for more time would not be included in the agreement anymore⁶⁵. At the beginning of December 2002, on the basis of the 1,589 badges still active, the English would welcome between 1,300 and 1,400 of them⁶⁶. But a great number of people had already left the centre with their badges to try to cross the Channel and many remained lost in the nature. It was said that 4,900 people had badges as a whole (2,900 Iraqis and 1,000 Afghans)⁶⁷.

⁶³ Immigration & Nationality Directorate, *UK boarders extended-Sangatte to close on 30 December*, 02/12/02, www.ind.homeoffice.gov.uk/news.asp?NewsId=211.

⁶⁴ J.P Dufour, *Le centre de Sangatte ferme ses portes aux réfugiés*, in *Carnet de route*, Le Monde, 01/01/03.

⁶⁵ S.Zappi, *idem*, Le Monde, 04/12/02.

⁶⁶ S. Zappi, *idem*, Le Monde, 04/12/02.

⁶⁷ J.P. Dufour, S. Zappi, *idem* 7, Le Monde, 03/12/02.

Moreover, it was argued that 1705 badges were valid on November 28 whereas 2628 were on the 5th of the same month. This supposed that 923 people had left the centre and did not have any valid badges anymore. Among them 70 had decided to ask for political asylum, which tells us that all the others, about 853 had managed to cross to England. It gives an average of 35 persons crossing each day, compared to 50 before⁶⁸.

4.2.3. The effectiveness of the agreement/settlement

Members of the Home Office were to arrive in Sangatte on December 9, 2002 to start the transfer of people to England⁶⁹ who were to be issued a “laissez-passer”.

About 150 of people of 20 different nationalities were dispersed all around France⁷⁰ with a renewable work permit of a year.

It is now important to observe and consider the consequences of the closure of the centre of sangatte.

People still arriving after November 5th, 2002 were backed up and taken to centres outside the area. They were not able to be included in the process. As a consequence some of them decided to stay in a church nearby and started a hunger strike as a protest. They felt left aside by the government. However no solution was found and the police forces had to intervene.

One can also wonder why only the people of Sangatte were given a solution and benefited from a real status. As there are many illegals living on the French territory, one could have hoped that the French

⁶⁸ J.P. Dufour, S. Zappi, *Des dizaines de migrants errent encore autour de Calais*, in *Le Monde*, 03/12/02.

⁶⁹ J.P. Dufour, S. Zappi, *Comment Londres et Paris veulent en finir avec Sangatte*, in *Le Monde*, 03/12/02.

⁷⁰ J.P. Dufour, A Sangatte, *Avec les derniers réfugiés du centre de la Croix-Rouge*, in *Le Monde*, 16/12/02.

government would have taken other actions to find solution to the overall problems of immigration.

At the end it seems that Sangatte was a political issue and that the pressure of all actors involved in the dispute forced the government to take action but only on a local level. As such it was not possible to hide the problem anymore as everybody was aware of the existence of the centre. But in the end the closure did not solve the problems.

Every step of the agreement was to be done earlier than previously agreed. This led to a chaotic situation. Indeed people had heard of the closure of the centre and knew about the procedure and the decisions taken for the people already inside.

As no involvement of the international community occurred, only the two countries concerned took steps to close the center definitively and show that they did not remain inactive.

The strategy decided upon in the settlement of the problem of Sangatte is believed to have been one of “security and parsimony”⁷¹, making it first harder to reach Britain while at the same time less desirable to do so. The effect of this settlement seems to have increased the miserable conditions of the people still trying to reach the UK illegally. And it remains hard to conclude that the closure of the centre stopped the flows of migrants.

Until now their number has not decreased but they have become less visible as they are now spread along the French and Belgian coast. They still try to cross to the UK via other harbours like Dieppe, Zeebrugge or The Hague.

Eventually the final result of the agreement is that it is still necessary to provide people trying to cross the Channel with basic

⁷¹ *ILPA's Position Paper on The lessons of Sangatte: Time for change in EU Asylum Policy*, November 5, 2002, www.ilpa.org.uk/submissions/SANGATTE.html.

humanitarian assistance. NGOs in Sangatte and the Calais region are still providing people with food and basic health care like they had been doing before the centre was opened. Every night a van drives around the streets to meet with the people and propose them a solution for the night. Eventually this humanitarian assistance remains far beyond the needs of the people and only few eventually accept to be sheltered.

