



**The European Union, Asylum and the International Refugee Protection Regime :
UNHCR's recommendations for the new multiannual programme in the area of
freedom, security and justice**

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) attaches great importance to the further development of European refugee policy, and welcomes this opportunity to provide input into the coming multiannual programme in the area of freedom, security and justice.
2. In a context of increasing international migration driven by economic and social imbalances, instability and conflict in many parts of the world, establishing a common European asylum system which is accessible and effective is vitally important. The Treaty of Amsterdam set out a number of areas where instruments on minimum standards should be adopted to enhance harmonization between Member States, as a first phase towards a common asylum system. The European Council's Tampere conclusions provided a political framework, underscoring the commitment of the European Union (EU) and Member States to the "absolute respect of the right to seek asylum" and the need for "the full and inclusive application of the Geneva Convention".¹ In the five years since the Treaty of Amsterdam entered into force, the EU has adopted a number of key instruments, thereby essentially completing the first legislative phase of harmonization by the deadline of May 2004.²
3. Substantial work nevertheless remains to be done, the next steps of which are to be agreed in the multiannual programme. UNHCR strongly hopes that Member States will ensure that this work is firmly grounded in the international protection principles which they have accepted under international and regional European treaties, but also as a matter of binding Community law. In particular, UNHCR calls on the European Council to ensure that this programme reaffirms the European Union's commitment to safeguarding the rights of refugees and other persons in need of international protection, and to work to ensure that refugees around the world receive the international protection to which they are entitled – including timely access to durable solutions.

¹ Conclusions of the European Council Summit at Tampere, 15-16 October 1999, paragraph 13 http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/ec/00200-r1.en9.htm

² By May 2004, as required by Article 63 of the Treaty of Amsterdam, agreement had been reached on four asylum-related Directives establishing minimum standards in the areas of temporary protection; reception of asylum-seekers; qualification for refugee status or other forms of international protection; and procedures for granting or withdrawing of refugee status. Additionally, the so-called "Dublin II" Regulation was adopted on determining responsibility for examining an asylum request, and another regulation establishing a database, EURODAC, to support implementation of "Dublin II".

4. This will require strong political resolve in the face of current trends and challenges. However, in upholding these standards, in line with its tradition of protecting the human rights of those in need of international protection, the EU will set a positive example for other countries and regions, thereby contributing to a viable global refugee protection regime.
5. The EU has additional important input to make to help resolve international protection challenges beyond EU borders. These challenges require international cooperation that takes into account domestic, regional and global dimensions of refugee problems, as well as causes and consequences of flight. To that end strong partnerships are needed among all stakeholders in countries of destination, transit, first asylum and origin. They include the EU, other regional fora, refugee-hosting countries, UNHCR, other intergovernmental partners, NGOs and the refugees themselves.
6. As the international agency mandated to protect refugees and to seek durable solutions to refugee issues, UNHCR offers a multilateral framework in which partners can work together toward these goals. It has set out a number of suggestions, *inter alia*, in its “three pronged proposal” and then in its more detailed “EU prong” paper.³ UNHCR hopes that the ideas outlined below will provide useful elements for common EU initiatives in the more immediate future.

Recommendation:

- ***UNHCR strongly encourages the European Council to ensure that this programme reaffirms the European Union’s commitment to safeguarding the rights of refugees and other persons in need of international protection, and to work to ensure that refugees around the world receive the international protection to which they are entitled – including timely access to durable solutions.***

THE INTERNAL DIMENSION: ASYLUM WITHIN THE EUROPEAN UNION

7. International legal obligations are the foundation of the EU’s asylum policy. In framing its programme in the asylum arena for the coming years, UNHCR urges the Council to reaffirm its commitment to protecting the rights of refugees and other people in need of international protection, based on the full and inclusive application of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (hereafter 1951 Convention), and other relevant human rights instruments.

³ UNHCR originally presented a “three-pronged proposal” in June 2003, which is available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDLEGAL&id=3efc4b834>. A revised EU prong proposal was presented in December 2003 and is available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDLEGAL&id=400e85b84>.

Recommendation:

- ***UNHCR strongly encourages the European Council to reaffirm its commitment to develop future asylum and migration policy based on the full and inclusive application of the 1951 Convention and other relevant human rights instruments.***

Transposition of Community instruments into national law

8. Transposition into national law of existing Community instruments will be a major focus for the coming period. UNHCR remains concerned about the low standard of the safeguards contained in some of the instruments adopted in the first phase. UNHCR hopes that the standards set out in the EU Directives will be treated as the minimum standards that they are, and strongly encourages Member States to maintain or adopt legislation and policies with higher standards, in line with international law and best practice.
9. The European Commission has a legal responsibility to monitor the transposition and implementation of the asylum Directives into national law, as well as the effective implementation of the Dublin II Regulation⁴. UNHCR encourages the Commission to continue to use systems that have proved useful in the past. These include publication of the six-monthly “scoreboard”⁵ and contact committee meetings between the Commission and Member States. The reach and effectiveness of monitoring could, however, be improved by allowing for wider input by expert observers at national or European level. UNHCR would be pleased to assist the Commission and the Member States in this regard.
10. Should Member States fail to transpose and implement EU Directives correctly in national law, further measures will be needed. These could range from technical discussions involving the Commission and Member States, through specific recommendations to legal action if necessary.

