

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

Background Note for the Agenda Item:
SECURITY CONCERNS: HOW TO PROTECT THE RESETTLEMENT
MECHANISMS FROM ABUSE BY TERRORISTS AND OTHER INTERNATIONAL
CRIMINALS WITHOUT UNDULY IMPEDING RESETTLEMENT

1. The relationship between migration and security has been a rising policy issue for a number of years, and has been brought into sharper focus by recent terrorist attacks in the United States of America on 11 September 2001. Following these attacks, a number of States have taken individual and collective steps to develop measures to limit access to their territory of individuals suspected of being involved with, or having links to, terrorist and international criminal organisations and networks.
2. In the aftermath of the terrorist attacks, UNHCR endorsed “all efforts aimed at rooting out and effectively combating terrorism,” while expressing concern about the possible impact of such measures on asylum procedures and other refugee protection activities, including resettlement.¹ Motivated by heightened security concerns following the terrorist attacks, a number of resettlement countries suspended their overseas resettlement activities and revisited resettlement procedures in light of the new global reality. UNHCR also expressed concern that revised resettlement procedures might involve reduced resettlement opportunities, especially for certain ethnic groups or nationalities.
3. While disruptions to resettlement activities were relatively short-lived, some remaining challenges will need to be addressed by all tripartite partners to ensure that resettlement is not unduly impeded. These challenges include restrictions on refugee admissions, more restrictive legislation and additional admissibility requirements, which have affected the predictability that once characterised resettlement. While global commitment to resettlement has not been diminished as a result of these tragic events, the new post-September 11 global reality has brought to light a fundamental question: How can resettlement mechanisms be protected from abuse by terrorists and other international criminals without unduly impeding resettlement? Finding an effective answer to this question, which bears in mind the security concerns of resettlement countries, countries of first asylum and refugees is one of the most pressing issues in resettlement policy today.

Migration, security and resettlement

4. The relationship between forced migration and security has been a concern of States and UNHCR since the origins of the modern international refugee protection regime, founded on the 1951 Convention relating to the Status of Refugees. This concern resulted in the development of mechanisms to ensure that individuals who have committed war crimes, serious non-political crimes and acts contrary to the purposes and principles of the Charter of the United Nations do not benefit from refugee status.² At the same time, concerns of national security and public order are the sole permissible grounds upon which the principle of *non-refoulement* may be limited.³

¹ UNHCR Press Release, “Ten refugee protection concerns in the aftermath of Sept. 11,” 23 October 2001.

² Article 1AF, 1951 Convention relating to the Status of Refugees.

³ Article 33(2), 1951 Convention relating to the Status of Refugees.

5. There remains, however, a very real relationship between forced migration and security. Countries of first asylum may face direct security threats when refugee flows contain armed elements.⁴ In such cases, the challenge remains to separate those not deserving of international protection from the refugee population. Countries of first asylum, especially those who suffer resource scarcities and domestic instability, may also face indirect security threats as migrants compete for scarce resources and influence domestic political debate.

6. Resettlement, while primarily a tool to address the protection needs of vulnerable refugees, may also play an important and complementary role in preserving asylum in regions of origin by addressing the legitimate security concerns of asylum countries. In the spirit of international solidarity and burden sharing, resettlement can address these perceived indirect threats by resettling “groups of refugees whose presence in a country of asylum may pose problems for security or other reasons particular to that country.”⁵

7. Resettlement countries have expressed legitimate concerns that steps be taken to ensure that individuals not deserving of international protection, including individuals with links to terrorist and international criminal networks and war criminals, do not have access to resettlement. This fundamental concern is shared by UNHCR. In this light, it is important to identify ways of ensuring the development of resettlement procedures and priorities that are mindful of the legitimate security concerns of all resettlement stake-holders: resettlement countries, countries of first asylum, refugees and UNHCR.

Addressing the security concerns of resettlement countries

8. The security concerns of resettlement countries will best be addressed by developing more effective mechanisms to ensure that a full and effective consideration of the relevant Exclusion Clauses are carried-out during refugee status determination, when appropriate, and prior to resettlement consideration. This is a particular challenge in the context of *prima facie* refugee populations.