Migrants will continue to attempt to go to Britain, whether or not there is an emergency centre like Sangatte in the area to shelter them.

In some cases and at the request of the State concerned, UNHCR can undertake refugee status determination to provide fair and efficient procedures to examine asylum claims. France did not ask for the agency's help and at the end the agency itself proposed its help to the government.

In situations like Sangatte, there is a high and urgent need for a European political response. Until now it seems rather improbable that countries on the borders such as England, France, Belgium and the Netherlands can find any solution to the problem of illegal migrants coming on their territory. As such a European solution was to be expected but remained inexistent.

5. Towards a common policy?

A study of the main relevant features concerning the responsibility for asylum claims in the European system as well as the attempts towards the setting of common conditions of receptions will be taken into consideration. Eventually a special focus on the last developments in asylum and refugee law will be made.

5.1. The responsibility for asylum claims

When dealing with the protection of asylum seekers and refugees in Europe, we always have to come back to two basic systems which are first the Dublin Convention and then the principle of third safe country. When dealing with an asylum application, States should refer to them in this order.

5.1.1. The Dublin Convention

Since 1997, the Dublin Convention has been governing the allocation of responsibility for asylum claims among EU states. The main purpose of the Convention is on the one hand to ensure that asylum seekers cannot lodge several asylum claims in the European Union and on the other hand to make sure that one Member State will effectively proceed to the study of the application. The essence of the system lies in the principle that the state responsible for the study of the application for asylum should be the first country through which the applicant has traveled within Europe. Family ties are also taken into account, such as in the case when one of the family members has already been granted asylum in one of the countries.

The Dublin experience has not been a success in practice, as very few asylum applications eventually led to successful transfers to other states.

Some problems of evidence appeared as well as problems of inequity that made states become more and more reluctant to the return of some people. As a whole it placed a far greater burden on the countries along the Mediterranean coast as well as Eastern European countries.

The Sangatte experience is relevant to the Dublin Convention in two ways. It firstly shows that the Dublin Convention contains a significant lacuna in the case of any intending asylum applicants who have entered France from a third member state. Under the Dublin system, France is not responsible of the people of Sangatte unless they apply for asylum, and neither is Britain as long as it succeeds in preventing them from entering the territory and claiming asylum. We can thus wonder which state should be responsible of the application of the Dublin Convention? In the case of Sangatte, it was clear that none of the two countries wished to take responsibility in designating the country responsible for their protection and claims. The UK finally supported the proposal contained in Dublin II that stated that a country would be responsible in cases it had tolerated the illegal presence of persons for a period of two months that was eventually extended to six months. If this proposal had been accepted then France would have been held responsible for the determination of the state responsible for many of the people of Sangatte.

This is relevant in the case of Sangatte because some people stayed in the centre for more than six months, and some others for even a year. Another lacuna of the Dublin Convention lies in the fact that it denies asylum seekers the right to choose their country of asylum. As such it ignores the wishes and needs of applicants who may have legitimate reasons to prefer one state to another such as family ties,

cultural and linguistic backgrounds. The case of Sangatte shows that allocating responsibility to a state without prior consultation/ regard to of the applicant's wishes remains a difficult matter.

Under the Dublin Convention, no special arrangements for asylum seekers on the French territory are provided. Thus they may find themselves in a very unstable social situation without any access to accommodation centres or any allowance⁷². The situation is different in the UK where asylum seekers falling under the Dublin Convention are treated as any other applicants⁷³.

5.1.2. The principle of Safe Third Country

The “safe third country” notion has become an important factor of nowadays’ European policy and has been included as part of the asylum procedures of many Member States. The concept of the principle was part of the European overall engagement to combat illegal immigration as well as the phenomenon defined as “asylum-shopping⁷⁴”, i.e. when people choose a specific country rather than others in their search for asylum.

In practice the rule of the safe third country implies that a country where an asylum application has been presented can refuse to take responsibility in the examination of the claim. This is justified on the basis that the applicant could or should have applied for asylum in a country through which he or she had traveled before reaching the country of destination. The applicant is then sent back to the country where there are strong evidence of his passage. However the sending state has to ensure that the receiving country will accept the person and guarantee her effective protection.

