



**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)

## **Introduction**

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) welcomes that a main aim of the Communication<sup>1</sup> is to make the international protection regime more accessible and equitable and that “*..this option should be complementary and without prejudice to the proper treatment of individual requests for asylum expressed by spontaneous arrivals in the EU*”.<sup>2</sup> While ensuring effective protection and access to durable solutions in regions of origin should reduce pressures for irregular onward movement of persons in need of international protection, this should not preclude access to safety and to an asylum procedure for persons arriving spontaneously.
2. Resettlement is an important instrument of international protection, has an important function as a durable solution and assists burden-sharing. An EU resettlement scheme involving a commitment to an annual target greater than the number of resettlement places currently available in individual EU Member States, could represent a significant contribution in this regard. Similarly, coordinated and comprehensive EU programming to help build refugee protection capacity in third countries is vital to the international effort to enhance refugee protection and access to durable solutions and to contribute to enhanced management of contemporary migration challenges. These two processes are thus complementary and mutually reinforcing. At the same time, an EU resettlement scheme would not diminish Member States’ obligation to offer protection to individuals who request it at or within the borders of Member States.

## **Chapter I: Resettlement**

3. UNHCR urges that any EU resettlement scheme benefit not only persons who fall strictly within the 1951 Convention criteria, but also others in need of

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<sup>1</sup> Communication from the Commission to the Council and the European Parliament ‘On the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin’ (COM(2004)410 final) (hereafter ‘Communication’). The Communication was prepared in response to conclusion 26 of the Thessaloniki European Council of 19-20 June 2003.

<sup>2</sup> Communication, paragraph 12; see also paragraph 25.

international protection. It therefore welcomes that all persons who qualify for international protection in accordance with the Qualification Directive<sup>3</sup> should be considered for resettlement.<sup>4</sup> In particular, persons fleeing indiscriminate threats from generalized violence and armed conflict may also require resettlement. It should be noted that in a situation of mass influx, individual determination of refugee status is not always feasible, and asylum may be granted based on group determination of refugee status. Resettlement should also benefit individuals in such groups. UNHCR supports the Communication's recommendation that resettlement criteria encompass particularly vulnerable people and those for whom there may be integration difficulties in host countries.

4. In this respect, UNHCR has established criteria which are used extensively to determine when resettlement can be the most appropriate of the three durable solutions. These criteria focus upon: (1) legal and physical protection needs; (2) survivors of torture and violence; (3) medical needs; (4) women at risk; (5) family reunification cases; (6) children and adolescents; (7) elderly people; and (8) others without local integration prospects. These criteria, which are elaborated in detail in UNHCR's *Resettlement Handbook*<sup>5</sup>, seek to avoid arbitrariness or discrimination in selection.
5. Refugees' potential for integrating in a resettlement country should not be used as an additional criterion for resettlement. In particular, refugees and other persons in need of international protection should not be discriminated against on account of their status, age, health condition, educational level or other personal characteristics. In line with international human rights law, family unity should also be a key principle of any resettlement programme, and every effort should be made to facilitate family reunification through resettlement. There should be a broad definition of family for the purpose of resettlement, taking into account cultural norms and economic and emotional dependency factors.
6. Throughout it should be borne in mind that refugees should be the subject rather than the object of the resettlement process. In this respect UNHCR welcomes the reference to the concept of "double voluntariness" permitting an element of choice of an EU destination State for refugees selected for resettlement if a particular Member State is willing to accept them, possibly with provision for financial integration assistance.
7. UNHCR notes the emphasis the Communication places on a '*targeted and comprehensive approach aimed at a specific caseload, limited but consistent in number as appropriate to the specific situations in which resettlement is deemed necessary*'<sup>6</sup>, as part of a multi-faceted response to a particular refugee situation.<sup>7</sup> The Office notes that it has been examining ways to extend resettlement to more refugees by implementing a group methodology, and has been examining ways to use resettlement strategically, *inter alia* as part of comprehensive 'Convention

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<sup>3</sup> Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection, adopted 29 April 2004.

<sup>4</sup> See Communication, paragraph 29.

<sup>5</sup> Geneva, 1997/Revised edition, Geneva, July 2002.

<sup>6</sup> Communication, paragraph 23.

<sup>7</sup> Communication, paragraph 26.

Plus' approaches. It therefore welcomes the focus on protracted refugee situations and the suggested group approach to identification of resettlement target groups. UNHCR notes, however, that group resettlement should be timed so as not to undermine other available and feasible durable solutions as part of any comprehensive plan, and should be complementary to other durable solutions. In relation to protracted refugee situations, resettlement schemes may benefit in particular, residual caseloads of refugees for whom there are no local integration prospects.

