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STEERING COMMITTEE FOR HUMAN RIGHTS

(CDDH)

DRAFTING GROUP ON THE SAFE THIRD COUNTRY CONCEPT

(CDDH-PTS)

Summary of the exchange of views
held on 4 March 2025
at the first CDDH-PTS meeting

1. Introduction

At its first meeting on 4 March 2025, the CDDH-PTS held an exchange of views on the issue of safe third country concept with:

- Andreas WISSNER, Representative to the European Institutions in Strasbourg, UNHCR;
- Elisa DE PIERI, Researcher, Europe Regional Office, Amnesty International; and
- Thomas STRAUB, Senior Lawyer, Registrar of the European Court of Human Rights

2. Summary of discussions

Key points made by Andreas WISSNER

- Andreas Wissner presented international standards and UNHCR's perspective on the safe third country (STC) concept. He noted that the 1951 Geneva Convention Relating to the Status of Refugees (1951 Refugee Convention) does not mention the STC concept. While states may enter into arrangements with other states to ensure international protection, such arrangements must uphold refugee rights, promote international cooperation, and enhance responsibility-sharing, in line with the 1951 Refugee Convention's preamble.
- References to the STC concept are found in soft law, particularly in the conclusions of the UNHCR Executive Committee (ExCom), the highest executive body of UNHCR composed of 110 UN member States, including 40 from the Council of Europe.
- ExCom conclusions provide that refugees and asylum-seekers who move irregularly from a country where they have found protection may be returned there. Also, where a person before seeking asylum has a connection or close links with another country, he/she may be called upon to seek asylum first in that country, if it appears fair and reasonable to do so.
- The STC concept is explicitly included in European Union (EU) law (Article 38 of the recast Asylum Procedures Directive of 2013 (recast APD) and Article 59 of the new Asylum Procedures Regulation of 2024 (new APR)). Relevant case law from the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) describes binding safeguards to be applied by states.
- Under international refugee and human rights law, and in line with general state practice, the primary responsibility for protection lies with the country where the asylum-seeker seeks international protection. From UNHCR's perspective, transfers to third countries should be based on cooperation and responsibility-sharing, not burden-shifting, and transfers to third countries need to contribute to the enhancement of the overall protection space, whether in the transferring state, the receiving state and/or the region as a whole.
- In its 2018 Legal Considerations, UNHCR identified four key requirements for the application of the STC concept:
  1) a connection between the applicant and the third country;
  2) compliance with safety standards in the third country;
  3) automatic suspensive effect of appeals against transfer to the third country; and
  4) proper designation and review of third countries considered as safe for this purpose.
- Regarding the connection requirement, although not mandated by international law, it is provided for under EU law. UNHCR advocates for a meaningful connection that makes seeking asylum in a third country reasonable and sustainable. Relevant factors include

family ties, previous residence or long-term visits, and linguistic, cultural or other similar links. The goal is to ensure viable transfers, reduce irregular onward movements, and avoid "orbit situations."

- On safety standards, any transfer must be preceded by an individual assessment ensuring that the third country will:
  i) (re)admit the person;
  ii) grant access to a fair and efficient asylum procedure and other international protection needs;
  iii) allow them to remain during the procedure;
  iv) provide treatment commensurate with the 1951 Refugee Convention and international human rights standards, including protection from *refoulement*, and
  v) if refugee status is granted, recognise the individual as a refugee with rights to lawful stay and employment.

  The assessment must also consider the asylum-seeker's specific vulnerabilities prior to any transfer.
- Regarding the automatic suspensive effect of appeals, where there is a risk of a violation of Article 3 of the European Convention on Human Rights (ECHR), ECtHR case law requires that appeals must have an automatic suspensive effect. The possibility to request suspension is not sufficient. Given the irreversible harm that may result, an arguable claim must be subject to rigorous scrutiny, and the remedy must be effective in both law and practice. UNHCR fully supports this jurisprudence.
- On the designation and review of safe third countries, UNHCR calls for a clear, transparent, and accountable designation process. Regular and ad hoc reviews must be based on well-defined criteria and take into account both gradual and sudden changes in the designated country. Ideally, this would be overseen by an independent EU advisory body.
- In conclusion, Andreas Wissner underlined that the work of the CDDH-PTS is key for updating the 1997 Committee of Ministers' Recommendation on the STC concept. Application of the STC concept must comply with the ECHR and the principles established in ECtHR case law, which are binding on all Contracting States, including EU member States under EU law.

