



Select Committee on the European Union

Home Affairs Sub-Committee

Oral evidence—Brexit: Future UK-EU co-operation on asylum and international protection

Wednesday 3 July 2019

11.30 am

Watch the meeting

Members present: Lord Jay of Ewelme (The Chairman); Lord Best; Lord Haselhurst; Baroness Jolly; Lord Kirkhope of Harrogate; Baroness Massey of Darwen; Lord McNally; Baroness Newlove; Lord Ricketts; Baroness Scott of Bybrook; Lord Watts.

Evidence Session No. 3

Heard in Public

Questions 30 - 38

Witnesses

[I](#): Mr Colin Yeo, Barrister, Garden Court Chambers; Professor Elspeth Guild, Professor of Law, Queen Mary University of London.

Examination of Witnesses

Colin Yeo and Professor Elspeth Guild.

Q30 The Chairman: Welcome to you both. We are extremely grateful to you for coming to give evidence to us in the inquiry we are conducting at the moment on our asylum policy and what asylum policy we might follow outside the European Union, on the assumption that we leave it.

We are grateful to you for giving evidence and to Professor Guild for having submitted written evidence, and we have seen some of the things you have written, Mr Yeo. So we have had a certain amount of background on your thinking, but we look forward very much to your evidence.

I will ask you to introduce ourselves, and then we will move on to the first question. Give us a little background about yourselves. We aim to finish the session by 12.30 pm. Who would like to go first?

Professor Elspeth Guild: Thank you very much, my Lords, Ladies and Chair. We have agreed a slight division of responsibility. I am Elspeth Guild, a Professor of Law at Queen Mary University of London, and a Professor of Law at the Radboud University in the Netherlands. I am a visiting professor at Bruges, where I teach the law, EU justice and home affairs in general. I also remain in affiliation to a law firm, Kingsley Napley.

The Chairman: Did I hear you pronounce your name as “guiled”?

Professor Elspeth Guild: I did.

The Chairman: Thank you very much.

Colin Yeo: I am a practising barrister based at Garden Court Chambers in London, and I also run a website called Free Movement, which is particularly interested in immigration and asylum issues.

Q31 The Chairman: Thank you. As you know, this is a public evidence session. We will send you a transcript afterwards in case you want to correct any factual points.

As a first question, could you set out your assessment of the key implications of the UK leaving the Dublin system after Brexit? This is always on the assumption that we do leave the European Union. Who would like to go first?

Professor Elspeth Guild: We have agreed that I will deal with the European side, and Colin is excellent on the national side, so we rather agreed that I might say a few words to begin with. But do speak up if you would rather we did it differently.

The Chairman: I think you have been set up for that.

Professor Elspeth Guild: The consequences of the UK leaving the European Union in respect of the Common European Asylum System will

probably not be felt very rapidly, either in this country or in the EU. On the assumption of whichever D-Day we choose, there will not be a dramatic change either here or there.

The reason is threefold. First, the UK is now associated to the Common European Asylum System in its first phase. It has had a second phase of legislation, which everybody else is associated with, which is changed and different from the first phase, which we are still part of, with the exception of Dublin and Eurodac. So we are already out of step.

The second aspect is that, as regards the arrivals and departures of asylum seekers, decision-making processes in the UK and the Common European Asylum System, there is not a tremendous amount of evidence that the Common European Asylum System has a strong impact on what happens in this country or on the movement of asylum seekers or refugees from this country to the EU member states. So one way is back and forth. The evidence on the way the Common European Asylum System works is that there is not a big impact.

The third consideration is that at the moment I have heard no indications from Ministers in this country that they intend to denounce the 1951 international convention on the status of refugees or its 1967 protocol. Nor have I had any indication that there is an intention to denounce the UN convention against torture. While there were some rumblings a while back about how some Ministers do not like the European Convention on Human Rights, that seems to have receded into the distance, for the moment at least.

Therefore, of the three instruments that are most important with respect to our international framework, it looks like the UK will remain part of them. The Minister's statement on the UK's adoption of the UN Global Compact on Refugees was a very strong internationalist statement that the UK will respect its obligations to refugees, et cetera. So, to me, there was no indication there that we would remove ourselves from the umbrella under which the Common European Asylum System has been developed.

If you would like me to say where I think there is likely to be a difference, it has nothing to do with the legal measures of the Common European Asylum System, and it has very little to do with EU law as such; it is the Le Touquet agreement regarding border control arrangements in Calais, and of course elsewhere—there is an equivalent one with Belgium, but Calais is the one where the big trouble is.

The Chairman: We will come on to that a bit later. That is very helpful indeed as a start.