8. EU Member States have been involved in the elaboration of the recently-agreed 'Multilateral Framework of Understandings on Resettlement'<sup>8</sup> under the Convention Plus process. Linking the EU scheme to this endeavour would help the EU develop and utilize the most effective approaches, methods and criteria, by drawing from international best practice, and the experience of resettlement actors worldwide.
9. UNHCR would, however, like to highlight the need for flexibility. It is clear that resettlement programmes should be directed at situations where protection needs are apparent. In this respect, emergency procedures for resettlement of refugees who face imminent threat to their life and/or personal safety, is also an important protection feature of a resettlement scheme. As presently practiced by many states, resettlement involves a commitment in principle to consider resettling refugees from a variety of situations under broad criteria outlined above. While the particular focus on protracted situations is welcome, resettlement can also represent an important protection tool in new refugee situations, including those involving mass influx.
10. There is a wealth of experience, information and critical analysis of the principles, methods and outcomes of refugee resettlement, including from individual Member States. UNHCR encourages the Member States to ensure that an EU resettlement scheme will benefit from this knowledge base. An EU scheme should be carefully coordinated with ongoing multilateral initiatives in the resettlement field; the involvement of countries hosting potential resettlement beneficiaries is a crucial part of these discussions.
11. The Communication further calls for protected entry procedures (PEPs) to be retained as an emergency strand of any wider resettlement scheme. Building on the existing practices of some Member States, UNHCR believes such procedures could be used where the regular resettlement process might be too slow or otherwise inappropriate for particularly deserving or urgent cases. PEPs have an important protection value *per se*, and should continue to be utilized, independently from an EU resettlement programme. However, the substantive and procedural aspects of PEPs should be further clarified, so that such schemes truly benefit those in need of international protection.

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<sup>8</sup> 'Multilateral Framework of Understandings on Resettlement' approved by the Convention Plus Core Group on the Strategic Use of Resettlement, 17 June 2004 (available at [www.unhcr.org](http://www.unhcr.org))

*Procedural and operational aspects*

12. The Communication does not explore in detail the arrangements which will ultimately be needed to put an EU resettlement scheme into practice.<sup>9</sup> As part of the process of establishing an EU resettlement scheme, issues requiring further attention include, *inter alia*, clarifying responsibilities for:
- establishing the criteria for situations/caseloads for which resettlement should be introduced as the appropriate protection tool or as an appropriate durable solution;
  - determining refugee status, i.e. assessment of whether a person is a refugee or otherwise in need of international protection; and
  - determining eligibility for resettlement, i.e. identifying whether a person meets the particular EU resettlement criteria.
13. For the purposes of defining when and where a European resettlement scheme might operate, the Communication's call for UNHCR involvement is welcome. In addition to providing a multilateral forum with countries of transit, first asylum and origin, UNHCR has much expertise in coordinating resettlement processes in the field. Involvement of UNHCR can also help ensure that international initiatives are consistent and complementary.
14. UNHCR considers that it would be important to ensure that an EU scheme would not add a further administrative layer to existing resettlement procedures of EU Member States. For existing resettlement programmes, UNHCR plays a central role in determining refugee status, identifying refugees in need of resettlement, referral of candidates to resettlement countries, as well as in determining the overall protection and durable solutions strategy for a given refugee population. Registration and documentation of refugees requesting resettlement is a priority activity, in which host countries, international and non-governmental organizations cooperate; this process should be designed to minimize inefficiencies as well as the risk of fraud. Equipped with the requisite resources, UNHCR's capacity could be expanded to support an EU resettlement scheme.
15. With respect to the suggestion that interviews by EU immigration services be an essential part of the decision-making process<sup>10</sup>, UNHCR notes that in its experience, the participation of resettlement country officials in the selection process through interviews in host countries can help to ensure States' confidence in the process, and particularly the conformity of resettlement decisions to national criteria. However, UNHCR emphasizes the need to respect its identification of potential resettlement beneficiaries, and to give primary consideration to protection concerns in the host country when making decisions on resettlement needs.
16. UNHCR would further welcome the involvement of non-governmental organizations in the operation of an EU scheme, in view of the positive and constructive role that NGOs have for many years played in resettlement in Europe and other regions. NGOs can offer expertise as implementing partners in

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<sup>9</sup> It is noted that while some aspects are referred to in paragraph 31 of the Communication, further in-depth examination and consultation on practical aspects will be needed, once the broad parameters of a scheme are decided.

<sup>10</sup> Communication, paragraph 29.

preparation of applicants' files for consideration by UNHCR and by resettlement countries; arranging medical examinations; and providing pre-departure cultural orientation and integration briefings, as well as settlement support services, among other areas.