⁷²F. Liebaut, *idem*, p. 87.

⁷³ F. Liebaut, *idem*, p. 318.

⁷⁴ Danish Refugee Council, “*Safe third country*” policies in European countries, November 1997, p.2, www.flygtning.dk/publikationer/rapporter/safe3rd/intro/index.php, 28/04/03.

A safe country is defined as “a country where it can be clearly shown, in an objective and verifiable way, normally not to generate refugees or where it can be shown, in an objective and verifiable way that circumstances which might in the past have justified recourse to the 1951 Convention have ceased to exist”⁷⁵.

As such some European countries have decided to adopt this principle⁷⁶. In the case of Sangatte it is important to note that the UK has adopted the principle and created a list, called the “White list”, where all names of countries considered to be safe are written down. France has not officially adopted the principle but it is argued that it has had a long standing use of it.

The principle is simple. When someone claims for asylum in a country, he can be declined this application under the principle of third safe country. The system stipulates that the applicant should be returned to his country of origin because there are no grounds for the asylum application.

Still a few major problems arise from the use of this principle. First, each country does not have the same list. We can thus wonder on what grounds they are able to define one country or another as safe. Do they make their own assessments of the situation in each country or do they ask NGOs to write some reports about it? The second problem lies in the fact that countries where asylum claims are presented can decide that all nationals from a specific country cannot be granted asylum. This is in contradiction with the 1951 Convention on refugees as well as the Dublin Convention. The UN Convention states that asylum applications should be treated on an individual basis. On the basis of the principle of third safe country, some of the people coming from a country or whole peoples can be excluded from the process of asylum. It is also in contradiction with the principle of non-refoulement found

⁷⁵ M.G.V. Veldhoven, *Le principe de 'pays d'origine surs'*, in *L'asile dans l'Union Européenne*, p. 21.

⁷⁶ Countries that have adopted the principle: Denmark, Germany, Finland, Luxembourg, The Netherlands, Austria, Portugal, Sweden; countries that have not adopted the principle: Belgium, Greece, Ireland, Italy, Spain.

in article 33 of the Convention. Eventually the concept is in contradiction with article 2 of the Dublin Convention that states that Member State should comply with the 1951 Convention on refugees and its Protocol without any geographical distinction.

Many organizations such as the UNHCR, ECRE and Amnesty International have discussed the principle and the problems its application raised.

Some argue that the sending state (or transferring state) would remain responsible for ensuring the protection of the fundamental rights of the person transferred. In this matter, it should ensure that the receiving country will guarantee the individuals with all basic rights.

However the legal basis for this measure remains unchanged as the state responsible is freed of its obligation which are transferred to the receiving state⁷⁷.

It is argued that the practice of the third safe country principle has changed following the decision “Roger” of the French Council of State on December 18, 1996. In this decision, the Council of State stated that the principle of the third safe country was not to be found in the Geneva Convention. The fact that the asylum seeker could have submitted an application in another country party to the Convention “would not have in itself entitled authorities to refuse the status of refugees and could not legally be justified by the ministry of Interior as a reason for the applicant’s claim to be regarded as manifestly unfounded preventing his access to the territory for the examination of his claim”⁷⁸. From then on French authorities are no longer supposed to refuse entry into the country on the basis of this principle. However

⁷⁷ Dublin Convention, article 3.4: *"L'Etat responsable en application des critères précités est alors libéré de ses obligations qui sont alors transférées à l'Etat membre responsable de la demande d'asile."*, [www.eu.int.org, file://A:\convention%20de%20dublin.htm](http://www.eu.int.org/file://A:\convention%20de%20dublin.htm), 05/03/03.

⁷⁸ F. Liebaut, *idem*, p. 86.

applicants with manifestly unfounded claims are still being returned to third countries.

Other bilateral agreements have been put in place as complementary measures to the Dublin Convention and the principle of third safe country.

5.2. The need for common reception conditions

The controversy about the Sangatte centre raises the question of the need for effective EU standards in relation with reception conditions. Minimum standards should be agreed upon in order to avoid differences between Member States policies that applicants usually take into consideration when choosing their country of asylum. Moreover, effective minimum standards would prevent states from lowering their conditions of reception of asylum applicants in order to become less attractive as a destination such as in the case of England with its new immigration policy.