Colin Yeo: I think the question was specifically about Dublin. One of the day-to-day impacts of leaving the Dublin system, along with the rest of the Common European Asylum System, is that I will have less work to do. Frankly, I would welcome that, because there are several hundred cases a year where the Home Office in the UK attempts to remove an

asylum seeker to their point of entry into the EU using the Dublin system. The numbers have fallen year on year; there are only a few hundred per year these days. I have not memorised the figures, but we are talking about over 30,000 asylum claims per year, so it is a very small number. The Home Office will not be able to seek to remove those people once we have left the Common European Asylum System.

I am not quite sure about the numbers, so I do not know quite how far that is counterbalanced by the UK under the Dublin system also receiving a certain number of people, usually under the family reunion provisions. The removals from the UK under Dublin tend to be cases where somebody has been fingerprinted on entry into the EU or where they have claimed asylum in another country en route to the UK. Of course, because of our geography as a far-flung outcrop of the European continent, most people have to fly here directly or travel through Europe to get here. Those are the removal cases.

The arrival cases under Dublin tend to be family reunion cases, such as a child who has reached Calais and is seeking to join relatives in the UK. I understand that there has been something of an upward bump in the number of cases in the last couple of years, but I would have thought that that number would have naturally been falling anyway because of the way the Calais and Dunkirk camps have been cleared.

The Chairman: Thank you very much. You both made a number of points that will come up in the rest of our discussion.

Q32 Lord Kirkhope of Harrogate: First, I am sure that we do not want to put Mr Yeo out of business.

Going to my question, as I have said to this Committee before, the Dublin agreements have been total failures, although having been involved in drafting them it is my own fault as well, I suppose. The amount of activity through Dublin is inevitably likely to be restricted, as Mr Yeo said.

My question, to Professor Guild, relates particularly to item 6 of page 2 of your written submission to us, which is very helpful. Does this not just underline a simple fact? In the UK we have adopted our own processes and procedures outside the 1951 convention. I think it would be unconscionable for us ever to be out of a United Nations convention, and I am sure that we would not. However, as regards the criteria applied domestically, Brexit will presumably make little difference to that.

I question you on your figures in item 6. When you talk about rejection rates, I assume that you are talking about rejection rates for applications for asylum. Of course, as we know, while we are quite strict about the convention and its application criteria, we grant a considerably higher percentage of leave to remain in this country, which does not in fact assume that the criteria for asylum are being met, but it is next to it. In other words, there are reasons why we would nevertheless want to try to shelter people without it. I therefore assume that your statistics are against other countries. Other countries do not necessarily apply the same criteria, so there is a difference there.

You talk about domestic issues. What I am really wondering is this. We are talking about a gap as a result of leaving, of Brexit. Will that not be fairly minimal, in fact? I would be grateful if you could comment on the Charter of Fundamental Rights, because clearly that is a political issue; a lot of people have a view that we should get rid of it. It was a complicated addition to the Convention on Human Rights. It is not exactly the same—and it was confusing at the time, in my view—but the loss of it in itself would surely not lose our own domestic approach and the ways we apply the criteria when we deal with asylum applications.

Professor Elspeth Guild: You have covered something that we were just discussing in the corridor, actually.

To answer your first question, according to the Eurostat statistics from 24 April 2019, figure 8 is the distribution of first-instance decisions on non-EU asylum applications, so it does not cover Mr Puigdemont. It covers rejected humanitarian reasons, subsidiary protection and refugee status. The two EU Common European Asylum statuses are refugee status and subsidiary protection, but the statistics also include humanitarian reasons so that would cover the UK's humanitarian status and other member states' varieties of humanitarian status.

Eurostat is very sensitive to the issue you have raised. I believe that some 10 years ago there was an awful lot of debate about this and it decided to produce consolidated statistics for everyone. "Rejected" means that you get nothing, and you are on the list to be expelled.

Perhaps Colin would like to say something about what the Charter means in the UK.

Colin Yeo: I am not sure that all practising lawyers necessarily agree with this, but my experience has been that it is not a legal instrument that I make use of in my practice. It is not something that I rely on on behalf of my clients. I refer to the Refugee Convention, the European Convention on Human Rights and to EU law, including EU asylum laws.

Lord Kirkhope of Harrogate: This is very important. I think lawyers and judges and so on are obliged through the courts to cite, if appropriate, the convention on human rights. Can you correct me on this? Are we obliged to cite the Charter of Fundamental Rights?

Colin Yeo: I do not think that there is any obligation to cite the ECHR unless it is particularly relevant to the case. There have been legal arguments about whether the Charter of Fundamental Rights adds something to the European Convention on Human Rights. Certainly, in textual terms, there is more in it than in the ECHR, but in practical day-to-day terms I am not sure it really has much of a direct impact on practice in the UK—at the moment at least. Arguably it should have more impact, but I do not think it does at the moment.