Key points made by Elisa DE PIERI

- Elisa De Pieri examined the possible impact on human rights safeguards of recent proposals related to the STC concept, including within the EU. She underlined the growing reliance by European countries on third country arrangements to manage their obligations under international refugee law. The STC concept is increasingly being used as a deterrent to reduce the number of persons seeking asylum in Europe, undermining the object and purpose of the 1951 Refugee Convention, which aims to enhance refugee protection.
- Ms De Pieri stressed that the STC concept is an exception under international refugee law and must be applied with robust procedural and substantive safeguards, particularly to prevent *refoulement* and ensure access to effective asylum procedures.
- Amnesty International had made several recommendations to ensure compliance with international standards. The returning state must conduct individual safety assessments, bear the burden of proof, allow the applicant to be heard and to rebut the claims made by the returning state, and provide access to a suspensive appeal. Diplomatic assurances are insufficient and cannot replace a proper individual non-*refoulement* assessment. The speaker referred to relevant case law of the ECtHR, including *Ilias and Ahmed v. Hungary,*

M.A. and Z.R. v. Cyprus, and *T.I. v. The United Kingdom*, which affirm these safeguards.

- The quality of protection in the third country must include access to fair and effective asylum procedures, protection under the 1951 Refugee Convention without geographical limitations, and treatment in line with accepted international standards, including appropriate reception arrangements, access to health and education, safeguards against arbitrary detention, and support for individuals with specific needs. Amnesty emphasised that protection must be both effective and durable.
- The new EU APR, due to apply from June 2026, is problematic for lowering protection standards, particularly concerning legal residence and readmission guarantees. According to Amnesty International, a country designated as "safe" must have ratified all relevant international instruments, including the 1951 Refugee Convention, its 1967 Protocol, and the UN Convention against Torture.
- Amnesty International had warned against the practice of designating countries as "safe," referring to the CJEU Case C-406/22, which clarified that the "partial designation" of a country as safe is incompatible with EU law.
- Amnesty International opposes applying the STC concept to unaccompanied minors or in the absence of a meaningful link between the applicant and the third country, noting that mere "transit" does not constitute such a link. Meaningful links help ensure that the transfer is sustainable and beneficial to both for the asylum-seeker and the third country, improving integration prospects and reducing irregular onward movement. Amnesty International raised concerns over the new APR's vague definition of "connection."
- Any transfer of asylum-seekers to a third country must be governed by legally binding frameworks, that allow affected individuals to challenge the transfer before a court of law. There must also be effective guarantees that the third county will accept the individual's return in each individual case, going beyond general readmission agreements. Amnesty International referred to the CJEU judgment in Case C-134/23 concerning Türkiye's designation as a STC despite its suspension of readmissions. The case highlighted the legal and operational pitfalls of such practices. The 2016 EU-Türkiye Statement has resulted in complex and lengthy procedures, leaving many asylum-seekers in inadequate conditions on the Greek Aegean islands and in prolonged legal limbo.
- According to Amnesty International, applying the STC concept in asylum procedures should not be mandatory.
- Based on its monitoring and research, Amnesty International found that the use of the STC concept in recent years have led to major operational challenges and significantly increased the costs of migration management systems. This has often diverted resources away from strengthening asylum and reception systems toward border controls and detention facilities in third countries.
- Amnesty International also criticised the use of the STC concept as a tool for shifting, rather than sharing, responsibility for refugee protection. This has led to inconsistent practices across Europe, reduced protection standards, and increased the risk of arbitrary outcomes. Further expansion of the application of the STC concept risks disincentivising the development of asylum systems in third countries and reducing their willingness to offer protection beyond Europe. Amnesty International opposed proposals to establish "return hubs," warning that such externalisation measures may be incompatible with international law and pose serious risks – including arbitrary detention, limited access to remedies, ineffective asylum procedures, and the danger of chain *refoulement*.
- In conclusion, Ms De Pieri underscored the need for stronger safeguards and genuine responsibility-sharing to uphold international refugee protection standards.

