Table of Contents

TABLE OF CONTENTS	V
LIST OF FIGURES AND TABLES	XVI
ABBREVIATIONS	XIX
INTRODUCTION	1
1 WESTERN EUROPEAN ASYLUM POLICIES FOR EXPORT: THE TRANSFER OF PROTECTION AND DEFLECTION FORMULAS TO CENTRAL EUROPE AITHE BALTICS 1.1 The EU Accession Process	ND 5
1.11 Non-Admission and Non-Arrival Policies	10
1.II.A Various Types of Deflection of Asylum Seekers 1.II.B Deflection Policies with a Particular Impon Central European States	10 act
1.II.C Shifting Responsibility and Creating Safe Third Countries	16
1.III Safe Third Country Practices	17
1.III.A The Notion of a Safe Third Country	17
1.III.B The Dublin Convention and EU Member States as Safe Third Countries	19
1.III.C Harmonization and Safe Third Country Practices	21
1.III.D Accession, Enlargement and Safe Third Country Practices	25
1.IV Reshuffling Protection Burdens	28
2 THE CENTRAL LINK: GERMANY, POLAND AND TI CZECH REPUBLIC 2.1 Germany	HE 29 29

2.1.A Policy	29
2.1.B Practices	31
2.1.A.1 The Domestic Legal Framework	33
2.1.A.1.(a) The German concept of safe third countr	ies
	33
2.1.A.1.(b) Entry and apprehension in the border zor	
	38
2.1.A.1.(c) In-country application	40
2.1.A.2 Negotiating the Eastern Border	41
2.1.A.2 (a) Poland	42
2.1.A.2 (b) The Czech Republic	44
2.1.C Conclusion	46
2.11 Poland	48
2.11.1 General Situation and Policy	48
2.11.A.1. Conversion from Sending Country to Transit	48
2.II.A.2 Migratory Pressure from the East and South	53
2.II.A.3 Pressure from the West	56
2.11.A.3 (a) Financing and co-operation	56
2.11.A.3 (b)The political aspect	59
2.II.A.4 Readmission Agreements with the Eastern	<i>/</i> O
Neighbours	60
2.11.B Changes in the Law	62
2.II.B.1 Fundamental Steps	62
2.II.B.1 (a) Refugee status and asylum	64
2.11.B.1 (b) Bodies deciding in refugee matters	64
2.II.B.2 Access to the Determination Procedure	66 68
2.II.B.3 The Notion of 'Safe Country'	68
2.II.B.3 (a) Definitions 2.II.B.3 (b) Practice	70
2.11.B.3 (b) Hachce 2.11.B.4 Detention	7 1
2.11.B.5 Humanitarian Status (Temporary Protection)	73
2.11.C Conclusions	75
2.III The Czech Republic	78
2.III.A Transit or Destination State?	78
2.III.A.1 Political Concerns	78
2.III.A.2 Rising Numbers of Asylum Seekers	78
2.III.A.3 Implementing Readmission Agreements with Neighbouring States	79
1 10 9 110 9 110 9	, ,

2.111.B Legislative Practices	81
2.III.B.1 The Aliens Act	81
2.III.B.2 The Asylum Act	85
2.111.B.3 Multifunctional Character of the Asylum Act	85
2.111.B.4 A Comparison of the Asylum Act and the Cha	arter
of Fundamental Rights and Freedoms	85
2.III.B.5 The Concept of the Safe Country of Origin	87
2.III.B.6 The Concept of the Safe Third Country	88
2.III.B.7 The Concept of Persecution	89
2.111.B.8 The Entry of an Applicant into the Territory an	d
the Institution of Asylum Procedure	89
2.III.B.9 Appeal Options	91
2.III.B.10 Manifestly Unfounded Applications	91
2.III.B.11 Minimum Procedural Guarantees	92
2.111.C Conclusion	92
2.1V Conclusions on the Central Link	94
2.1V.A The Proliferation of Strategies and Count	ter-
Strategies	94
2.1V.B Numbers	95
2.1V.C The New Orbiters	96
3 THE SOUTHERN LINK: AUSTRIA AND HUNGARY	100
	100
3.1.A Introduction	100
3.1.B Developments in Domestic Legislation	
3.1.B.1 Amendments in 1990 Justified as 'Emergency	101
Responses'	101
3.1.B.2 The Phase of Consolidated Restrictionism	104
3.1.B.3 Relaxing Restrictionism: 1997 and Beyond	107
3.1.C Building a New Curtain	110
3.I.C.1 The Multilateral Dimension	110
3.1.C.1 (a) EU membership	110
3.1.C.1 (b) Schengen	111
3.1.C.2 The Bilateral Dimensions	113
3.1.C.2 (a) Border control and apprehension in the	
border zone	113
3.1.C.2(b) Readmission agreements	116
3.1.D Transposing the Acquis	119