Recommendations:

- ***UNHCR calls on Member States to maintain or adopt legislation and policies that go beyond minimum levels set out in EU instruments, and reflect higher standards in line with international law and best practice.***
- ***UNHCR further encourages the Council and the Commission to provide for wider input from UNHCR and other experts in plans to monitor the transposition and implementation of EU instruments into national law.***

⁴ Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, 343/2003/EC, 18 February 2003.

⁵ The European Commission scoreboards are accessible at: http://europa.eu.int/comm/justice_home/doc_centre/scoreboard_en.htm. The two latest versions are COM (2003) 291 (1) for first semester of 2003; and COM (2003) 812 (01) for the second semester 2003.

Assessment of existing asylum instruments

11. The Constitutional Treaty envisages the establishment of common procedures for the granting of refugee or subsidiary protection status.⁶ It also foresees measures on a uniform European status of asylum and of subsidiary protection for nationals of third countries.⁷ New legal instruments or further amendments to existing Community laws will be required, in line with the provisions in the Constitutional Treaty, setting out the next phase of developing a common asylum system.⁸
12. Before embarking upon the elaboration of such instruments, it would be useful, in UNHCR's view, to engage in an extensive assessment of the Community legislation adopted to date to determine where legal and practical gaps exist and may require further legislation or amendment. UNHCR would be pleased to offer its expertise, and believes that legal experts from the Member States, the Council, the European Commission, UNHCR and other competent bodies could all be involved in such a process.
13. In this respect, the draft Directive on asylum procedures,⁹ which still requires formal approval, gives Member States wide scope to retain divergent national rules. The potential for different national rules runs counter to the objective of EU harmonization which aims *inter alia* at reducing onward movements of asylum-seekers and refugees within the EU.
14. UNHCR is further concerned that different national asylum systems, even where they are in line with the provisions of the Asylum Procedures Directive, may nonetheless pose difficulties in ensuring effective access to an asylum procedure, when they are applied in conjunction with the "Dublin II" Regulation, and could thereby result in *refoulement*.
15. It also remains concerned about several other restrictive provisions in the proposed Directive which, if implemented, could lead to violations of international law.¹⁰ These relate *inter alia* to safe third country concepts, as well as the possible extended reliance that may be made on accelerated procedures, encompassing categories which go far beyond manifestly unfounded or clearly abusive cases. In UNHCR's view,

⁶ The Constitutional Treaty, agreed by the European Council on 18 June 2004 (CIG 87/04, 6 August 2004), refers to goals including the establishment of a common procedure and uniform status of refugee and of subsidiary protection. Progress towards these aims will necessitate further legislation extending beyond the minimum standards agreed to date for some parts of the asylum system.

⁷ Constitutional Treaty, Article III-266, paragraphs 2(a) and (b).

⁸ Constitutional Treaty, art III-266 paragraph 2 calls for legislation for a common European asylum system comprising a uniform status of asylum and subsidiary protection, a common system of temporary protection, common procedures for determining asylum and subsidiary protection status, mechanisms for determining responsibility of Member States for asylum and subsidiary protection applications, and standards for conditions of reception of applicants.

⁹ Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status: political agreement reached 29 April 2004; formal adoption pending (hereafter "Asylum Procedures Directive").

¹⁰ Letter from Mr Ruud Lubbers to Mr S. Berlusconi, President of the European Council, 24 November 2003; UNHCR press release, "UNHCR regrets missed opportunity to adopt high EU asylum standards", 30 April 2004.

there is a genuine risk that the Asylum Procedures Directive, in practice, may lead to breaches of international law.

16. The Qualification Directive,¹¹ which amongst others defines the minimum rights attached to the grant of status, potentially restricts the scope of its application with respect to persons fleeing generalized conflict and indiscriminate violence. It also establishes very limited entitlements for holders of subsidiary protection, including potentially indefinitely restricted access to labour markets,¹² and access only to “core benefits” provided by national social assistance schemes.¹³ It thereby creates the risk that persons in need of international protection will not be granted the status and rights they require, and also exposes persons with subsidiary protection and any family members to potential hardship. In view of the latter group’s equally compelling needs, which are likely to be of equal duration to those of refugees, UNHCR believes their rights should correspond to those of refugees.
17. UNHCR stresses the need for careful monitoring of the impact of these provisions and invites Member States to consider amending national legislation to ensure that there will be no violations of international law in practice. To assist in this process, UNHCR has already issued annotated versions of the Temporary Protection and the Reception Conditions Directives, and plans to issue similar versions of the Qualification and the Asylum Procedures Directives. It would be pleased to support further efforts.