9. Refugee status determination is ideally carried-out on an individual basis shortly after an individual’s arrival in a country of asylum. Such an approach is extremely problematic, however, in situations of mass influx where thousands of asylum seekers may cross into an asylum country in a matter of days. In these particular circumstances, and in the interest of providing essential protection and assistance, a group determination of refugee status may be provisionally conducted, whereby each member of the group is accorded *prima facie* refugee status.⁶

10. Before resettlement can be considered for individuals with *prima facie* refugee status, an individual refugee status determination must be conducted to confirm that that individual is in continuing need of international protection and may be recognised as a refugee under the Mandate of UNHCR. Such individual status determination should also include, when appropriate, a full consideration of the possible application of the Exclusion Clauses contained in the relevant international and regional mechanisms.

11. Individuals who have committed acts contrary to the purposes and principles of the Charter of the United Nations are excluded from refugee status, and are consequently excluded from resettlement. Security Council resolution 1377 of 13 November 2001 declares that acts of international terrorism constitute one of the most serious threats to international

⁴ See: “Report of the First Meeting in the Third Track of the Global Consultations on International Protection” (EC/GC/01/8/Rev.1).

⁵ Executive Committee of the High Commissioner’s Programme, Standing Committee, 21st Meeting, “New Directions for Resettlement Policy and Practice”, 14 June 2001 (EC/51/SC/INF.2).

⁶ See: UNHCR Resettlement Handbook, Chapter 3.7.

peace and security and are contrary to the purposes and principles of the Charter of the United Nations. Therefore, individuals who have committed acts of international terrorism, including financing, planning and preparing terrorist acts, are excluded from refugee status and are consequently not eligible for resettlement. The same is true for individuals found to have committed war crimes and crimes against humanity.

12. As such, the legitimate security concerns of resettlement countries may be addressed by ensuring that the possible Exclusion Clauses are considered as part of the refugee status determination process prior to resettlement consideration. It is, however, recognised that the intelligence and information at the disposal of some resettlement countries is more detailed on questions relating to individuals who have engaged in excludable acts than the information at the disposal of UNHCR offices and eligibility officers in the field. Greater co-operation is therefore required between resettlement countries and UNHCR to improve effectiveness in this area.

13. At the same time, it must be emphasised that the Exclusion Clauses can only be applied on a case-by-case basis. UNHCR is concerned by recent examples of group exclusion from resettlement through ‘profiling’, whereby individuals belonging to specific groups are excluded from the resettlement process pre-emptively as a consequence of their membership in a particular group. As cautioned by the conclusions of the Nordic Regional Resettlement Meeting in November 2001, “excluding certain categories of refugees on the basis of their religion or ethnic or national origin from resettlement, without undertaking individual determination, is not justified.”⁷

Addressing the security concerns of countries of first asylum

14. Just as protracted refugee situations were seen to provide the base for groups of so-called ‘refugee-warriors’ in the 1970s and 1980s,⁸ a growing number of host countries have identified the presence of large protracted refugee populations as a security concern. In the same way that a solution for the problem of ‘refugee-warriors’ was found in a comprehensive series of solutions, comprehensive solutions to current protracted refugee situations might not only provide durable solutions to refugees but also address the security concerns of countries of first asylum. In such situations, the country of asylum, in co-operation with other States and UNHCR, is responsible for physically separating and legally excluding those individuals not deserving of international protection from the refugee population and, by extension, the resettlement process.⁹

15. There are also indirect security implications for countries of asylum hosting protracted refugee populations, especially in underdeveloped and unstable regions such as East and Horn of Africa and South Asia. In these contexts, the hosting of large protracted refugee populations may cause legitimate security concerns for the State, as the presence of protracted refugee populations exacerbates local grievances and may alter the balance of domestic political opportunity as the continued refugee presence becomes politicised.¹⁰

⁷ Global Consultations on International Protection, 4th Meeting, Nordic Regional Resettlement Meeting, “Resettlement as a Multi-Faceted Protection Tool and its Relationship to Migration”, Oslo, 6-7 November 2001, paragraph ix.

⁸ See: Gil Loescher, “Refugee Movements and International Security” Adelphi Paper 268, International Institute for Strategic Studies, London, 1992.