3.I.D.1 The Safe Third Country Concept	119
3.1.D.2 Implementation of the Dublin Convention	127
3.I.D.3 Manifestly Unfounded Cases and Accelerate	d
Procedures	128
3.1.D.4 Airport Transit and Applications for Asylum at	
Airports	129
3.1.D.5 Carrier Sanctions	131
3.1.D.6 Applications at the Borders	131
3.1.E Austrian Policies Targeting Hungary	132
3.1.E.1 Hungary as a Safe Third Country	132
3.1.E.2 Border Control and Apprehension in the Bord Zone	ler 135
3.1.E.4 Austria's Capacity-building Measures in Hung	gary
	137
3.11 Hungary	138
3.11.A Introduction: Notes on the History of	
Migratory Movements in Hungary	138
3.11.B Challenges Shaping Hungary's Role and	
Policy over the Last Decade	140
3.11.B.1 The General Pressure of Migrants	140
3.11.B.2 Hungary as a Country of Asylum	146
3.11.B.2 (a) The first phase	147
3.11.B.2 (b) The second phase	149
3.11.B.2 (c) The third phase	150
3.II.B.2 (d) Role of the UNHCR until 1998	151
3.II.B.2 (e) The fourth phase	152
3.11.B.2 (f) Problems with the data (where have all	the
new arrivals gone?)	155
3.11.C The Challenge Posed by the EU	158
3.II.C.1 Bordering Austria and the European Union	158
3.II.C.2 Legal and Policy Harmonization with the EU	159
3.11.D The Practice in its Changing Form	161
3.II.D.1 Impact of Non-Domestic Actors Including	
Western European States and the EU	162
3.II.D.2 The Effect of Bilateral Treaties	167
3.II.D.3 Unique Features of Hungarian Law and Prac	tice
	176
3.II.D.3 (a)The road to the new act	177

3.11.D.3 (b) Critical elements of the new Hungo legislation concerning asylum seekers and ref	fugees
3.II.D.3 (c)The 2001 bill: the EU acquis as a preguiding tool? 3.II.E Conclusion	178 etext or a 194 197
3.111 Concluding Observations on the Souther	200
4 THE NORTHERN LINK	203
4.1 Nordic Policy Responses to the Baltic Asy	ylum
Challenge	203
4.1.A Strategic Aspects of the Nordic –Bal	ltic
Relationship	203
4.1.A.1 Diverging Interests: Political Support vs. Protection	Self- 203
4.I.A.2 Safe Third Country Criteria and the Ensu Containment Policy	uing 205
4.1.A.3 The Episodic Approach to Policy-making	g 208
4.1.B Political Self-Interests and Depende	encies
	211
4.1.B.1 Conditionality in Migration Policies	211
4.1.B.2 Abolition of the Visa Regime	213
4.1.B.3 From Sub-regional Conditionality to EU A	Accession 216
4.1.C Cooperation and Coordination on and Migration Issues	Asylum 218
4.1.C.1 Cooperation Forums and Division of	
Responsibilities	218
4.1.C.2 Influential Cooperation: Containment a Capacity-building	nd 220
4.1.D Protection vs. Exclusion as the Obje	ctive of
Cooperation	222
4.11 Lithuania	226
4.11.A Factors which Prompted Establishm	ent of
Asylum Systems	226
4.2.A.1 Background and Context	226
4.II.A.2 Trading Rights with Nordic States: Visa-f and Refugee Protection	ree Travel