The impact of withdrawing from it will perhaps be a more long-term, policy-level one where if the UK wants to seek to benefit from the Common European Asylum System or elements of it, such as having

access to Eurodac, Dublin-type arrangements and so on, if the UK appears to be diverging from European standards that will presumably become something the EU will find harder to agree to.

Professor Elspeth Guild: I would add only that there is quite an interesting disjunct between the importance of the Charter in domestic proceedings here and its position in the judgments of the Court of Justice of the European Union. I read them fairly carefully and there are quite a lot of them. On the asylum side, almost all of them make references to the Charter as the foundation. It is very interesting to see how the evolution is quite distinct.

Lord Kirkhope of Harrogate: A very tiny point on this. In fact, therefore, the bringing of the Convention on Human Rights into our domestic law in 1998 by the then Government would surely have an effect on our ongoing criteria and responsibilities, would it not, outside Europe?

Colin Yeo: Yes. We are bound to that by the Human Rights Act and our membership of the European Convention, which will remain in place even if or when we leave the EU.

Q33 **Baroness Scott of Bybrook:** The EU Withdrawal Act 2018 requires the Government to seek an agreement with the EU on family reunification for unaccompanied minors. Do you think the future UK-EU asylum co-operation will extend beyond family reunion to include, for example, interagency co-operation and maybe a mechanism for returning asylum seekers to the first-entry countries? If that is the case, will the UK need to access Eurodac for such a system to work?

Colin Yeo: I will start by saying that I cannot say a lot on that. I am a practising lawyer; I do not really have a high-level opinion on what should happen. I can say that access to Eurodac will be important to the UK if the UK wants to go down that road, because it is very difficult to match people or to check identity without ready access to it.

I do not know how realistic it is for the UK to get access to Eurodac, which is not a static thing. It is something that the EU is developing over time and there are plans to expand it away from being just about asylum to other types, such as irregular migration, and perhaps regular migration. The UK would need access to it to have meaningful co-operation about accepting or removing people from the EU. Whether that is realistic when the UK is pulling out of the rest of the system is a bit of an open question.

I will finish by saying that we have not seen much from the UK on this. Considering the role that asylum as an issue seemed to play in the referendum campaign, there has been virtual silence from the UK Government since the referendum on what their 'asks' are. There has been a White Paper in which the UK has expressed interest in access to Eurodac and in a Dublin-style arrangement, but certainly in the public-facing work that has been going on I am unaware of any specific moves

to negotiate that by the UK. There might be only so much bandwidth for civil servants and Ministers and they have a lot else that they are worried about instead, or it might be that something is secretly happening that I am just not aware of. It certainly does not have much apparent priority as an issue at the moment.

Professor Elspeth Guild: I would add only that family reunification for the other EU member states is a fairly easy issue on which to work with the UK post departure. EU Directive 2003/86 sets minimum standards, so member states can exceed them. However, on the assumption that eventually the Common European Asylum System becomes a Regulation, that may make it more complicated, because there will then be very strict rules. It will become a Regulation with binding rules and the possibility of alternatives would become limited.

I am not sure that it will be possible. If your colleague, Lord Kirkhope, is correct and Dublin is dead, always has been dead and will not be revived, and if we cannot even have a system of distribution of asylum seekers within the EU among states that, at least in theory, are tied to one another, the chances of sending them to third countries will be much diminished.

Q34 **Lord Best:** My question is about a no-deal Brexit. You may have some broad observations about its implications. In particular, if there is no deal, is there anything to prevent the UK continuing to co-operate with each EU country on the reunion of separated refugee families?

Professor Elspeth Guild: That question follows on very well from the previous one, because, again, what scope is available to the member states in respect of family reunification? From the perspective of the continent and the remaining EU member states, the question will be: to what extent does EU law permit them to enter into bilateral arrangements with the UK?

That is where the Family Reunification Directive comes in. It is a minimum standard. The UK has never participated in this piece of legislation, but the other member states are bound by it. It permits member states to enter into other arrangements, but it sets minimum standards for family reunification for refugees, so it would not be possible for a member state to seek to enter into an agreement with the UK that was inconsistent with the threshold of rights in the Directive.

Colin Yeo: I agree with Elspeth. Also, in practical terms, even if you could negotiate a bilateral arrangement with another EU country that was compatible with EU law, it is rather laborious to do that with each country. It is far more efficient to enter into some sort of arrangement with the EU through the Common European Asylum System. Whether that is possible as we are leaving, I do not know.

The Chairman: So what would the position be the day after we leave, if we leave with no deal? How would that affect asylum seekers and our ability to take people in?