In order to illustrate the differences between Member States' conditions of receptions, we will focus on France and the UK's systems and compare a few essential features of asylum seekers' protection such as the new forms of protection as well as elements of the assistance they propose.

5.2.1. Complementary forms of protection

As a complement to the definition of a refugee found in the 1951 Convention, France and the UK such as most of the Member States have created other kinds of statuses to protect the people that could not fall under the criteria of the UN Treaty.

France has developed three different kinds of protection for foreigners. The first one is territorial asylum⁷⁹ that consists of a temporary protection for persons fleeing threats to their lives and freedoms contrary to article 3 of the ECHR. This subsidiary protection has mostly been granted to Algerians at the discretion of the Minister of Interior.

The second one, constitutional asylum, is granted to the people persecuted for their activities in support of freedom. The OFPRA and the Appeal Board for Refugees may grant Constitutional asylum to persons "fighting for freedom" but who would not fall within the provisions of the Geneva Convention. Constitutional asylum is granted under the same procedure as Convention status as such the OFPRA does not specify if asylum is granted under the provisions of the Geneva Convention or the French Constitution. In practice, no distinction is made between both statuses, which give access to the same rights, including a 10-year residence permit. It is believed that constitutional asylum has only had a limited application so far⁸⁰.

The UK has been developing two kinds of temporary protection, the Exceptional Leave to remain (ELR) and the Exceptional Leave to Enter (ELE). These protections are granted to asylum seekers who do not fall under the strict definition of refugees found in the UN Convention. People granted these statuses are allowed to stay temporarily in the country for a definite period of time, mostly on humanitarian grounds. It remains a discretionary decision taken by the Secretary of State on behalf of the Home Office. After four years, those granted ELR and ELE can apply for settlement under the Indefinite Leave to Remain (ILR) which is then usually granted.

⁷⁹It was introduced into French legislation by Law of 11 May 1998.

⁸⁰ ECRE, *Legal and social conditions for asylum seekers and refugees in Western Europe, introduction to the 2000 reports*, www.ecre.org/condition/index.shtml.

5.2.2. Social guarantees

In France, financial assistance consists in a waiting allowance of 304,9 Euros per adult and 106.7 Euros per child granted once upon arrival. Then a monthly allowance of 274.4 Euros per adult is provided only for a period of twelve months. This is meant to cover all living costs of asylum seekers. This money is not given to people living in reception centres such as Sangatte because food and accommodation are provided free of charge.

Places in accommodations centres (CADA) are provided but they cannot receive all asylum seekers. First they have to stay in Transit Centres⁸¹ for two or three weeks until a place in CADA is eventually found. As only 16.6%⁸² of asylum seekers can be sheltered in these centres, places are available on the basis of social criteria and a priority is given to families.

From January 1st, 2000, the Universal Medical Coverage has been put in place which provides a 100% coverage of all medical expenses for the low income segments of the population. However the text does not mention asylum seekers but it should be expected that they are included in the system.

Since 1991, access to work is not permitted, neither are there any vocational training programs or language tuitions.

Children can attend some special classes in some schools of large cities. The Transit Centre of Créteil eventually set a primary school class.

France's system of protection is considered effective but a major problem remains: the system cannot meet with the needs of the great numbers of persons asking for asylum each year. As such it should be extended to the actual number of asylum applications.

⁸¹ Two Transit Centres exist: one outside Paris, in Créteil with 80 places and one in the Lyon area able to receive 40 persons.

⁸² This percentage has been found on the basis of the elements given in the study by PLS Ramboll Management, *France's country profile*, European Community, 2001.

In the UK, the National Asylum Support Service (NASS) is in charge of all social guarantees asylum seekers are to be provided with. It was established in April 3rd, 2000. It is supposed to replace the old system and assume the overall responsibility for supporting asylum seekers while their claim is being processed.

Asylum seekers are entitled to apply for accommodation in the UK on a "no-choice" basis. The aim is at dispersing them through out the country especially outside the areas of London and the South East. Accommodation may be provided by a local authority, housing associations or a private landlord. There thus exist a wide range of types of accommodation from hostels to flats, the latter usually designed to host families. Once asylum seekers are hosted, they are to be provided with all necessary information about access services, including health care and the possibilities for children to attend school by the provider of the accommodation. Accommodation is to be provided for a period of two months and four months in case of appeal.