4.II.A.3 Pressure from International Organizations	230
4.11.B Legislative Practice: Balancing Refugee	>
Protection against Exclusion	231
4.11.B.1 Access to the Territory	231
4.11.B.2 Access to the Procedures	235
4.11.B.2 (a) At the border	235
4.II.B.2 (b) In the territory	235
4.11.B.2 (c) On readmission from the West	238
4.11.B.3 Refugee Definition	239
4.11.B.3 (a) Existing definition	239
4.11.B.3 (b) Exclusion clauses	243
4.II.B.4 Asylum Procedures	245
4.11.B.4 (a) Time-limit clauses for asylum application	1s245
4.11.B.4. (b) Appeal rights and suspending effect	246
4.11.B.4 (c) Accelerated procedures	248
4.11.B.4. (d) Detention of asylum seekers: general	
or exception?	249
4.11.B.5 Cases Falling Outside the Existing Refugee	0.50
Definition	253
4.II.B.5 (a) Lack of alternative status and efforts towards introducing one	253
4.11.B.5 (b) Fate of persons excluded from the existi	
refugee definition	254
4.II.B.6 Restrictive Practices	258
4.11.C Policy Strategies	259
4.II.C.1 Concerns for Stability	259
4.II.C.2 Avoiding the 'Closed-Sack' Effect	260
4.II.C.3 Adopting Western Practices	265
4.III Latvia	267
4.III.A Factors which Prompted Establishment	
the Asylum System	267
4.III.A.1 Background and Context	267
4.III.A.2 Trading Rights with Nordic States: Visa-free T	
and Asylum Protection	270
4.III.A.3 Pressure from International Organizations	271
4.III.B Legislative Practice: Balancing Refugee	خ
Protection against Exclusion	272
4.III.B.1 Access to Territory	272
4.III.B.2 Access to Procedures	273

4.111.B.2 (a) At the border	273
4.111.B.2 (b) In the territory	274
4.III.B.3 Refugee Definition	274
4.111.B.3 (a) Existing definition	274
4.111.B.3 (b) Exclusion clauses	275
4.III.B.4 Asylum Procedures	276
4.111.B.4 (a) First instance level	276
4.111.B.4 (b) Second instance	276
4.111.B.4 (c) Accelerated procedures	277
4.III.B.5 Caseload Falling Outside the Existing De	finition
	277
4.111.B.5 (a) Lack of alternative status	277
4.111.B.5 (b) Deportation	278
4.111.C Capacity Building	278
4.III.C.1 Reception and Asylum Systems	278
4.III.C.2 Strengthening Border Controls	279
4. IV Estonia	281
4.1V.A Factors which Prompted the Establis	hment
of Asylum Systems	281
4.IV.A.1 Background and Context	281
4.IV.A.2 Trading Rights with Nordic States: Visa-f	ree
Travel and Asylum Protection	283
4.IV.A.3 Pressure from International Organisation	s 284
4.1V.B Legislative Practices: Balancing Ref	ugee
Protection against Exclusion	286
4.IV.B.1 Access to Territory	287
4.IV.B.2 Access to Procedures	287
4.IV.B.2 (a) At the border	287
4.IV.B.2 (b) In the territory	290
4.1V.B.2 (c) Upon readmission from the west	290
4.IV.B.3 Refugee Definition	291
4.IV.B.4 Asylum Procedures	292
4.1V.B.4 (a) Time-limit clauses for asylum appl	ications 292
4.1V.B.4 (b) Appeal rights and suspensive effe	ect 292
4.IV.B.4 (c) Accelerated procedures	294
4.1V.B.4 (d) Detention of asylum seekers	296
4.1V.B.5 Caseload Falling outside the Existing De	finition
	297

4.1V.B.5 (a) Lack of alternative status	297
4.1V.B.5 (b) Fate of those persons outside of the	
definition	297
4.1V.C Policy Strategies	298
4.IV.C.1 Policies of Evasion: Fear of 'Closed-Sack' Eff	
	298
4.IV.C.2 Transposing Western Practices	299
4.V Concluding Observations on the Northern Li	
	301
5 PROTECTION IN A SPIRIT OF SOLIDARITY?	305
5.1 The Role of Burden-Sharing in the Enlargeme	ent
Context	305
5.1.A The Objective of Burden-sharing	306
5.1.B The Scope of Burden-sharing	307
5.1.B.1 Sharing Norms	311
5.1.B.2 Sharing Money	312
5.1.B.3 Sharing People	313
5.11 A Synopsis of Burden-Sharing in the EU Conte	ext
	313
5.11.A Bosnia and Kosovo as Problem Indicato	rs
	313
5.11.B Standard-Setting and Regime-Building	
Efforts in the EU	314
5.111 Burden-Concentration in Europe	319
5.III.A The Dublin Convention	319
5.111.B Safe Third Countries in the East	321
5.IV Conclusions	324
C TITLE IV/TEC AND THE COHENICEN INTECDATIO	
6 TITLE IV TEC AND THE SCHENGEN INTEGRATION PROTOCOL WITH SPECIAL REGARD TO	JIV
IMPLICATIONS ON ACCESSION CANDIDATES	325
6.1. Introduction	325
6.11. ANew Areas of Jurisdiction in Title IV of the TE	
the Third Pillar Acquis in the Fields of Asylum and	\(\)
Refugee Law to be Implemented in the First Pillar	270
voiged raw in peniplemented in the main	020