Recommendation:

- ***UNHCR suggests that a system or forum be established to review and assess the application, interpretation and impact of EU asylum instruments, to identify legal and practical gaps and to avoid violations of international law. In light of this assessment, the need for further legislative changes at EU level could be considered. Such a forum and any assessment could also support harmonization in practice, as outlined below.***

Harmonization in practice

18. Harmonization requires more than the adoption of common rules. The interpretation and application of these rules needs also to be more coherent and consistent across the 25 Member States, as they move towards realization of a common European asylum system. Harmonization should further be in accordance with high standards to ensure the long-term credibility of EU asylum policy and its compliance with international norms. Proposed steps to achieve progress in this area are set out below.
19. Existing EU mechanisms for identifying and sharing expertise and best practice among Member States in asylum decision-making could be strengthened. Building on

¹¹ Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted: adopted 29 April 2004; Official Journal publication pending (hereafter “Qualification Directive”).

¹² Qualification Directive, article 26(3); preamble paragraph 36.

¹³ Qualification Directive, article 28(2).

the experience of “Eurasil”,¹⁴ senior level asylum officials from Member States could, for instance, meet periodically to discuss challenges and agree on common approaches to eligibility determination, in line with international standards and best practice. UNHCR would be pleased to participate fully in such a forum, which could also receive input from other expert bodies as needed.

20. Another approach could involve Member States seeking to reach agreement on practical eligibility guidance for particular groups of asylum-seekers. As a first step, decision-making regarding a specific group which is common to several Member States could be examined in depth. This could include a review of procedures, credibility assessments, legal interpretations and decision outcomes across the EU for this group. UNHCR would be prepared to contribute to a comparative assessment and facilitate round-table discussions on different approaches, as well to provide input to existing fora. The goal of the process would be to reduce the discrepancies in decision-making, while ensuring those in need of international protection are able to access and receive it.
21. Building on efforts to agree on common approaches to particular groups of asylum seekers, discussions could also commence on the possibility of establishing common systems within the EU for determining the claims of such groups. These discussions should examine the scope for pooling resources and sharing responsibility among the Member States for reception, claim assessment and receiving people who are recognised as refugees or in need of subsidiary protection. Pilot projects could be considered to explore these possibilities further.
22. Effective cooperation on the provision of country of origin information could also significantly strengthen and promote consistency in decision-making across the EU. Specific initiatives could build on existing efforts and include the sharing of national information resources, and the establishment of common source collections which are up-to-date and accessible. Joint research and fact-finding missions could be undertaken in a coordinated fashion, as part of work towards common assessments of conditions in countries of origin.
23. Practical harmonization could also be enhanced through the development of common training modules and joint training activities. UNHCR could contribute to this process, drawing on its extensive experience of protection training in many countries.
24. Member States could work towards establishing a common database of standard-setting decisions, building on existing tools, including UNHCR’s RefWorld, and national collections of asylum jurisprudence and administrative decisions. This could provide guidance and information for decision-makers.

¹⁴ Eurasil comprises Member States representatives, drawn chiefly from asylum decision-making bodies, and is chaired by the European Commission. It meets in Brussels approximately six times annually to discuss the situation in particular countries of origin or themes of interest arising in national claim determination.

25. Some Member States may face a significant increase in the number or complexity of asylum claims in future, for instance, as a result of the application of the Dublin II Regulation. In these circumstances, further burden-sharing may be needed, through technical or other forms of assistance, to assist with the determination of claims and finding durable solutions. Support could extend from financial assistance to practical measures, such as the provision of seconded personnel, including interpreters, advice on the management of claims or legal counseling, etc. UNHCR stands ready to assist the Member States in planning and implementing such cooperation.
26. To reduce the risk of overwhelming the capacity of states otherwise bound to “take back” applicants, Member States could elect not to transfer all such applicants, under article 3(2) of the “Dublin II” Regulation, and instead permit access to their own asylum procedures.
27. Finally, UNHCR would support the establishment of an institutional mechanism to provide advice and coordinate such practical harmonization and burden-sharing efforts, possibly in the form of a “European Asylum Office”. It could operate in collaboration with other working structures in the asylum area, and draw input from governmental and non-governmental sources. UNHCR would be prepared to provide support and input to such a body.