Eventually the UK want to change accommodation possibilities and test a new system of centre that would host around 3,000 persons while their claim is pending. Eight centres are to be opened. The centre would provide basic living needs, legal assistance and interpretation help⁸³.

Asylum seekers are allowed to cash 10 pounds of the vouchers which can be redeemed each week for goods and services. These can be used all around the country but getting change back is not allowed. In the case asylum seekers are to stay in the process for longer than six months, they are given an additional 50 pounds.

All Children aged from 5 to 16 have the right to primary and secondary education. NASS notifies local authorities of children to be enrolled but is not responsible for its implementation which has to be provided free of charge until they are 18. However there are no special classes.

⁸³ Immigration & Nationality Directorate, *Accommodation centres for asylum seekers*, 15/08/02, www.ind.homeoffice.gov.uk/news.asp?NewsId=176, 26/03/03.

Asylum seekers over 18 who wish to pursue their educational training are then treated as overseas students and have to pay the same fees. However state funding can be given to the ones who have already lived in the UK for more than three years.

No special language tuitions are provided and only courses based on local initiatives can be offered. Only some areas with multi-ethnic populations propose English as an Additional Language courses (EAL) to support workers.

5.3. The last developments

Facing the problems and difficulties related to asylum and refugees in the European Union, some recent proposals have been presented. These include a proposal from the British Government as a response to the increasing number of asylum applicants in the last few years as well as the problem of the Sangatte centre. Then, as a response, a counter proposal from the UNHCR was presented and eventually a European communication was proposed. We will also consider the last developments of the EU for a more efficient common policy on immigration.

5.3.1. The UK proposal

Based on the presumption that current asylum systems are failing within the European Union, the UK presented in February 2003 a proposal for the setting of a new procedure for asylum applications. The aim of the proposal was to set up a better management of the asylum process within the European Member States. It proposed two different approaches: the creation of “transit processing centers”(TPCs) on the one hand and on the other hand the creation of “regional protection areas”(RPAs).

Under the system of the first ones, Asylum seekers arriving on the British or on other Member states' territories would be transferred to a TPC where they would be detained while their claim would be processed. Once the decision is taken, people whose claim was accepted would be resettled in Europe whereas the ones whose claim was rejected would be returned to their country of origin. Eventually, special temporary statuses would be granted to people who could not be returned to their country. The creation of TPCs would tackle the problem of abuse of the asylum system.

RPAs are designed to provide temporary support to persons with failed asylum claims who cannot be returned for the time being.

Both kinds of centres would be placed on the borders of the European Union but outside.

The UK justifies such a proposal to be in compliance with the 1951 UN Convention on refugees that remains silent on whether or not asylum claims should be processed on the territory of the country of application. The UK also claims that the creation of such centres will be in conformity with the ECHR as they will ensure that applicants will not be exposed to inhumane and degrading treatment.

5.3.2. The UNHCR counter-proposal

In response, the UNHCR presented another proposal in April 2003 meant to rescue refugee protection from the contents of the UK proposal.

The proposal put forward two major aspects, first a strengthening of national asylum systems and then the enforcement of protection and solutions in regions of origins.

Of course national legislations have proved insufficient until now and need to be improved but the UNHCR does not present the lacunas of each of the member states' procedural systems nor does it give any suggestions on how to make national legislations more efficient.

Durable solutions in regions of origins will be carried out through substantial financial and material investments. Eventually the UNHCR also proposed the creation of “common processing centres” for people whose claims have been rejected but which would not be located outside the EU but inside its external borders, either the current EU or the enlarged one.

5.3.3. The EU developments

Facing the last developments, the EU decided to adopt a communication “Towards more accessible, equitable and managed asylum systems on June 3rd, 2003. It accepted the UK diagnosis that many problems still remained in the European asylum policy but rejected most of its elements. The EU preferred to further explore the UNHCR’s proposal instead. However the EU proposal remains more cautious than the two previous ones.