Colin Yeo: I do not think that it would have much of an immediate effect for most asylum seekers in the UK claiming asylum. There might well be a medium or long-term impact. There would no longer be a legal basis for sending the few hundred people undergoing Dublin removals or some part of that process, perhaps in detention, back to EU countries; they would have to be released and allowed to stay, and their asylum claims would have to be processed in the UK. For most asylum seekers arriving, their claims would be processed under the UK process.

Generally speaking, the EU Directives on asylum did not require the UK to change its processes very much. Although they exist as a layer of UK law, in legal terms a lot of the asylum process is already in the Immigration Rules, which are part of our domestic legislation, so I struggle to think of an immediate impact other than a few hundred Dublin removal cases suddenly having to be processed here in the UK. In the longer term, there may well be other impacts, but that is my guess for day one.

Lord Best: Some people say that people in Spain, Italy or Greece will now say, "Carry on, asylum seekers. We have no agreement with the UK. We don't have to be the first port of call. We don't have to take any responsibility for you. Keep going. The UK is just over there". Is that scaremongering?

Professor Elspeth Guild: I will deal with both questions simultaneously. If we leave without an agreement, I assume that, on the day we leave, someone over in Estonia, where Eurodac is based, will take the UK off the access list, so that from one day to the next you will not be able to access that system. I am sure that you have already taken evidence from Home Office officials on what value they see in Eurodac; it is not my place to comment on that.

From one day to the next, the UK would also lose access to the European Asylum Support Office, if that is of any interest. Similarly, from one day to the next, the UK will lose access to FRONTEX, the European border control agency. Institutionally, no deal means that the agency will have to take the UK off the permitted-user list from one day to the next. Whether that is important is something which the Home Office is better able to tell you.

Will that mean that ruffian border guards will start encouraging people to think about the UK as their ultimate destination? That caused tremendous turmoil in 2015-16. I believe that your other witnesses talked about the ripple effect during that period—in particular, the Western Balkans hiring buses to carry people across the border and keep them moving in the right direction. That practice has been much denounced in the European Union, and many arguments have been put forward about protecting the integrity of the system and the necessity of member states stepping up to the plate and providing reception conditions.

The pressure to engage in these dubious practices is infinitely smaller now, because there has been an exponential increase in reception conditions across the EU, particularly in Germany and Austria—places

that were big destinations in 2015-16 and remain as such. They set up lots of reception spaces by converting all kinds of old military buildings into nice little apartments, for example.

Now, they have the opposite problem: they have hired a lot of people and trained them up, and they have lots of infrastructure, but they do not have enough people to fill those places, so people will become unemployed. I talked to a colleague from one of those member states, who mentioned that it was surprising that there has been a big rise in numbers in one particular member state with absolutely no impact—or the impact not being picked up at all by the political party concerned about too many asylum seekers there.

Lord Kirkhope of Harrogate: A very quick point. I think it is well known that, in migrant flows, including asylum seekers in particular, there is embedded an element—a very small one, admittedly—of danger of terrorism, crime and so on. Without Eurodac, which my noble friend referred to in his question, presumably we will also lose our access to a whole lot of other databases that are interesting from a law enforcement point of view and are used regularly to check out people making applications to make sure that they are not a threat to this country. We will lose all that as well, will we not?

Colin Yeo: The short answer is yes, basically.

Professor Elspeth Guild: Thank you for the question. The EU is struggling with the development of what is called interoperability. The legal measures required to create interoperability between the different EU databases relating to third-country nationals have been passed, but there are certainly difficulties there. The European data protection supervisor is exceedingly chary about the idea, because of the problems with data collection, the objective under which data is collected and how it will be used.

Eurodac was set up as a self-contained database, but one that permitted law enforcement access. I am sure that you have heard from other witnesses with greater experience of using the Eurodac system than I that law enforcement is terribly unhappy about the Eurodac database because it does not give you any information about identity. For them, it is an awful lot of effort. You get a set of fingerprints that match, then you have to go back to the member state which put the fingerprints in and ask them, "But who is this person, and where is he or she?"

One has to bear the limitations in mind which are there. If you are thinking about interoperability with the SIS, the VIS and all the other databases on third-country nationals, I do not think this will be an easy road.

Baroness Massey of Darwen: Do you foresee legal challenges or nightmares in all this? It sounds very complicated and liable to much interpretation. How might it all play out? You said that it would not be an easy road. No, but could it be a legal nightmare?

Colin Yeo: It would be a legal nightmare. In some ways, a no-deal exit is quite simple and straightforward, because it is just such a cut-off that it is legally clear. The consequences, however, are very difficult to predict. What might be more challenging in the medium term is where we see a gradual withdrawal, and how far the legal status of agreements with the EU to continue elements of the Common European Asylum System would be legally valid. I can foresee legal challenges down the road that way.