17. With respect to legal implications<sup>11</sup>, the Communication touches briefly on the appropriate legal framework and implications. These issues need further development. The Communication suggests the creation of a general procedural framework on resettlement. Such a framework should offer flexibility and could be rapidly "activated" and applied in different caseloads/situations. To take matters forward, UNHCR would be pleased to provide guidance on issues to be addressed in such a general framework. It is noted that the formulation of selection criteria will be a matter for future negotiation and that selection will be focused on a particular target group. UNHCR could also provide expertise in this regard. It would further be important to make a distinction between the internal EU legal framework and the norms governing cooperation with partners, that is, the host country, UNHCR and NGOs. It is additionally worth noting that resettlement should not be seen as equivalent to extra-territorial determination of asylum claims. The latter would entail a number of complex legal issues which do not apply in traditional resettlement contexts.
18. The Communication refers to '*pre-departure security checks*' as an important operational issue.<sup>12</sup> UNHCR notes that security checks should normally be conducted as part of the initial selection process, when the possible application of exclusion criteria under the Geneva Convention is considered within the refugee status determination process. Once it is established that a person is not excluded and requires resettlement, there should not be further need for security checks prior to departure.

#### *Status of resettled refugees*

19. A key feature of any resettlement programme must be a commitment on the part of participating states to provide a durable solution. UNHCR therefore underlines the need for resettled refugees to receive a secure (long term) status in resettlement countries, without the requirement for further screening or procedures upon arrival. This is essential to realize the cost and process benefits of resettlement, and to ensure that resettled refugees begin their integration process as soon as possible. It is likewise essential that all persons in need of international protection who are resettled have access to the full range of 1951 Convention rights. In this context, the important differences between resettlement and temporary protection schemes should be noted.

## **Chapter II: Enhancing protection capacity in regions of origin**

20. UNHCR welcomes the importance the Communication attaches to enhancing the capabilities of States outside the EU to meet their obligations toward those seeking international protection, and supports the Communication's call for greater EU efforts toward this end.

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<sup>11</sup> Communication, paragraph 30.

<sup>12</sup> Communication, paragraph 31.

21. The Communication makes clear that capacity-building activities may have many different aspects, such as encouraging adoption of the requisite international and domestic legal instruments; building up institutions (including organizational competence), clear distribution of responsibilities for dealing with all aspects related to refugee protection, and contributing training or staff resources, among others. In many situations, however, the most immediate and extreme needs are for material assistance and support, particularly in post-conflict and mass influx situations. Capacity-building should also cater for changing needs over time. It is particularly important that such efforts include a strengthening of access to all three durable solutions. Without serious prospects for solutions, both within and outside the region, the condition of refugees in host countries is likely to deteriorate, with potentially negative effects on the social fabric and stability of the host country, and increasing the likelihood of secondary movements.
22. A strategy for enhancing protection capacity cannot exist in isolation. It must also look at the root causes of population movements, going beyond issues of asylum policy and migration control. The Communication's proposed "EU Regional Protection Plans" are particularly relevant from this perspective.
23. The aim of the capacity-building process, as defined by the Communication, is to assist countries in regions of origin to become '*robust providers of effective protection*'<sup>13</sup>. The Communication's suggested '*benchmarks*' derive from standards in EU instruments adopted under the Amsterdam Treaty agenda (article 63 of the Treaty Establishing the European Community). It is important to recall, however, that these reflect minimum standards which have evolved in the context of Europe's highly developed, individualized asylum systems, and are not necessarily an appropriate blueprint for other contexts.
24. How to define and measure "effective protection" remains a challenge, on which no international consensus has been achieved. The Conclusions of the UNHCR-sponsored Lisbon Roundtable on Effective Protection<sup>14</sup> represent a useful starting point. The Conclusions formulate parameters which take refugee law and human rights principles as their starting point, and which also take into consideration the various motivations for secondary movements. Multilateral discussions on the subject have referred to the need to move towards the progressive achievement of self-reliance and access to means of adequate livelihood, pending the identification of durable solutions. The ongoing nature of the process makes it difficult to establish conclusively when, and by what indicators, it is clear that a country has reached the stage of being able to provide 'effective protection'. While '*benchmarks of effective protection*', as proposed in the Communication, can be a helpful tool, the capability of and challenges facing each host country obviously need to be central to any discussion, in which host countries must be involved.
25. UNHCR wishes to highlight some additional measures which can facilitate the process of local integration in host countries and make the return of refugees sustainable. They include:

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<sup>13</sup> Communication, paragraph 42.

<sup>14</sup> Summary Conclusions on the Concept of 'Effective Protection' in the Context of Secondary Movements of Refugees and Asylum Seekers: Lisbon Expert Roundtable, Agenda for Protection, 9-10 December 2002.

