

3rd meeting

**RESETTLEMENT: AN INSTRUMENT OF PROTECTION AND A
DURABLE SOLUTION**

I. INTRODUCTION

1. Coinciding with the marked decline in the volume of resettlement requirements in South-East Asia, there has been a relative increase in the identified needs from other regions, especially from the Middle East, Africa and the former Yugoslavia. In 1995, 30,000 refugees from more than 40 countries of first asylum were resettled under UNHCR auspices to a dozen principal resettlement countries. The needs of these newer caseloads have created new challenges that bear directly upon how resettlement is managed by UNHCR and by receiving countries.

2. In its 1995 General Conclusion on International Protection (A/AC.96/860, para.19 (p)) the Executive Committee reiterated the continued importance of resettlement as an instrument of protection and as a durable solution to refugee problems in specific situations. UNHCR was encouraged to continue the process of consultations with Governments and implementing agencies to strengthen resettlement activities, further to the recommendations of an evaluation study commissioned by UNHCR. The Executive Committee also requested that UNHCR provide regular reports on resettlement. The report which follows is a discussion of criteria and approaches to resettlement. Many of the issues are addressed in more detail in the Resettlement Handbook, which is in the final stages of preparation.

II. GENERAL CONSIDERATIONS

3. Five years ago, the High Commissioner reported to the forty-second session of the Executive Committee that instead of the massive resettlement operations which characterized the situation in South-East Asia in the 1980s, resettlement operations in the 1990s "are likely to be more protection-oriented and could often involve smaller numbers." The compelling character of the protection claims for the resettlement submissions would, in turn, require that Governments respond more quickly and flexibly.

4. The Executive Committee in 1991 reaffirmed the link between international protection and resettlement as an instrument of protection, noting the important role of resettlement as a durable solution in specific circumstances. Governments were called upon to establish refugee admission ceilings in the context of international burden-sharing, and have since done so. UNHCR appreciates that the principal resettlement countries are responding positively to the continuing need for resettlement places by allocating generously to finance the associated costs. There is also broad agreement between UNHCR and Governments to make an effort to increase the number of countries offering resettlement opportunities, even on an ad hoc basis.

5. Resettlement may ultimately be considered when a refugee in need of a durable solution for protection or other specific reasons cannot repatriate nor safely remain in the country of asylum. The decision to resettle is taken only when there is no alternative and no lasting way to guarantee the legal or physical security of the person concerned. In its engagement to protect refugees and promote durable solutions, UNHCR's preferred goal is voluntary repatriation. UNHCR also promotes local integration, whereby Governments offer refugees the possibility to settle in the host country with the prospect of gaining self-sufficiency and enjoying legal protection through asylum. In the longer-term, a refugee who benefits from resettlement or local integration

may eventually choose to repatriate.

6. The description of resettlement as a measure of "last resort" and as the least preferable solution may have created a negative perception of its value as a durable solution. Yet for some refugees whose physical safety is at stake, resettlement may be the only viable solution. The decision to pursue resettlement opportunities for any given caseload raises fundamental issues of policy linked to protection and assistance. While undertaking resettlement activities and thereby ensuring individual physical safety, UNHCR also seeks to reinforce asylum in the host countries and to promote durable solutions benefiting the majority of the refugee population concerned. In taking the decision to refer certain cases for resettlement, UNHCR remains sensitive to the risks of provoking pull factors and consequent irregular movements of refugees who already enjoy the protection of the country of first asylum. On the other hand, resettlement can be an effective way to meet the best interests of the refugees concerned. It opens a "window" for increasing public awareness of asylum and refugee assistance issues.

7. Planning for resettlement is "needs-driven," and the search for durable solutions motivates UNHCR's decision to resettle a refugee. The decision by UNHCR to pursue resettlement opportunities takes into account the availability of resources in the form of resettlement places (through quotas, ceilings or targets with national budget allocations). When places are available, potential receiving countries are urged to collaborate in using them quickly and in a flexible manner according to need. As part of a more comprehensive approach, resettlement may be offered on the basis of "burden-sharing" arrangements with a view to protecting the individuals concerned and strengthening the goodwill of first asylum countries.

8. The reduction over the last several years in the number of refugees considered by UNHCR to be in need of resettlement is largely a result of the conclusion of UNHCR resettlement activities in South-East Asia, and does not reflect any fundamental change in the criteria which UNHCR uses to identify candidates for resettlement. The criteria motivating UNHCR's resettlement activities are reviewed below and are elaborated in the forthcoming Resettlement Handbook.

III. CRITERIA FOR RESETTLEMENT

9. As an instrument of international protection, resettlement is in the first instance a guarantee for the physical security of refugees. Resettlement may offer the only means to preserve human rights and to guarantee protection when refugees are faced with threats which seriously jeopardize their continued stay in a country of refuge, in particular:

- (a) threat of *refoulement*,
- (b) threat of expulsion to a country from where a refugee may be refouled or where his life or freedom would be threatened,
- (c) threat to physical security,
- (d) threat of arbitrary detention.