It is not something that lawyers like me have thought about too much at this stage. We tend to think more creatively about legal challenges as and when something happens. We do not pre-plan them, if you see what I mean. If I had a client who suddenly found themselves in situation X, at that point I would have to think about the legal options and what legal challenges might be available. Are there challenges to validity that we could run in a case like that? It is not something I have given any thought to so far, and I would hope not to have to.

Q35 **Lord Ricketts:** I want to take you up, Professor Guild, on your kind offer to say something about Le Touquet. I would be interested in your thoughts on one area where there could be fairly immediate consequences, particularly in a no-deal Brexit.

I am interested in how you see the interface between our co-operation with the French on maintaining the fluid border, given the load they have been bearing on border security and policing it, and our willingness to co-operate with them on asylum, particularly for unaccompanied children and so on. I declare an interest in that I was the Ambassador in Paris during 2015. In all that very difficult period, the French bore a big load on the security side—securing our border through juxtaposed controls—and they expected some return from us in terms of a co-operative approach on asylum issues, unaccompanied minors and so on.

Do you see the operation of the Le Touquet agreement as at risk, not in itself as a bilateral agreement but because of the nature of Brexit and our attitude towards future asylum co-operation?

Professor Elspeth Guild: Thank you for the question. The Le Touquet agreement is undoubtedly facilitated by the fact that it is an agreement among friends—and friends who are tied in the legal framework of the European Union. With this kind of agreement, beyond or without that framework, it may be much more difficult to sustain the necessary good will, because if one looks at Calais and its salience in the French political scene, it is an irritant. Every now and then there are statements about how unsatisfactory it is.

Expense is one issue, of course, but the Le Touquet agreement and the export of British border controls to the Calais region could, on the turn of a pin, become a state sovereignty issue. I think everyone knows that. As long as it is just about money, that can be sorted. But if it becomes an issue on which some French political party starts rallying the forces around state sovereignty, the UK will have a very difficult time maintaining that agreement.

It is also not popular in Calais. There are an increasing number of judgments from various French courts about the provision of services to people in Calais. The most recent one from the Conseil d'État last summer was worded in terms where in fact the Prefect in Calais is criminally liable for the failure to provide services. As I understand it from my French colleagues who are jurists, this is a very serious concern which potentially places the prosecutor in the position of having to arrest the Préfet in Calais. That is a very unhappy situation.

We are watching Italy unwinding, between the Minister of the Interior, the prosecutors, the instructing magistrates and the magistrates of liberty over the captain of "Sea-Watch 3". There is also the commencement of criminal prosecutions of the naval officers who prohibited the military vessels' departure in the rescue mission in 2013. We can see how difficult the problem of co-operation with other states might become and how that can be internalised into mechanisms within the state.

The agreement looks fine at the moment. I understand that less than a year ago the Prime Minister stood with the French President and confirmed that it was all wonderful. But what will happen if, for instance, the French start doing their customs controls in Calais, as they did at Eurostar a couple of months ago? That caused massive delays. If those lorries are backed up with customs checks leaving France, that will result in a pull factor—a term I loathe massively, but it is probably useful here—for people who are trying to get to the UK, because the lorries will be backed up here, there and everywhere, it will be impossible to provide protection and they will break into the back of them. Things could get rather unpleasant, which would then increase the political pressure on the French Government in respect of the agreement itself.

Lord Ricketts: I agree absolutely. You said that it was an irritant, but it could easily become a crisis. You are quite right that it could become a national thing and, in the circumstances you describe, it certainly would.

Coming back to the asylum issue, do you see the British attitude to co-operation with the French and other countries on asylum as part of maintaining good will and co-operation over the wider border in Calais? I can reveal that I do, but I am interested to know whether you see an interaction between the two.

While you are answering that, are there any other EU countries—Belgium is obviously tied into the three-way agreement—in which there is anything like that level of concern that the bilateral relationship ought not to complicate the freedom, or fluidity, of movement between the UK and those EU countries?

Professor Elspeth Guild: Thank you very much for the opportunity to expand a little further—and Colin, do throw your two-cents' worth in if there is something that you want to say.

One of the difficulties of good will in international diplomacy is that it can be wasted in fields that are perhaps tangential and not of particular interest. One example of the way in which the EU has wasted an awful loss of good will has been the EU-Turkey statement where, as we now know, the member states negotiated with Turkey that it would prevent the continuing arrival of Syrians and others from Turkey into Greece—bearing in mind that, at the time this agreement was settled, everyone knew that it could be in contravention of the international human right to leave a state, and that Turkey would be taking that risk.