	orms of Legal Action; Possibilities of	
Incorpord	ating the Acquis to Date into Commu	nity
Law		336
6.11.C Ju	irisdictions of the ECJ	341
6.11.D Ir	nplications for Accession Candidates	s 341
6.11.E Th	e Schengen Protocol; Incorporating	the
Schenger	n Acquis into Community or Union La	w 345
6.11.F 1ss	sues of Transparency	348
6.11.G Th	e Asylum Protocol	350
6.III Résume	é	350
7 DECENIT	DEVELOPMENTS IN CENTRAL EUROF	
	ALTIC STATES IN THE ASYLUM FIELD	
	UNHCR AND THE STRATEGIES OF T	
	IISSIONER FOR ENHANCING THE ASY	
SYSTEMS O	F THE REGION	351
7.1 Introdu	uction	351
7.II Recen	t Developments in the Central Europe	ean
and Baltic S	itates	352
7.11.A Im	nportant Achievements in Building As	ylum
Systems		352
7.11.B Th	ne Forces Driving Progress	352
7.11.C Sc	me Problems Still to be Overcome	353
7.11.D Pr	evention of Illegal Migration and	
Refugee	Protection	354
7.III UNHCR	R's Objectives and Strategies in Cent	ral
Europe and	the Baltic States	356
7.111.A H	ow to Proceed in the New Asylum	
Countries	; \$	356
7.111.B Th	ne Prime Objectives of UNHCR in the	
		356
7.111.C U1	NHCR's Main Activities in the Region	358
	olvement in Institution and Capacity	
Building in t	he Central European and Baltic State	
		359

7.V EU Harmonization and the EU Acquis on Asyl	um:
UNHCR's Perspective on the Implications for the	
Central European and Baltic States	360
7.V.A UNHCR's View of the EU Harmonization	
Process	360
7.V.B The EU Acquis as an Asset for Refugee	
Protection in the CEBS	362
7.V.C The EU Acquis on Asylum and Internatio	
Refugee Law Standards	362
7.VI Assessing the Results of UNHCR's Strategy	366
7.VII An Attempt to Predict the Future	368
7.VII.A The Continued Momentum Created by I	EU
Accession	368
7.VII.B Some Problems that may Persist	370
7.VII.C Future UNHCR Activities in the Region	371
8 FUTURE PERSPECTIVES: ACCESSION AND ASY	LUM
IN AN EXPANDED EUROPEAN UNION	373
8.1 Introduction	373
8.11 Migration and Asylum Policy in the West in th	ne
1990s	378
8.III Factoring the Influences on Asylum Policy: th	ne
Accession Process in Context	381
8.111.A Chain Reactions: Readmission Agreeme	nts,
'Safe Third Country' Policies and the 'Closed	
Sack' Fear	383
8.111.B Transferring the Acquis and the	
Democratic Process	391
8.1V The Process of Accession	396
8.V The Tampere Summit and the Future of the	
Asylum Acquis	399
8.VI Transposing the Acquis	402
8.VI.A Manifestly Unfounded Claims	403
8.VI.B Minimum Guarantees for Asylum	
Procedures	408

8. VI.C. Biturcated Harmonization: Procedure	
Before Substance	412
8.VI.D Judicial Challenges to the Presumption	of
Equal Justice	416
8.VII Lessons Learned	421
9 TRANSFORMATION OF ASYLUM IN EUROPE	
9.1 A Comparative Assessment of Migration Cor	ntrol
and Refugee Protection in the Three Sub-regions	424
9.11 The Phases of the Transformation of Asylum	426
9.III Asylum and Enlargement	429
SELECT BIBLIOGRAPHY	433
LIST OF CONTRIBUTORS	439
LIST OF CONTRIBUTORS	403
INDEX	443