10. In addition, resettlement continues to be vital to a core caseload of refugees with compelling needs. Emergency resettlement is pursued on behalf of refugees being subjected to life-threatening protection or medical problems which have not been resolved through UNHCR's local intervention and which require their urgent evacuation.

11. Eligibility for a UNHCR medical referral is limited to those conditions which cannot be addressed either locally or regionally, or by medical evacuation. Disabled or sick refugees who can function adequately in their present environment or find treatment locally are not submitted for resettlement on the basis of their medical condition alone. Every effort is made to fully explore the possibility of local solutions in the country of first asylum. Special programmes are critically important in providing quota places for vulnerable medical cases who might otherwise not meet the admissibility criteria of resettlement countries. Priority is given to refugees with medical problems directly related to persecution and flight, for example, psychological trauma, torture,

war-inflicted disabilities and rape.

12. For refugees in need of resettlement who are diagnosed HIV-positive or with AIDS, special efforts are made to pursue resettlement or to find regional solutions in the best interest of the refugee. UNHCR is concerned about refugees who are rejected by resettlement countries on the basis of their HIV status, especially when rejections lead to risk of *refoulement*, detention or persecution in the country of first asylum or refuge.

13. Protection considerations also motivate resettlement referrals for certain categories of refugee women who are not easily, or not at all, admissible under the usual refugee admission criteria because of problems related to refugee status determination or resettlement eligibility. One or both of these factors may be an insurmountable obstacle to resettlement and in some cases could lead to life-threatening situations such as the risk of deportation or *refoulement*, and additional hardships in the country of asylum. In response, special resettlement programmes for women-at-risk were created by some countries, whereas others extended admission under existing vulnerable group provisions to refugee women considered at risk. The rationale for the special programmes is to allow for priority acceptance and accelerated departure of refugee women otherwise ineligible under general selection criteria. The women also benefit from specialized care in the country of resettlement to overcome trauma.

14. Family reunification is undertaken not only in respect of basic rights but also to improve the prospects for integration upon resettlement. There exist several mechanisms for family tracing and reunification, including direct processing by resettlement countries and immigration procedures initiated by the refugee in the country of resettlement. Other international organizations, such as the International Committee of the Red Cross, the International Organization for Migration and various NGOs implement projects supporting family tracing and family reunion. Reasons for UNHCR resettlement referrals for family reunification may involve nuclear family links and dependants, including, for example, elderly dependants who do not share the same household.

15. Consistent with UNHCR Guidelines to ensure the protection and care of refugee children who are extremely vulnerable, the resettlement of an unaccompanied refugee child is justified in cases of family reunification with parents/guardians or siblings (when the parents cannot be traced) already in a safe third country. If the legal status of the parents or family is unresolved, UNHCR intervenes on behalf of the child with the authorities of the resettlement country to permit family reunion. The resettlement of an unaccompanied child for reasons other than family reunification is not considered unless there are very specific circumstances. Every case is thoroughly assessed to ensure that the best interests of the child are met.

IV. RESETTLEMENT AS A DURABLE SOLUTION

16. Whereas resettlement could be the only durable solution for refugees in need of protection and in the specific circumstances outlined above, it may also be considered for refugees who, after a protracted stay in a country of asylum, do not have the possibility to establish themselves in a manner consistent with their cultural, social, religious or educational backgrounds. They may have educational or vocational qualifications and a demonstrated potential to attain self-sufficiency, but are not allowed access to formal employment because of their refugee status. In this regard, the quality of asylum, including the socio-economic prospects, in the country of first refuge should also play a key role in the assessment of resettlement needs.

17. Resettlement may thus be promoted when it is evident that the individual refugee will not be able to return home in the foreseeable future, is not able to integrate locally, and moreover, is assessed to have an integration opportunity in a second country of safe asylum. There should be a positive prognosis for integration upon resettlement, thus serving the "best interests" of the individual and the programme. As the motivation to resettle in this case is not a threat to physical security or a compelling protection claim, resettlement is of a discretionary nature and other specific elements are considered in assessing such cases. When considering resettlement for refugees without integration prospects, a resource assessment is needed including the availability

of places, the likelihood of acceptance and the processing capacity of all parties involved. Without reasonable assurances that cases will be considered, UNHCR abstains from referring such cases because doing so may raise expectations, create an unmanageable demand, and even lead to security problems. Governments and UNHCR are collaborating further in organizing "selection missions" or "circuit rides" to expedite processing of an increased number of resettlement referrals. Recent experience shows that these are effective mechanisms which give UNHCR Field Offices confidence that "durable solutions" cases will be considered.