The EU promised two things: quite a lot of money, and the lifting of the mandatory visa requirement for Turkish nationals who come to the EU by June 2016. Of course, the EU has not delivered on the latter promise, and visa requirements are still in place.

Secondly, the Court of Justice has said that the EU-Turkey statement is not an agreement of the EU but of the member states. I hear that Ankara is extremely displeased, that it was led to believe that it was entering into an agreement with the European Union but has now been told that, no, it entered into an agreement with member states, which is not even an agreement, and it has no recourse in terms of lifting the mandatory visa requirement on Turkish nationals coming to the EU.

What is the consequence of that? If one side does not deliver, does the other side have to continue to carry out its side of the bargain? We all want free trade and the free movement of goods, services and capital to keep going, we want a framework for it and everybody behaving. Once you get yourself out of EU general co-operation and start putting yourself in the position of a third country and undertakings to third countries, you have to be fairly careful that, if you have something to offer that the other side wants, you deliver it.

Lord McNally: To take this a little further, anybody who has been to Calais must see what a problem that is from the French side. Part of our job will be to advise, or to make suggestions to, the British Government. What prospect is there for a kind of entente cordiale between the British and the French about the problem of Calais and the continuing flow? What element would there be in such an agreement beyond what we have now?

Professor Elspeth Guild: I really think that the Le Touquet agreement is as far as you can go. I assume that the UK Government's concern is that there is more than one political party in France that might well wave the state sovereignty flag once the UK has left the EU. I very much doubt that outside the EU framework the UK will be able to negotiate anything further to accommodate diminishing flows of persons. Practically, one sees it as a very difficult scenario.

Lord McNally: That is a little despairing. Life will go on. I would suggest that we get into dialogue now with the French at a bilateral level to think more broadly about what must be done and how it can be handled. If we just stay where we are, you are quite right that the present situation on

both sides of the Channel will be exploited. The present situation, inside or outside the EU, is not tenable in the long term, and it must be in the mutual interest of Britain and France to use the long history of solving problems between us to address that.

Professor Elspeth Guild: I will perhaps give the perspective of France, which is not necessarily a perspective I agree with. Calais is an exception. There is no Calais between France and Germany. There is no Calais between France and the Netherlands. There is a certain degree of friction at the Franco-Italian border. There is certainly no Calais between France and Spain, notwithstanding the terrorist threat of long standing, which has been an issue on that border.

Therefore, from the French perspective, Schengen is the best way not to have Calais and people living in squalid conditions seeking to try to cross a border that they cannot get across. From the French perspective, lifting the border controls is the solution, and a solution to the problem of the continuation of the squalid conditions becoming a reason why the prosecutor has to arrest the Préfet of Calais. There are a whole load of knock-on effects, which, if you look at this from the perspective of the other side of the border, are very important.

Colin Yeo: The UK seems to get quite a good deal out of the current arrangements, and it is hard to see what the French would gain from any possible UK asks that develop the situation any further. It is possible to imagine that the French might be a bit less co-operative than they are at the moment if we leave the EU, especially if we leave on bad terms.

Q36 **Baroness Newlove:** Apologies for my voice. I am full of a cold. It has been fascinating to listen to you. I am one of the newbies on this Committee, along with some colleagues.

The Committee has heard from previous witnesses that the externalisation of EU asylum or migration management is gaining traction. What is the assessment of both of you of the proposed policy of the regional disembarkation platforms and controlled centres to process asylum claims outside EU territory? Is such a policy compatible with the refugee convention and human rights law?

Colin Yeo: There has been a lot of discussion for many years about having what are basically camps outside the EU; somebody claims asylum and is removed from the EU to one of these external camps. That was proposed in the early 2000s, when the numbers claiming asylum in the UK were historically very high.

It does not seem to have happened yet, and I am not sure what information is available to suggest that we are now any closer to that happening than previously. We have seen arrangements with Libya and Turkey, which I suppose test the water to some degree. Those have been extremely controversial. You would certainly not immediately associate Libya with being what we call a safe third country. It seems very unsafe, so it seems an odd country to pick to pilot something like that.

There are some very strong arguments that that kind of system is incompatible with the Refugee Convention, but that is not really EU law. The Refugee Convention by implication requires state parties to process an asylum claim from a person who claims to be a refugee, and it certainly requires refugees not to be returned or removed to other countries, directly or indirectly.

So there are legal obstacles to those kinds of external camps being developed. There is also mounting evidence in Libya of really serious breaches of human rights of those who have been prevented from travelling or have even been returned, so it is not exactly an encouraging precedent for it, either.

Baroness Newlove: I quite agree.