- a. Commitments by the EU and its Member States to share the burden and responsibility with host countries through additional development assistance, and to encourage host states to incorporate refugee needs in development and poverty reduction strategies;
- b. Commitments by EU and Member States to include the needs of refugees, returnees, and others of concern in long-term development plans and Country Strategy papers;
- c. EU and Member State encouragement to host countries to priorities refugee self-reliance and integration. This could include calling on the host state authorities to put in place the necessary laws and administrative arrangements (including as needed to provide secure legal status for refugees), as well as develop strategies to improve self-reliance and integration;
- d. Promotion of freedom of movement, coupled with the issuance of documentation (including identity and travel documents) which can be used to gain access to employment, as well as available basic services;
- e. Assistance with housing, education for children and when appropriate, skills and vocational training for youth and adults; and access to health care facilities;
- f. Promoting employment and economic opportunities for people needing protection, alongside measures to assist economic prospects for host communities;
- g. Support of projects strengthening local communities' absorption capacity through investment in infrastructure, community services, and the environment;
- h. Building protection networks in civil society, and creation and support of a receptive climate for people needing protection. Such measures could most effectively be undertaken through support to NGOs in host countries, or through international organizations with a record of fostering constructive activity among civil society networks in the field;
- i. Conflict prevention and resolution work, aimed at preventing or alleviating conflict and unrest, which are frequently the root causes of flight.

### **Chapter III: A comprehensive approach**

26. UNHCR acknowledges the Communication's proposal for a comprehensive approach, involving EU Regional Protection Programmes with resettlement and enhancing protection capacity as two important elements. The Regional Protection Programme objectives of achieving greater coordination and synergy among development, humanitarian and asylum capacity-building activities and funding are welcome. Addressing root causes of refugee flows and supporting political processes which aim at restoring peace and normalcy or improving human rights conditions in the country of origin, as appropriate could, in UNHCR's view, also be included as part of an EU Regional Protection Programme. Consistency with EU regional and country strategies would be essential, as is the proposed inclusion of host countries in partnership dialogues. The mere establishment of an EU regional Protection Programme should not, however, *ipso facto* be the basis for considering that effective protection has been achieved in the host country concerned.
27. An effective response to a refugee situation requires careful coordination among the various actors, and in particular, well-planned transition among the various

phases of response. UNHCR can and should play a key role as a coordinator and facilitator in these ventures, based on its worldwide experience and legal responsibilities in the protection area. Coordination of the EU Programmes with related multilateral activity will ensure they have a greater impact.

28. UNHCR's Convention Plus initiative offers a unique multilateral context in this regard. Three Convention Plus initiatives, concerning the strategic use of resettlement, ways of addressing problems of irregular secondary movements of refugees and asylum-seekers, and targeting of development assistance to support durable solutions have found broad acceptance, and can provide a useful umbrella for EU actions.
29. UNHCR would draw particular attention to work to establish a Framework for Durable Solutions for Refugees and Persons of Concern. This framework proposes Development Assistance for Refugees and Host Communities (DAR) in preparation for durable solutions, a renewed emphasis on Repatriation, Reintegration, Rehabilitation and Reconstruction (the 4Rs) in post-conflict settings, and Development through Local Integration (DLI) in situations where local integration is a viable option. All three approaches aim at mobilizing development actors and development assistance to improve the quality of life and prospects for refugees as well as for the host communities. They offer the appropriate methodology for planning and implementing complex, multi-dimensional and multi-partite agreements between developing countries hosting large numbers of refugees and/or returnees on the one hand, and humanitarian and development actors (aid donors, NGOs and UN agencies) on the other.
30. In addition, UNHCR's efforts in the Convention Plus initiative to reach specific multilateral agreements to resolve particular refugee situations provide a helpful framework for any EU Regional Protection Programmes. Like resettlement, the enhancement of protection capacity in the long term is an area where the EU can not only draw from previous experience at the multilateral level, but also bring its collective will and resources to bear on current multilateral undertakings. UNHCR looks forward to continued EU involvement in the development of Convention Plus special agreements, with a view to resolving protracted refugee situations and building partnerships with refugee-hosting third countries and countries of origin.

## **Conclusion**

31. As endeavours complementing Member States' responsibilities under the 1951 Convention, the initiatives proposed in the Communication have the potential to increase the availability and quality of protection available to refugees outside the EU. Clearly, every refugee situation presents a unique context and set of challenges, and the suitability and effectiveness of measures to enhance protection capacity should therefore be assessed with reference to context. UNHCR stands ready to offer its experience and support, drawn from over a half-century of work around the globe.
32. New or expanded EU efforts in the fields of resettlement and enhancing protection capacity will be most effective if they are undertaken in concert with existing international initiatives, including those ongoing within UNHCR's Convention Plus process. The EU's continued participation in and support to this process will

ensure that the various efforts to address refugee problems are well-coordinated and mutually reinforcing. In this way, the EU's commitment to improving access to durable solutions and strengthening refugee protection capacity can be most effective.

UNHCR  
30 August 2004