Recommendation:

- ***Measures to improve the quality of asylum decision-making across the EU, and achieve practical harmonization at a high standard could in particular include efforts to:***
 - *identify and promote exchange of expertise and best practice;*
 - *develop common approaches to specific caseloads;*
 - *explore the possibility of common systems within the EU for determining applications from particular groups, potentially through pilot projects;*
 - *improve cooperation on country of origin information;*
 - *share access to key decisions; and*
 - *share burdens, including through technical support as needed to assist Member States in addressing significantly increased or especially complex caseloads.*
- ***A European Asylum Office could be established to provide advice and coordinate practical efforts at harmonization and burden-sharing, including technical assistance.***

New asylum instruments

28. As noted earlier, a number of new instruments will be required to develop a common asylum system in line with the Constitutional Treaty.¹⁵ UNHCR supports the Member States’ objective, as expressed in the Constitutional Treaty, of supplementing and developing further the legal instruments in the common European asylum system, in accordance with the 1951 Convention and other relevant international law. In addition

¹⁵ Constitutional Treaty, Article III-266 paragraph 2. (See also footnote 5 above).

to the suggestions above for amending existing legislation, UNHCR notes that new instruments are expected in the near future in the following areas.

29. A proposed Directive on long-term residence status for refugees and holders of subsidiary protection should complement the Directive on long-term residence rights of other third-country nationals.¹⁶ UNHCR encourages Member States to ensure that both refugees and holders of subsidiary status are entitled to move to and reside within the Union under appropriate conditions. In addition, provision should be made for full transfer of responsibilities should a protected person take up residence in another Member State.¹⁷
30. UNHCR supports the proposal for adoption across the EU of a single procedure to determine claims for all forms of international protection. A single procedure should, however, be established in a form which does not undermine the 1951 Convention, and contains adequate procedural safeguards.¹⁸

Recommendation:

- ***UNHCR encourages the Council to develop further legal instruments which are in accordance with the 1951 Convention and other relevant international law. Instruments which could be adopted in the near future include Directives:***
 - ***governing long-term residence status for refugees and holders of subsidiary protection; and***
 - ***a single procedure to determine claims for all forms of international protection, which does not undermine the 1951 Convention and contains adequate procedural safeguards.***

Informing public opinion and creating a receptive climate

31. Asylum and refugee protection policies cannot be successful without a receptive climate, underpinned by strong public support. Public awareness and support for the admission, reception and integration of refugees, and the struggle against ignorance, indifference, racism and xenophobia, hinge on accurate knowledge, reliable information and an understanding of who refugees are and why they flee. Positive visibility should be given to the contributions being made by asylum-seekers and refugees to their host societies. UNHCR recommends that the Council and Member States strengthen existing efforts to promote a culture of refugee protection, solidarity and tolerance in the host society. UNHCR is ready to assist Member States in working with the different actors, including government officials, local communities, media, NGOs, teachers and others, to foster a more balanced discussion on asylum

¹⁶ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, published in the Official Journal of the European Union No L 16 of 23 January 2004.

¹⁷ 'Study on the transfer of protection status in the EU, against the background of the common European asylum system and the goal of a uniform status, valid throughout the Union for those granted asylum' of 25 June 2004, by Nina M. Lassen (Danish Refugee Council) et al., DG.JAI/A2/2003/001.

¹⁸ Commission Communication COM(2004)503 final, 15 July 2004. For UNHCR's position and the conditions on which the single procedure should be introduced, see "UNHCR Observations on the Communication on 'A more efficient common European asylum system: the single procedure as the next step'", 30 August 2004.

and refugee protection issues, and thereby support a more receptive environment for developing the common European asylum system.

Recommendation:

- *UNHCR encourages the Council and Member States to commit to promoting a more positive climate for refugee protection in Europe, including through a more informed and balanced public debate.*

Integration of refugees and persons enjoying subsidiary protection

32. It is widely recognized that the successful integration of refugees and those with subsidiary protection status is key to public support for asylum and resettlement programmes. Fully integrated refugees are better able to interact with the local population economically and socially, and are thereby perceived as an asset rather than a burden. Building on progress achieved so far on best practice in local integration, as well as initiatives undertaken under the European Refugee Fund and the INTI programmes, UNHCR recommends that the Council commit itself to supporting measures to promote and facilitate the economic, social and cultural integration of refugees in the Member States, as a group with particular needs, but also with a valuable contribution to make to society. Family reunification and the grant of permanent residence rights or nationality are vital elements in this regard. UNHCR can offer input to EU initiatives on integration, based on worldwide experience in supporting integration of refugees in varying social and cultural contexts.¹⁹

Recommendation:

- *UNHCR encourages the Council to affirm the need for measures to help refugees to integrate in their new homes, taking into account their experiences, special needs and potential contribution to European society.*