In the meantime, the EU has been developing its immigration system towards a more effective and common approach of its policies. Since the Tampere summit, it decided to establish a European Refugee Fund⁸⁴ (ERF) in 2000. It was to be considered as the first concrete attempt at creating an equitable mechanism for sharing financial responsibility, a solidarity measure to promote and balance the efforts of Member States in receiving and bearing the consequences of welcoming refugees and displaced persons.

However, the European Council on Refugees and Exiles (ECRE) believes that the budget decided upon is inadequate because the mechanism for allocation remains too retrospective. It favours countries that have received large numbers of asylum seekers in the

⁸⁴ Council Decision establishing a European Refugee Fund (2000/596/EC), 28/09/2000.

past and neglects the countries likely to play a greater role in the near future⁸⁵.

And eventually the creation of EURODAC for the comparison of fingerprints introduced a possible better effectiveness in the application of the Dublin Convention⁸⁶.

The case of Sangatte clearly shows that the system for allocating responsibility for asylum claims in the EU needs to be entirely reviewed. It does not meet the new changes of migration issues. It should be replaced by a new set of criteria which would take into consideration the applicant's choice of the country and use it as a major element in the determination of the responsible country.

Sangatte also shows that there is a necessity to reject the new approaches taken by governments, the EU and the UNHCR and open discussions for more humane and viable solutions to the problems of immigration within European countries as well as worldwide.

A lift out of the Dublin Convention as well as the principle of third safe country is to be considered.

Eventually, the project of the European Constitution, following the Laeken and Tampere Council, was presented on June 13, 2003. It was adopted during the European Council in Greece on June 19 and 20, 2003 as the basis for the Inter-Governmental Conference⁸⁷. It will be considered as a substitute to the former Treaties of Amsterdam and

⁸⁵ ECRE, *The promise of protection: Progress towards a European Asylum Policy since the Tampere Summit 1999*, November 2001, p. 14, www.ecre.org.

⁸⁶ Council Regulation concerning EURODAC (2725/2000/EC), 11/12/2000.

⁸⁷ *Le projet de constitution européenne*, 18/06/2003, www.vie-publique.fr/actualite/dossier/constitution_europeenne.htm, 30/06/03.

Nice. Heads of States and governments will have to meet at the Intergovernmental Conference (IGC) before the end of this year to decide of the fate of the project. Then in 2004 the Constitution will need to be ratified through parliamentary means or by way of referendum. In regards to asylum policy, one still has to wait and see what kinds of improvements are to be expected. Article 18 of part II states that asylum should be guaranteed in respect with refugee instruments and article 19 forbids collective expulsions⁸⁸.

⁸⁸ *Projet de Constitution*, CONV 797/1/03, REV1, Vol. 1, 12/06/03, <http://european-convention.eu.int/docs/Treaty/cv00797-re01.fr03.pdf>, 30/06/03.

In the last few years, the priority objective of the European Union has consisted in the creation of an area of "liberty, security and justice" based on the principle of solidarity. The establishment of a common European Asylum System focusing on a more accessible, equitable and managed asylum system is needed and will ensure the quick identification of all persons in need of protection⁸⁹.

This statement was first made during the Tampere summit and has been recalled and reinforced since then until the recent Thessaloniki summit in June 2003.

However, meanwhile, some absurd situations have been arising. Situations in which people in need of protection are completely left aside and denied all kinds of rights. The centre of Sangatte is indeed one of these situations.

The reason for its opening was mainly humanitarian. The centre could shelter the people who had been formerly wandering in the streets and provide them with all basic needs. However, they remained too basic and this humanitarian action failed in meeting the needs of so many people and for such a long time.

The French government also hid behind this humanitarian action and was not interested in taking any action to give them a status under national and international law. As such the problem was put aside and with time it became more and more difficult to act against the migration flows around the centre.

Many could argue that the people of Sangatte wanted to remain undocumented and did not wish to ask for asylum in France first

⁸⁹ European Council, *Presidency Conclusions, Part II: Immigration, Frontiers and Asylum*, Thessaloniki, 19 and 20/06/03, www.eu.int/newsroom/related.asp?BiD=76&GRP=5988&FROM=EuropeanCouncil_&LANG=1, 05/07/03.

because they believed they would have better chances to remain on the territory and not be returned in the case their claim was to be rejected or because their wish was simply to go to England. But this statement would not consider all sides of the problem. France was to find solutions and take steps to protect the people of Sangatte. The French government's inaction lasted over three years and led to an unbearable situation as well as to an unacceptable solution of closure. If we consider nowadays European system of asylum, one can hardly believe that allowing people who lived in Sangatte and who wished to go to England was in accordance with the principles of the Dublin Convention and the third safe country.