Lord Haselhurst: It seemed perfectly reasonable a few years ago to discuss the idea that if people were being tragically displaced by war—one thinks of the Middle East in particular—and you could hold them in camps that were relatively close, they would then have the chance to go back to be part of the rebuilding of their country rather than be permanently excluded.

There seems rather less hope of that at the moment. You mentioned the Libyan situation, and some of us heard evidence on that: that it is all very well having these camps, but out of sight, out of mind, and the further away you go, the more that cruel and exploitative forces may seek to take control of them.

The Norwegians suggested in their policy document to us that more had to be done at source to try to stem migration for whatever reason. Is there any realistic possibility that resources by European Union countries, for example, could be applied in a way that would reduce the need for people to move? At the moment, the world looks as though the displacement of people will get even worse, and we cannot be sure that that will not be the case.

Do we have to do some back-selling—to use a commercial phrase—to put money into some of the countries so that some stabilisation can be achieved?

Professor Elspeth Guild: The two global compacts for safe, orderly and regular migration and for refugees are based on the sustainable development goals and the 2030 agenda. That was not accidental, and it is part of the thinking that migration and refugee protection are human rights issues—people are entitled to human rights—but there is also a very strong development element to this that needs to be addressed. I believe that the International Organization for Migration, under its new leadership of Mr Vitorino, is currently trying to work on developing links and seeing just how this can work together.

One of the aspects that I thought I heard from some of the development agencies in the Nordic states—I am very interested to hear that you have

been talking to the Norwegians—and that sounded quite a good one to me was to marry development and human rights in the context of trying in development strategies to privilege good governance, ending corruption, access to justice, and access to the mechanisms of governance that make a state one in which people want to live. That in itself may provide people with a little more hope about the future of their own state and their capacity to remain there.

A classic problem is the robustness of land ownership systems. We have seen this in a number of countries. It has been particularly scandalous in Uganda; there have been grey questions about property ownership, land ownership, and the robustness of the land registries in ensuring that people are not deprived of the ownership of their land through nefarious deals. That kind of thing may be very helpful in making more of the world a place where people feel confident that they have a future.

Colin Yeo: I have two points to make in response. One is that a lot of countries would be surprised to hear us having this kind of discussion about 30,000 asylum seekers per year. The number of refugees or internally displaced persons that Middle Eastern countries, including Pakistan and Iran, end up hosting is huge compared to the number that we are talking about, which is very small. That is also true within the EU; we take comparatively few people in comparison to other EU countries, particularly per population.

On another point, I saw an interesting research paper that sort of contradicts Elspeth's point. I do not think the analogy is drawn in it, but it is like de Tocqueville on the French Revolution saying that it is the not the most downtrodden peasants who are revolutionary; it is the ones who are more aspirational. Development aid, by injecting hope and development into economies, can increase the desire to migrate as opposed to reduce it. I do not have the reference to hand, but I can submit it to the Committee afterwards. I thought it was an interesting counterpoint to the more normal suggestion that if you develop places, people will be willing to stay where they are.

The Chairman: Thank you. It would indeed be helpful to us if we could have the reference so that we can take it into account.

Q37 **Lord Watts:** What is your view of the debate, or disagreement, over the proposed reforms of the Common European Asylum System? Do you think the EU is still experiencing the ripple effects of the 2015 crisis in terms of increasingly restrictive policies towards refugees? Finally, are attitudes to migration in Europe likely to affect the future relationship which the UK is able to achieve with the EU when we leave?

That is a fairly wide-ranging number of issues, but do your best.

Professor Elspeth Guild: Certainly the 2015-16 arrival of a couple of million people who were not expected has been a bit of a shock for a number of interior ministries. Recovery from that shock takes a bit of time.

On the question about the ripple effect on the Common European Asylum System, one of the sticking points and perhaps not particularly judicious moves by the EU in 2015-16 was the relocation programme, which is a very complicated mechanism for relocating asylum seekers from Greece and Italy. Hungary was supposed to be included but said, "Oh no, we don't want anything to do with that". It has not been a great success and has created an enormous amount of ill will, with the idea and the creation of two camps: the western European camp and now the Visegrád camp.

I am a bit surprised by this, because even 10 years ago the countries that are supposedly Visegrád countries did not consider themselves a bloc; they considered themselves linked to other member states. Hungary, for example, considered itself to be more closely aligned to Austria than it did to Slovakia.

Now, that seems to have changed, and there now seems to be a real bloc. So it is highly unlikely that the proposed Dublin IV, with a relocation mechanism as an intrinsic part of it, is actually going to be adopted in its current format. It might be that relocation will be shifted over into the Temporary Protections Directive, but that has never been used anyway, so what is the point of that?