THE INTERFACE BETWEEN THE INTERNAL AND EXTERNAL DIMENSION OF REFUGEE PROTECTION

Integrated Border Management, migration control, and the migration/asylum nexus

33. The right to asylum, with due respect for the rules of the 1951 Convention, is guaranteed in the European Charter of Fundamental Rights.²⁰ Exercise of that right depends upon access to the territory of a State where protection can be provided, and to a process which will ensure the fair examination of an applicant's claim. Stringent controls at the EU's external frontiers, and restrictive border procedures applied under

¹⁹ In recognition of the importance of this issue, UNHCR in 2003 published its 'Handbook on the Integration of Resettled Refugees', available at: <http://www.unhcr.org/cgi-bin/texis/vtx/template?page=publ&src=static/rh2002/rh2002toc.htm>. Many of the best practices outlined in the Handbook are relevant for refugees who may have arrived spontaneously as asylum-seekers as well.

²⁰ Charter of Fundamental Rights, Article 18. The Charter has been incorporated in the Constitutional Treaty, agreed 18 June 2004 (see Part II; CIG 87/04, 6 August 2004; and Declaration 12, CIG 87/04 Add 2.

individual Member States' rules, can threaten that access and deprive the right to asylum of practical meaning.

34. UNHCR wishes to highlight that people who enter the EU by irregular means include individuals requiring international protection, who may in addition have special needs, for instance, if they are victims of trafficking, children or women at risk. As the EU develops an integrated border management system, UNHCR recommends that greater emphasis be placed on ensuring that persons seeking international protection in the EU are able to access territory and asylum procedures.
35. Border controls and procedures, and the use of transit zones to detain asylum seekers, should be accompanied by protection safeguards.²¹ In addition, border personnel should receive appropriate, regularly updated training on refugee protection and other human rights issues.²² Interpreters and counsellors should be made available to assist with the prompt identification of persons seeking international protection and to provide assistance and advice to others, for whom asylum is not an appropriate option, as needed. Such efforts would usefully include operational partnerships with various international organizations with complementary mandates (e.g. for refugee protection, the human rights of migrants, victims of trafficking), including UNHCR.
36. Joint pilot efforts could be initiated in this regard in the context of increased cooperation in the area of border and migration controls, with joint screening to ensure that persons who seek international protection are identified and that economic migrants and others receive clear counselling on options available to them.
37. Measures to combat irregular migration as well as human smuggling and trafficking both within the EU and elsewhere,²³ should also be designed and implemented in a protection-sensitive manner. As at the border, prompt identification of persons seeking international protection and with other special needs is required. UNHCR hopes that EU measures will take the needs of these people into account²⁴ and ensure that it upholds its international obligations not only under international human rights and refugee law, but also under the Trafficking and Smuggling Protocols to the 2000 Convention against Transnational Organized Crime.²⁵

²¹ These safeguards are important, among other areas, in the implementation of measures proposed in the "Plan for the management of the external borders of the Member States of the European Union", adopted June 2002 (Council Directive 2001/51/EC of 28 June 2001).

²² E.g. under Art 5 of the "Proposal for a Council Regulation establishing a European Agency for the Management of Operational Cooperation at the External Borders", COM (2003) 687 final of 11 November 2003, which provides for border guards training through the envisaged External Borders Management Agency.

²³ Comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union, OJ C 142 of 14 June 2002, p.23.

²⁴ The Council Directive on short-term residence for victims of trafficking (2004/81/EC of 29 April 2004, published in the OJ L 261 of 6 August 2004, p.19) provides a limited residence entitlement for people who co-operate with criminal prosecutions.

²⁵ See the two Protocols to the 2000 Convention against Transnational Organized Crime (i) against the Smuggling of Migrants by Land, Sea and Air and (ii) to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

38. UNHCR further supports proposals for the establishment of legal migration opportunities for people seeking entry and residence in the EU. The need to increase immigration in order to address labour market demands is widely acknowledged. Challenges caused by demographic decline and an ageing population in the EU accentuate this trend. Legal channels for both economic migration and family reunification also have the potential to reduce pressure on and misuse of the asylum system, to the benefit of people in need of international protection.

Recommendations:

- *The Council should ensure that measures on border management and procedures, and other measures to combat irregular migration, human smuggling and trafficking, are designed and implemented in a protection-sensitive manner, which does not deprive the right to asylum of practical meaning. Persons in need of international protection should not be prevented from accessing Member States' territory and asylum systems.*
- *Member States should further ensure that border personnel receive appropriate and regularly updated training on how to integrate international protection and other human rights concerns into their work. Interpreters and counsellors should also be available to assist in identifying promptly persons seeking international protection, persons with special needs, and others, and to advise them accordingly. Joint pilot efforts could be initiated in this regard in the context of increased cooperation in the area of border and migration controls, including joint screening and counseling.*

Management of sea borders, including interception of irregular movements at sea

39. UNHCR is deeply concerned by the dangers faced by people trying to reach Europe in an irregular manner across the Mediterranean. This phenomenon affects all states bordering the Mediterranean, and can only be tackled through long-term partnership among all the states involved, with a view to developing a concerted approach. There is a need for cooperative measures geared towards minimizing the loss of life at sea, including through robust support for the principles of rescue-at-sea as governed by the relevant maritime conventions. UNHCR is ready to provide a forum for discussion of this humanitarian problem, and to participate actively in cooperative efforts to resolve it.