⁹ Executive Committee of the High Commissioner’s Programme, Standing Committee, 18th Meeting, “The Security, civilian and humanitarian character of refugee camps and settlements: Operationalizing the ‘ladder of options’,” 27 June 2000 (EC/50/SC/INF.4).

¹⁰ For a discussion of the direct and indirect security burdens borne by countries of first asylum, see: James Milner, “Sharing the Security Burden: Towards the Convergence of Refugee Protection and State Security”, RSC Working Paper No. 4, Refugee Studies Centre, Queen Elizabeth House, University of Oxford, May 2000.

16. In both scenarios, resettlement has a partial role to play as part of a comprehensive response to the security concerns of the host State, the region and the international community by providing a partial solution to the protracted refugee situation. Resettlement can provide a 'safety-valve' to the host State while providing an opportunity for the refugees themselves, thereby preventing the sense of deprivation and desperation that could possibly lead them not only to alternative means of protection through smuggling but also to more extreme political and social views. Such a comprehensive response would require an increased commitment on the part of resettlement countries through an expansion of resettlement activities, an increase in available resettlement opportunities, and the diversification of resettlement intakes.

17. Addressing the resettlement needs of protracted refugee populations is an on-going challenge for UNHCR. It has been emphasised in various fora that such situations require a flexible application of the resettlement criteria by resettlement countries. This is especially true for *prima facie* refugees who have pressing protection problems in the country of asylum but who may be rejected for resettlement due to the fact that they are not found to meet a strict application of the 1951 Convention criteria. UNHCR is trying to address this concern through on-going discussions with its partners relating to the refinement and harmonisation of resettlement criteria in a way that would not only respond to the pressing protection needs of vulnerable refugees, but also groups or categories of protracted refugees in need of a durable solution.

Addressing the needs and concerns of refugees

18. The suspension of resettlement activities in the immediate aftermath of the events of 11 September 2001 resulted in significant concern and feelings of insecurity for refugees around the world who had either been provisionally accepted for resettlement or who were awaiting processing of their resettlement request. It is also important to recognise that this time-delay left a significant number of refugees in extremely vulnerable and dangerous situations, especially true in the case of victims of sexual violence, vulnerable women and children.

19. As resettlement activities resume with more comprehensive and complex security-related screening requirements, there are concerns that resettlement processing will become a more time-consuming process, less capable of responding to urgent and emergency resettlement needs. While it is recognised that such screening requirements cannot be circumvented, there must be a balancing of security considerations in cases of extreme refugee vulnerability.

Addressing the security concerns of UNHCR

20. The predominant security concern of UNHCR is for the physical security of refugees and UNHCR staff. In addition to the fact that UNHCR's work is increasingly located in areas of armed conflict and that refugee camps and settlements have become targets in regional conflicts, recent challenges to resettlement have contributed to an increasingly insecure environment for all staff in the field engaged in resettlement activities.

21. Resettlement activities have often resulted in unmanageable expectations on the part of refugee populations, which results in frustration when these expectations are not met. Long processing delays, uncertainty about resettlement outcomes, and delayed departures also result in frustrations which can manifest themselves in threats to UNHCR and other partner agency staff. More effective co-operation is therefore required by all partners in the resettlement process to develop more efficient procedures to manage refugee expectations relating to resettlement.

Conclusion

22. In light of the terrorist attacks of 11 September 2001, it is essential to ensure that resettlement mechanisms are protected from abuse by terrorists and war criminals through effective application of the exclusion clauses at the moment of adjudicating refugee status. This application must be on a case-by-case basis and not through the 'profiling' and exclusion of certain categories or groups of refugees. At the same time, it is important to emphasise that resettlement can play a positive role in addressing the security concerns of host States by acting as a 'safety-valve'.

23. The protection needs of vulnerable refugees must remain at the core of resettlement activities, policies and priorities. Balancing security concerns and resettlement priorities is not in contradiction with this position. Coupled with mechanisms to address the legitimate security concerns of resettlement countries, an expansion of resettlement targeted at protracted refugee situations could address both the durable solution needs of refugees and the security concerns of States. Such an approach would contribute greatly to the strengthening of both resettlement and the principle of asylum.

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