The policies and various practices of European countries of the last few decades have not only illustrated a trend towards restrictive measures but have also failed to find solutions in dealing directly with the underlying causes of migration or model proper responses on the basis of international cooperation and solidarity. As such an involvement of all actors relevant to the issue is needed in finding solutions of problems resembling the case of sangatte and to construct a new approach.

The convention on refugees was not designed to tackle the root causes, but rather to alleviate the consequence by offering victims a degree of international legal protection and eventually help them rebuild their lives.

As such protection can contribute to an overall solution but does not provide for the whole solution. As Professor M. Gentilini, the President of the Red Cross, stated in an appeal to Europe: "By providing these people with food and shelter, we are carrying out our humanitarian duty towards them, and we intend to continue." But humanitarian assistance is only an emergency response.

As the number of refugees increased dramatically in the last decades, it has become clear that humanitarian work cannot act as a substitute for political action in avoiding or solving future crises.

Thus the story of the centre was indeed the embodiment of the lack of common policy and political will to face the problems of asylum seekers, refugees and illegal persons in general within the borders of Europe. The Sangatte crisis shows the need to reconsider the legal framework governing asylum applications and reception conditions in the European Union.

Until now, Member States' approach has reflected a lack of political will to agree on common standards and move beyond national practice.

Even if the European Union as a whole has been taking steps towards significant progress, there still remain some areas of concern. Some of the measures taken to combat illegal immigration have failed to provide adequate guarantees and seem to have significantly diminished access for migrants. Until now the fight against illegal immigration has been more emphasised than the guarantees to those who seek protection.

Member States should agree to focus on the protection of refugees and migrants rather than deterrence. In doing so, they should work towards legislation which bridges the gaps between national policies as well as at the same time raises standards of reception conditions in accordance with their international commitments, i.e. refugee and human rights law.

Furthermore there is an urgent need to implement the decisions taken during the last European summits always keeping in mind past experiences and learn from past experiences.

Another important matter is that country authorities should not review the law on a national level without regard to the developments of European policies. If so, a widening gap between national

legislations and the European attempts to set a common policy is to be expected. And disparity in the legislation of European countries as well as the lack of harmonised rules in the European Union can eventually lead to a growth in human trafficking as well as highly contribute to the migrations of these groups of vulnerable people⁹⁰.

Eventually, a separate issue but of relevant concern for the European Union lies in the growing recognition of its need for immigration. This should shift the debate into a more welcoming environment for refugees. Until new improvements, refugee issues are still to be considered as a political matter.

⁹⁰ Prof. K. Ipsen, in *Red Cross appeal to European Union after Sangatte Death*.

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Summary

In the last few decades, the problem of refugees, asylum seekers and illegal migrants has grown in complexity.

Facing the changing situation, the European Union has tried to find solutions and made attempts at creating a new common asylum policy. In order to do so, Member States agreed to commit themselves towards creating an “area of freedom, security and justice”. For the first time, they agreed on setting common standards for asylum based on solidarity and shared responsibility.

However, while discussions were taking place, major incidents appeared on the ground. National practice seemed to develop in contradiction with the commitments decided by governments.

One of the most relevant example of the widening gap between States' practice and theory lies in the dispute about the centre of Sangatte of the last few years.

The political disagreement around the existence of such a centre which lasted for about three years shows that European Member States are facing difficulties in implementing their decisions on the important issues related to immigration.

The Sangatte crisis, from its opening to its closure, shows the need to reconsider the legal framework governing asylum applications and reception conditions within the European Union.

Member States should as such reverse their political developments and agree to focus more on the protection of refugees and migrants rather than on deterrence. In doing so, they should work towards legislation which bridges the gaps between national policies as well as at the same time raises standards of reception conditions in accordance with their obligations under refugee and human rights law.

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Refugee law in theory and practice: the case study of Sangatte

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