40. Sea border management largely takes place in the territorial waters of EU Member States. The concerns and recommendations outlined above on border management and migration control apply in the same manner as with land borders.

41. Specific solutions are required where interception takes place on the high seas or in the territorial waters of other countries in the Mediterranean region. People who are intercepted in such circumstances may well include individuals who are in need of international protection. States intercepting people aboard vessels in the Mediterranean should therefore not take action which either directly or indirectly exposes them to return to the country of origin and possible *refoulement* without first giving them an opportunity to claim asylum and to have their claim assessed in fair

and effective procedures. Any approach to this problem should include mechanisms to allow this and provide for access to durable solutions, including within the EU. Importantly, such an approach will also involve closer dialogue with the other countries in the Mediterranean region.²⁶

Recommendation:

- ***UNHCR urges the Council to commit itself to multilateral efforts to deal with the problems created by irregular movement across sea borders, in full respect for the right to seek and enjoy asylum from persecution. UNHCR would be pleased to provide a forum for consultations on a Mediterranean strategy in particular.***

Returns and readmission

42. A Directive is anticipated on minimum standards for return. UNHCR encourages the Council to give priority to this task, to ensure that the return of people not in need of international protection and who have no compelling humanitarian reasons to stay²⁷ will be effected in line with human rights obligations and other relevant safeguards. The return of asylum-seekers whose claims for international protection were not examined on their merits, but were determined to be inadmissible under agreements on determining responsibility for asylum claims or application of the “safe third country” concept, require particular consideration to ensure that international protection standards are respected. In UNHCR’s view, associated initiatives and cooperation arrangements, including joint return actions and strengthened EU partnerships with third countries and countries of origin on return, should be undertaken in the framework of such common standards.

43. An issue of particular concern relates to readmission agreements which provide for the return of third country nationals. Where such agreements do not explicitly exclude asylum-seekers, they could involve the readmission of asylum-seekers whose claims have not yet been determined on their merits. In such cases, UNHCR urges Member States to ensure readmission agreements contain clear and agreed criteria for apportioning responsibility for ensuring international protection needs are assessed substantively in a fair and efficient procedure; effective measures to assist the non-Member State in enhancing its own asylum system; and, if that State is a developing country already hosting large numbers of refugees, mutual commitments to include the refugee dimension in the development aid relationship.

Recommendations:

- ***UNHCR encourages the early adoption of a Directive on minimum standards for return which:***
 - ***ensures that the return of people not in need of international protection and who have no compelling humanitarian reasons to stay is in line with human rights obligations and other relevant safeguards, and***

²⁶ See also Section on “Cross-border dialogue and cooperation with EU ‘neighbours’ ”, paragraphs 43-48 below.

²⁷ As defined in UNHCR Executive Committee, Conclusion no. 96 (2003).

- *takes into account international protection standards for asylum-seekers who are returned without a substantive examination of their claim, because their claims are inadmissible pursuant to an agreement on determining responsibility for asylum claims or application of the “safe third country” concept.*
- *UNHCR further calls on the Council to ensure that readmission agreements include clear provisions and safeguards in line with international protection standards in view of their potential use to return asylum-seekers whose claims have not been determined on their merits. UNHCR would appreciate being closely associated with the negotiation of such agreements, in recognition of its mandate and legitimate specific interest in the matter.*

THE EXTERNAL DIMENSION: THE EU CONTRIBUTION TO REFUGEE PROTECTION WORLDWIDE

44. The EU’s policies on asylum and migration within and at the borders of the EU have a direct impact on refugee protection worldwide, particularly in neighbouring regions. The standards and policies adopted within the EU have precedent-setting value. They serve as standards for other States seeking to develop their national asylum systems, and they have direct impact on migration and asylum flows elsewhere. This global interaction means that it is more important than ever for the EU to engage in cooperation with third countries in the areas of migration and asylum.

