

ANNUAL TRIPARTITE CONSULTATIONS ON RESETTLEMENT
Geneva, 18-19 June 2002

Background Note for the Agenda Item:
STRATEGIC USE OF RESETTLEMENT: DEVELOPMENTS IN THE
RELATIONSHIP BETWEEN RESETTLEMENT AND ASYLUM

1. Reconsidering the relationship between resettlement and asylum, and the strategic use of resettlement to address asylum concerns, has continued to feature on the policy agendas of States and regional organisations since the issue was discussed at the Annual Tripartite Consultations on Resettlement in 2001.¹ Recent developments indicate that the possible use of resettlement to address asylum concerns in countries of first asylum and to partially respond to the asylum and illegal migration concerns of European and North American States will likely remain a significant policy question in the coming years. As such, it is important to highlight some recent developments as well as the foundations of the debate.

Recent developments: resettlement and the regionalization of asylum procedures

2. For several years, States have explored approaches to better ensuring the protection of refugees in regions of origin through regional asylum processing, complemented with resettlement programmes. Partially motivated by the desire to better manage migration flows and irregular movement, such proposals have concentrated on the feasibility of locating the national asylum procedures of Western countries in regions of origin in an effort to more quickly and efficiently address the protection needs of refugees. These approaches have frequently argued that coupling such procedures with resettlement opportunities for successful applicants would preclude the necessity for asylum seekers to undertake the often dangerous voyage to claim asylum in the West, often aided by smugglers.

3. As early as 1994, the Intergovernmental Consultations (IGC) examined the feasibility of enhancing the reception capacities of countries in regions of origin with a view to establishing international zones of protection, within which asylum applications could be reviewed.² At the time, the IGC concluded that the legal and practical concerns related to such an approach outweighed the potential benefits.

4. Notwithstanding the conclusions of the IGC, the regionalization of asylum re-emerged as a significant policy question in Europe following a speech by then UK Home Secretary Jack Straw to the European Conference on Asylum in June 2000. Mr. Straw argued that European Union (EU) engagement in improving reception conditions in the regions of origin, conducting EU status determination in the regions of origin and providing resettlement opportunities to recognised refugees could reduce the demand for smuggling and illegal migration to Europe.

5. This possible new approach is currently being explored at the level of the European Commission. In November 2000, the Commission promoted discussion on the development of this proposal and argued that resettlement could play a vital role in the success of such an

¹ For a detailed consideration of the underlying issues, see: UNHCR, "Strategic Utilization of Resettlement to Enhance Asylum and Protection Prospects," Background Note for the Agenda Item, Annual Tripartite Consultations on Resettlement, Geneva, 20-21 June 2001.

² IGC, "Working Paper on Reception in the Region of Origin," Geneva, August 1995.

approach.³ While recognising that there are significant concerns related to the development of this approach to asylum, the Commission has been enthusiastic about the potential benefits, both to States and to refugees. To this end, an EC feasibility study is currently underway, examining the feasibility of regional asylum processing. At the same time, and recognising the important role that resettlement would play in such an approach, an EC feasibility study on the possibilities and benefits of an EU-wide resettlement programme has also recently been initiated.

6. The further possibility of transferring status determination activities to countries outside the EU and conducting processing exclusively in the regions has also emerged in recent domestic debates in Member States of the EU, especially during political campaigns.

The benefits and limits of resettlement

7. The expansion of resettlement within the European Union, both collectively and on the part of individual Member States, is significant and potentially beneficial to global resettlement efforts. While efforts should continue to expand the base of resettlement countries in an attempt to expand resettlement opportunities, these efforts should remain focused on protection priorities and durable solutions expressed in the UNHCR criteria, and not guided by broader efforts to manage migration or address perceived asylum concerns.

8. In this light, it is important to emphasize the three equally important functions of resettlement, as highlighted through the Global Consultations process. First, resettlement is a tool of international protection to meet the special and pressing needs of individual refugees whose life, liberty, safety, health or other fundamental rights are at risk in the country where they have sought refuge. Second, resettlement is a potential durable solution for refugees, most effectively pursued as part of a comprehensive approach along with the complementary solutions of voluntary repatriation and local integration. Third, resettlement is a tangible expression of international solidarity and a burden sharing mechanism, through which a number of States may reduce the burdens borne by countries of first asylum.

9. At the same time, it is equally important to emphasize the limits of resettlement. First, resettlement can and should only ever be a complement to asylum, not a substitute. Resettlement cannot and should not serve as a substitute for asylum procedures in Western countries, just as it cannot and should not serve as a substitute for effective protection in countries of first asylum. Resettlement and asylum are two distinct and separate possibilities, and enhancing resettlement and promoting asylum must be seen as mutually reinforcing priorities.

10. More fundamentally, any use of resettlement to further restrict the access of individual asylum-seekers would undermine the right to seek asylum – a fundamental right articulated in the Universal Declaration of Human Rights and at the core of the international refugee protection regime.

11. Second, resettlement is not a panacea for irregular movement. The alarming trends in human smuggling will not be reversed by increasing the number of resettlement opportunities. Opening the ‘front door’ to States through resettlement will not necessarily reduce pressures on the ‘back door’ through smuggling. In fact, there is little evidence to suggest that individuals who currently resort to clandestine entry into States would have otherwise met the criteria for resettlement.

³ Communication from the Commission to the Council and the European Parliament, “Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum,” 22 November 2000.

12. There is also a danger that any approach that adopted resettlement as a substitute for asylum would engender a public misperception around the legitimacy of spontaneous arrivals, and lead to a popular view that resettled refugees are the 'real' refugees while refugees recognised through the domestic asylum procedures are not. Regardless of the means through which they arrived in a country of refuge, all refugees have a common need for not only protection, but understanding on the part of the host community.

Revisiting the strategic use of resettlement to enhance asylum

13. The debate on the strategic use of resettlement should be cautious when examining how resettlement could address the migration concerns of Western States. Resettlement cannot become a mechanism through which the right to seek asylum is eroded, just as it cannot independently respond to the challenge of smuggling. Resettlement could never, and should never, replace effective asylum procedures put in place by individual countries as part of their adherence to the standards of international refugee law.

14. The strategic use of resettlement can, however, contribute to the enhancement of asylum in dramatic ways. When approached as an element of a comprehensive protection and solutions strategy, resettlement activities can foster positive changes in the asylum practices and attitudes of countries of first asylum. As a tangible example of international solidarity, resettlement activities can encourage countries bearing a significant burden and thereby enhance protection for the remaining refugee population.

15. In addition to providing protection and solutions to refugees, resettlement has repeatedly been proven to be an effective tool to enhance asylum in the host country and promote the protection needs of all refugees. To this end, broadening the base of resettlement countries, as a sign of international solidarity, and approaching resettlement as part of a comprehensive approach to particular refugee situations appear to be the most effective means by which asylum may be enhanced, thereby improving the quality of asylum for all refugees. It is in this way that UNHCR seeks to enhance asylum through resettlement activities.

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