Key points made by Thomas STRAUB

- Thomas Straub presented the ECtHR case law on the STC notion, highlighting three main factual scenarios in which the Court examined transfers of asylum-seekers:
  1) transfers under EU law (under the Dublin Regulation) – where the transferring state considered another EU country competent to examine the asylum application;
  2) removals to a non-EU country based on national STC designations – as in *Ilias and Ahmed v. Hungary*, where a non-EU neighbouring state is designated as "safe" in domestic law;
  3) bilateral agreements between states – e.g. *H.T. v. Germany and Greece* and *N.S.K. v. the United Kingdom*, the latter concerning a proposed transfer to Rwanda under a UK-Rwanda agreement.
- The ECtHR consistently held that states remain fully responsible under the ECHR, even when acting under EU law. They must ensure that transfers comply with the Convention, including through individualised risk assessments. The Dublin Regulation does not justify indiscriminate removals (*Sharifi and Others v. Italy and Greece*; *M.S.S. v. Belgium and Greece* [GC]). Similarly, EU law does not require states (i) to refrain from assessing the merits of asylum requests based on the existence of a safe third country, or (ii) to declare another (non-EU) country as a safe third country (*Ilias and Ahmed v. Hungary* [GC]).
- Regarding states' obligations under Article 3 of the Convention, in all cases involving the removal of an asylum-seeker from a Contracting State to a third intermediary country without an examination of the asylum application on the merits – regardless of whether the receiving country is an EU member State or another party to the Convention – the removing state must thoroughly assess whether there is a real risk that the individual would be denied access to an adequate asylum procedure offering protection against *refoulement*. If existing guarantees are insufficient, Article 3 of the Convention implies a duty not to proceed with the removal (*Ilias and Ahmed* [GC]).
- Under Article 3, expelling states must also assess whether the applicant faces a risk of prohibited ill-treatment in the receiving country, including poor detention or living conditions (*Ilias and Ahmed v. Hungary* [GC]). The Grand Chamber judgments in *M.S.S. v. Belgium and Greece* and in *Tarakhel v. Switzerland*, both concerning Dublin transfers, established that such removals may breach Article 3 due to inadequate reception conditions in the receiving state (*M.S.S. v. Belgium and Greece* [GC]) or lack of guarantees for persons with vulnerabilities, which may require individual assurances from the receiving State (*Tarakhel v. Switzerland* [GC]).
- These risk assessments must take place before any removal to a third country (*Ilias and Ahmed* [GC]; *H.T. v. Germany and Greece*). Failure to discharge this procedural obligation under Article 3 constitutes a violation of the Convention (*Ilias and Ahmed* [GC]; *H.T. v. Germany and Greece*).
- Concerning states' procedural obligations under Article 3, national authorities applying the STC concept must conduct a thorough and up-to-date examination of the conditions in the third country, in particular the accessibility and reliability of its asylum system (*Ilias and Ahmed* [GC]). Authorities must act on their own initiative and base assessments on the facts known at the time of removal, seeking all relevant available information. Well-documented deficiencies, such as those set out in UNHCR, Council of Europe, or EU reports, are presumed to be known to the national authorities. The expelling State cannot merely assume compliance with Convention standards; it must verify how the receiving country's asylum laws are applied in practice (*Ilias and Ahmed*).
- While the Convention does not prohibit Contracting States from establishing lists of countries presumed to be "safe," any such presumption must be supported from the outset by an analysis of the country's conditions and asylum system (*Ilias and Ahmed* [GC]). Applicants

must be given sufficient opportunity to demonstrate that the receiving State is not a safe third country in their specific case (*Ilias and Ahmed* [GC]).

- Lastly, where asylum-seekers have an "arguable complaint" that removal to a (safe) third country would expose them to treatment contrary to Article 3, they must have access to an effective remedy at the domestic level, in both law and practice, in accordance with Article 13 of the Convention. This remedy must have automatic suspensive effect to be effective (*M.S.S. v. Belgium and Greece* [GC]; *M.K. and Others v. Poland*).

Discussions

- A question was raised regarding the notion of "meaningful connection" with the safe third country – specifically, whether any ECtHR case law addresses this or whether such a connection requirement derives from the Court's jurisprudence. Mr Straub responded that there is no such requirement under ECtHR case law, and it would be difficult to imagine one, as cases before the Court are brought under Article 3 of the Convention: the Court would examine whether the person's transfer would violate this provision, to which the issue of prior connection would be irrelevant. The application of (procedural guarantees) under Article 8 is made complex by the fact that asylum-seekers, as such, do not have a right to reside in a Contracting Party. Mr Straub reminded participants that the Convention sets minimum standards in Europe, and while EU law often provides differentiated standards, states are nonetheless bound by them.
- Another question concerned the Committee of Ministers' 1997 Recommendation and 2009 Guidelines on human rights procedures in the context of accelerated asylum procedures. It was noted that these instruments are quite distinct – one being concise and narrow in scope, the other broader and more detailed. This raises the issue of the appropriate scope for the CDDH-PTS study and whether it should follow a similar approach or take a new direction. In response, Mr Wissner noted that while the 1951 Refugee Convention remains the cornerstone of international refugee law and is both concise and detailed, the 1997 Recommendation reflects a different legal and political context. At that time, key ECtHR judgments – such as *Ilias and Ahmed* – did not exist. Debates around the STC concept were already taking place 30 years ago. The concept itself is not new; it was developed by states that felt overwhelmed by asylum-seekers. However, it must still be interpreted through the lens of the 1951 Refugee Convention, with the aim of advancing refugee protection and promoting responsibility-sharing.
- The participants discussed the importance of the ECHR and its case law. An important issue for the CDDH-PTS will be to assess whether the 1997 Recommendation still provides adequate guidance on contemporary standards, particularly in light of developments in ECtHR jurisprudence. The group will also need to examine whether the Recommendation sufficiently addresses new developments – such as the use of the STC concept under EU law or bilateral agreements on STC. These developments, along with novel migration scenarios involving a large number of individuals, may not have been foreseen at the time of the adoption of the Recommendation in 1997.