Cross-border dialogue and cooperation with EU “neighbours”

45. Cooperation with the EU’s neighbours, which include transit countries, countries of first asylum, and countries of origin, is of particular importance and could usefully involve closer cross-border dialogue, technical assistance in the asylum and migration field, as well as support in providing access to durable solutions, including through resettlement to the EU.²⁸
46. The EU and EU Member States have already engaged in a number of projects and processes including the Soderkoping Process in Eastern Europe and projects through TACIS, and regional and national processes in South-Eastern Europe under CARDS. In the Mediterranean region as well, the EU has established important relationships and specific frameworks for dialogue and cooperation.²⁹
47. Considerable effort and resources must be invested in creating both the political will and the concrete conditions which will enable the countries to the south and east of the EU to become “robust providers of international protection”.³⁰ Capacity-building

²⁸ See also section on “Expanding resettlement options in the EU”, paragraphs 56-57 below.

²⁹ The Euro-Mediterranean Partnership was launched at the 1995 Barcelona Conference with the MEDA programme as principal financial instrument of implementation (Council Regulation No. 2698/2000 of 27 November 2000 on MEDA II, published in OJ L 311 12 December 2000, p.1); Communication from the Commission COM (2003) 393 of 1 July 2003 “Paving the way for a New Neighbourhood Instrument”.

³⁰ Communication ‘on the Managed Entry in the EU of Persons in Need of International Protection and Enhancement of the Protection Capacity of the Regions of Origin: Improving Access to Durable Solutions’ COM(2004) 410, paragraph 42, page 14.

efforts in neighbouring States must focus *inter alia* on promoting the rule of law and adherence to international legal standards, including the 1951 Convention. Fostering NGOs and civil society in these countries is a valuable investment in this respect.

48. The EU's neighbours could be involved more intensively in multilateral processes and structures designed to promote international protection and durable solutions. UNHCR stands ready to provide a forum for such consultations.³¹

Recommendations:

- ***UNHCR encourages a close “cross-border” dialogue on asylum and migration issues and the establishment of multilateral processes and structures to promote international protection and durable solutions, and would be pleased to support such a dialogue.***
- ***UNHCR further encourages the EU and Member States to engage actively in building the capacity of neighbouring States in the areas of asylum and migration, and to promote the rule of law and adherence to the 1951 Convention. It further calls on the EU and Member States to support neighbours in providing access to durable solutions, including through resettlement in the EU.***

A comprehensive approach with regions of origin

49. The European Union has a central role to play in protecting and assisting the world's refugees, most of whom are not in industrialized countries, but in developing countries in the regions from which refugees originate. This role goes well beyond granting asylum within the 25 Member States. It is important to ensure that the multiannual programme signals a robust engagement in support of refugee protection worldwide, including the strengthening of national protection capacities in third countries, the targeting of development assistance to facilitate solutions to refugee problems, and expanding the potential for the resettlement of people in need of international protection in the EU. Such efforts should also help address the reasons why refugees and asylum-seekers may feel compelled to move on to other countries. A strategy for enhancing refugee protection cannot therefore exist in isolation. It must be accompanied by ongoing efforts to address the root causes of refugee flows.

50. An effective response to a refugee situation requires open communication and strong partnerships between the various actors, and coordination of their activities. In pursuing the external dimension of refugee policy, UNHCR encourages the EU to engage in dialogue with all stakeholders, including third countries (whether countries of origin, or transit or host countries), intergovernmental and nongovernmental organizations, relevant regional fora, and refugees themselves. UNHCR's "Convention Plus" initiative provides a forum for multilateral, cooperative approaches to these issues.

³¹ See also section on "Enhancing capacities and the search for durable solutions", paragraphs 51-55 and recommendation below.

Recommendation:

- ***UNHCR urges the Council to reinforce its commitment to strengthening the international protection regime, as well as efforts to address the root causes of flight and onward movements of refugees and asylum-seekers, and to continue the EU's active engagement in UNHCR's "Convention Plus" process.***

Enhancing capacities for the provision of protection and timely access to durable solutions

51. It is widely acknowledged that countries facing serious development challenges of their own host a disproportionate number of the world's refugees. Efforts are needed to strengthen the capacity of such countries to provide effective protection, to improve the situation of refugees and to distribute burdens and responsibilities for protection more equitably.
52. Important steps in building durable protection capacity include identifying where gaps in protection exist; and, in partnership with other stakeholders, prioritizing and strategizing on the most appropriate measures to fill them. UNHCR, in cooperation with the EU and several host countries, is in the process of implementing a capacity-strengthening methodology. Comprehensive strategies in this area aim, among other things, at building capacities to receive and admit those in need of protection; to fairly determine their protection claims; to keep secure from threats of violence, coercion or deliberate deprivation; and to assist in meeting protection needs and expand opportunities for durable solutions.
53. UNHCR also hopes that the Council will devote more attention to expanding opportunities for durable solutions – including voluntary repatriation, local integration and resettlement. The achievement of self-reliance as a precursor to any of these three durable solutions is in itself an important objective. Development aid can play an important role to support both voluntary repatriation and sustainable return, as well as local integration. It would usefully target not only refugees but also host and return communities.
54. Development assistance used in such a manner is also an important way in which the industrialized countries can help to share the burden, and contribute to regional security. Although refugees often have the potential to become self-reliant and to serve as agents of development in their host countries, they are rarely factored into development plans. In countries of origin as well, development can be an important factor in ensuring sustainability of return.
55. Refugee protection and solutions strategies should therefore be integrated into larger EU development strategies, in order to achieve greater impact on all fronts. Such an approach will require more extensive coordination between development, humanitarian and asylum and migration actors at all levels. Further, development partnerships would need to be built with refugee-hosting third countries as well as with countries of origin. UNHCR's operational frameworks for durable solutions