What we are seeing from the cases going to the Court of Justice at the moment is that it is no longer about secondary movement of asylum seekers. What is annoying member states is the secondary movement of persons who have received refugee status, subsidiary protection or humanitarian status. They moved to another member state, because when they were granted protection—the two most recent cases were from Bulgaria and Italy—they were just thrown out of the reception-condition places and were living under the bridges. No integration measures were available, so they just moved on to another member state and applied for asylum again.

Without us, the EU will have to resolve all these problems. Will there be any spillover effect on the UK? At the moment it does not seem very likely, although one never knows. The economies in most of northern and eastern Europe are doing very well, thank you, and unemployment rates have dropped fairly low, so one does not see an economic push factor to the UK. Also, in the light of Brexit, if anyone who is thinking of moving here can move under the free movement rules, they are moving right now. If they cannot, they may think twice.

Colin Yeo: I have nothing to add to that.

Lord Watts: When we visited Norway, the key issue there seemed to be that when people felt that the system was out of control—when large numbers of people arrived and they were not expected—that seemed to change public opinion. That then led to the politicians tightening up the system.

To me, the Norway system is much tighter than it was perhaps four or five years ago. Is that likely to happen again? If there are large numbers

again, and if those numbers are camped out—for want of a better phrase—on our borders and we are not taking part in any sort of mutual agreements, that is likely to create a crisis again, is it not?

Professor Elspeth Guild: I will make what may seem a diversion in the beginning, but I think it is particularly important. I do not think we are looking at cause and effect; we are looking at a series of political choices. I say that, because the country of origin of the largest number of persons arriving in the European Union since 2014 has been Ukraine: half a million a year going into Poland and receiving work and residence permits. There are now more than 3 million of them, and this is continuing.

We all know why people are fleeing Ukraine, and if the EU wished it could suggest that they go through an asylum procedure. That is not the choice that has been made. That is probably because if Poland suggested that half a million Ukrainians a year were going to be put through the asylum system, that would suggest that Kiev is unable to protect its citizens, and the neighbour to the east might find that a good reason to provide better protection for Ukrainians in Ukraine.

So, we have political scenarios. This is not an unknown story. You can look at the statistics. Eurostat produces a set of statistics every year on the issue of first residence permits in the EU. We issue between 2.5 million and 3.5 million such permits a year to third-country nationals. The country of origin of the vast majority of those—over half—is Ukraine.

They are invisible. Why? Because, politically, we have chosen to make them invisible. What happens to them? I have no actual data on this, but over coffee with a Commission official I was told that they sign up to post-box companies in Poland and are then posted all across central and eastern Europe, working in the construction industry and various different industries as third-country-national posted workers under EU law. But I do not know if that is true.

The Chairman: Thank you. That is extremely interesting—and new to me, I must say.

Q38 **Baroness Jolly:** I am interested in your response to the Home Secretary's recent announcement of a new, simpler global resettlement programme to replace existing schemes from 2020. Whichever way you look at that, it is either six or 18 months away, but it is very much around the corner. How can the administration of the new scheme be improved, compared to its predecessors? Is the Government's new target under the new scheme to resettle refugees at current levels sufficient, or should the UK be more ambitious about numbers?

Colin Yeo: The last question is easy to answer. It is always good to see more resettlement of refugees, because they need it and there are so many refugees being hosted in other countries, as I said earlier, in comparison with the numbers in this country.

On the question of improving the scheme, it is actually a pretty good scheme as it stands, by the sound of things. I was reading through the Chief Inspector of Borders and Immigration's report on the scheme, which is very positive. He starts by saying that this is a good report, and that basically he is nit-picking when it comes to suggested improvements. It sounds as though it has been a significant logistical challenge for the Home Office, and perhaps a bit of a culture change as well. There were very small resettlement schemes before the 20,000 one was announced. It sounds like they are being joined together and that the Home Office is able to build on the experience it has already gained from the last few years of running this one. It seems on the face of it to be a very good-news story.

Professor Elspeth Guild: I would add only that the numbers are pretty unambitious: a resettlement figure of 5,000 is not very ambitious. As the press release itself said, "The global humanitarian need continues to grow, with over 68.5 million people around the world forced from their homes". So 5,000 is maybe a bit of a drop in the bucket, but a good drop in the bucket.

Colin Yeo: But transformative to those who benefit from the scheme. It is not nothing: it is a big improvement on what we had before, when the numbers were much smaller. But it could be a lot more.

The Chairman: Thank you very much indeed, both of you. That has been extremely helpful to the inquiry and has given us a very useful perspective. We are very grateful to you and, as I say, we will send you a copy of the transcript afterwards to look through.