18. It is recognized that such cases have an ongoing, not an urgent, need for resettlement. When resettlement places are limited, more urgent cases take precedence. Moreover, in determining the need for resettlement for an individual or group based on a lack of integration prospects, a realistic evaluation is needed of how best to address the needs of other refugees in a similar predicament in the same country or in the region. Particular care must be taken to avoid that the resettlement programme acts as a pull factor for irregular movement of recognized refugees from a country of first asylum to another country for the purpose of resettlement. Such cases are not considered by UNHCR for resettlement referral, but are rather counselled to return to their country of asylum. If this is not possible because the first asylum country refuses readmission, UNHCR seeks their legal stay in the current country of asylum. UNHCR and Governments are faced with the problem of irregular movements in several regions, and it is also an important element in urban refugee situations. Resettlement can have a positive, mitigating influence on irregular movements when it is implemented on the basis of clear and consistent criteria, and when it is used as a policy tool to reinforce protection in countries of first asylum.

V. THE REGIONAL DIMENSION

19. The regional dimension is very important when considering resettlement as a durable solution for refugees because of protection considerations or integration prospects in the country of first asylum. UNHCR is committed to exploring regional solutions to refugee problems, provided that standards for protection of the refugees are maintained. Regional resettlement opportunities are often, *a priori*, less expensive, less disruptive for the family, and more promising in terms of eventual voluntary repatriation. However, in several regions important refugee movements have already exacerbated economic, social and environmental problems. This undermines the ability of Governments to accept the additional responsibilities of protecting and integrating resettled refugees. Moreover, an unstable security situation compromises the quality and durability of the protection that a resettled refugee needs, and that UNHCR expects for him or her.

20. If a solution has to be sought outside the region of origin, individuals in need of resettlement are usually referred to one of the ten principal resettlement countries. These countries have established refugee resettlement quotas or ceilings which allow greater possibility for referral of such cases. Other countries do accept resettlement on an ad hoc basis and some maintain special programmes benefiting vulnerable refugees.

21. UNHCR bears in mind the regional context when exploring resettlement opportunities. For the majority of refugees, voluntary repatriation or local integration will necessarily be the solution of choice. A concerted regional approach, wherever possible, will minimize the risk of creating poles of attraction for irregular movements which are an impediment to refugee protection and assistance.

VI. OBSTACLES TO RESETTLEMENT

22. In prior reports to the Executive Committee (e.g., EC/SCP/65), the High Commissioner has elaborated on the obstacles to resettlement, in particular, with regard to the confusion between immigration and refugee admissions levels and the blurring of the distinction between refugees (especially UNHCR-designated cases needing resettlement for protection reasons) versus immigrants who often do not face the same protection problems. When reviewing resettlement intake levels and corresponding needs by caseload and region, resettlement

countries often stress socio-economic and demographic criteria thought to correlate with an improved potential for integration. This public policy issue merits further attention and comparative study.

23. In practice, there are more constraints to the timely resettlement of individual protection cases. The special programme benefiting women-at-risk and other vulnerable categories do not always operate as planned: while the needs are identified, admissions criteria are often restrictive and processing is slow in certain countries. Few receiving Governments maintain the necessary flexibility to permit resettlement action on an urgent basis. Moreover, in most instances there are more limited opportunities for medically-at-risk refugees within annual resettlement quotas or even through the special programmes started for medical or disabled refugees.

VII. IMPLEMENTING RESETTLEMENT

24. Having determined that resettlement may be considered as the appropriate solution for individual refugees based on certain clear and consistent criteria, UNHCR has two key follow-up responsibilities: first, to ensure that resources are made available in order to meet identified needs; and second, to ensure that resettlement is implemented in the most effective and durable manner possible.

25. The process of consultations with Governments and agency partners allows for the exchange of information and the identification of problems of mutual concern. The Working Group on Resettlement, comprised of UNHCR, the International Organization for Migration and ten resettlement countries, has been meeting regularly on a bi-monthly basis. Regional consultations have been with agencies from Europe, the United States of America and Canada, and Australia and New Zealand. The formal consultations with Governments and NGOs in October 1995 and June 1996 continue to allow for a regular exchange with a view to developing strategies for meeting resettlement needs in a coherent and transparent manner.

26. The problems cover the scope of the "resettlement continuum," ranging from management in the field, the length of time it takes for Governments to decide on a given case, and the prospects for integration of the refugee upon arrival. Several initiatives are being taken to address these problems. For example, UNHCR's Resettlement Section is working to develop a strategy for improved management of the important human resource base actually doing resettlement work in the field. A principle objective is to give proper responsibility at the regional level for policy direction, project implementation, staff development and for training. Second, a concerted effort is being made to coordinate "selection missions" by resettlement countries. This allows for more efficient processing and also gives more credibility to UNHCR staff vis-à-vis refugees who are considered in need of resettlement. Finally, renewed attention is being accorded to lessons learnt from different resettlement experiences so that receiving countries may improve the cost-effectiveness and sustainability of their resettlement programmes. In so doing, UNHCR, Governments and NGOs reaffirm the continuing usefulness of resettlement as an instrument for ensuring the safety of refugees and the safeguarding of their rights.