involving Development Assistance for Refugees and Host Communities (DAR), Development for Local Integration (DLI), and Repatriation, Reintegration, Rehabilitation and Reconstruction (the 4Rs) should be used in this context.³²

Recommendations:

- ***UNHCR recommends that the European Council commit itself to supporting enhanced efforts to provide refugees with timely durable solutions, including through the appropriate targeting of EU development assistance.***
- ***UNHCR strongly hopes that the European Council will ensure there is effective coordination among EU initiatives in the area of freedom, security and justice; external relations; humanitarian assistance, and development.***

Expanding resettlement options in the EU

56. There is a need to provide more access to protection through resettlement. Although resettlement can provide a durable solution for only a small number of the world's refugees, it is a vital instrument of international protection in many contexts, and has an important function as a manifestation of burden-sharing, both for refugees more generally and as part of specific comprehensive approaches. With respect to the latter, the EU and Member States have been important partners in elaborating the Multilateral Framework on Resettlement under the *aegis* of Convention Plus.³³

57. The establishment of an EU resettlement scheme, involving a commitment to an annual target going beyond the existing resettlement programmes of Member States, would be a significant contribution to efforts to resolve refugee situations, and would contribute to improved management of contemporary migration challenges. UNHCR is willing to contribute to such a scheme through input to strategic and operational aspects as appropriate.³⁴

Recommendation:

- ***UNHCR encourages the Council to pursue an EU resettlement programme which will expand the opportunities for resettlement to the EU, and which complement national programmes and other multilateral efforts in the field.***

³² For more detailed comments, see "UNHCR Observations on the European Commission Communication 'On the Managed Entry in the EU of Persons in Need of International Protection and Enhancement of the Protection Capacity of the Regions of Origin: Improving Access to Durable Solutions'", (COM(2004) 410 final, 4 June 2004), 30 August 2004.

³³ Presented at the High Commissioner's Forum, Forum/2004/6, 16 September 2004, available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=PROTECTION&id=414aa7e54&page=protect>

³⁴ For more detailed comments, see "UNHCR Observations on the European Commission Communication 'On the Managed Entry in the EU of Persons in Need of International Protection and Enhancement of the Protection Capacity of the Regions of Origin: Improving Access to Durable Solutions'", (COM(2004) 410 final, 4 June 2004), 30 August 2004.

Conclusion

58. The achievements of the first five years towards establishment of a common European asylum system have been significant, but important tasks and new challenges lie ahead. UNHCR calls on the Council to reaffirm its aim in the next phase to ensure that the common European asylum system will be established on the basis of full and inclusive application of the 1951 Convention, in concert with efforts to strengthen international protection and durable solutions worldwide.
59. The EU instruments adopted to date may require Member States to enact new legislation to bring their laws into conformity with the Directives. UNHCR would strongly encourage Member States to recognize the minimum standards in the Directives as such, and to maintain or strive for higher national standards. Practical initiatives to improve both the consistency and quality of decision-making across the EU, in line with international standards and best practice, remain of vital importance. The establishment of an EU Asylum Office could facilitate efforts to this end and bring the EU closer to its goal of a common system. Additionally, work on a number of new EU legal instruments may still be required.
60. The nexus between asylum and migration necessitates concerted efforts to ensure that asylum-seekers and persons in need of international protection are identified, and receive effective access to fair asylum procedures. Instruments related to return and readmission should take the special situation of asylum-seekers into account.
61. In its external dimension, the EU's refugee policy needs to aim at enhancing protection capacities and contributing to durable solutions through cooperation with third countries, including through the targeted use of development assistance and the establishment of a substantial EU resettlement programme. In addition to efforts with regions of origin, UNHCR would encourage a close dialogue, possibly through expanded multilateral processes and structures, with the EU's "neighbours" in Eastern and South-Eastern Europe as well as with states bordering the Mediterranean Sea.
62. The challenges of refugee protection are more complex today than ever before. UNHCR will be pleased to support the EU in these vitally important endeavours, and looks forward to the contribution and support of the EU to the international protection regime.

UNHCR
September 2004