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ON REFUGEES AND EXILES

CONSEIL EUROPEEN
SUR LES REFUGIES
ET LES EXILES

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**Comments of the European Council on Refugees and Exiles on the
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
'Improving Access to Durable Solutions'**

COM(2004) 410 final

INTRODUCTION

ECRE is an umbrella organisation of 76 refugee-assisting agencies in 30 countries working towards fair and humane policies for the treatment of asylum seekers and refugees.

In June 2003 the Commission published a Communication *Towards more accessible, equitable and managed asylum systems* COM (2003) 315 final in which it discussed issues related to the orderly and managed arrival of persons in need of international protection in the European Union from the region of origin, including an EU-wide resettlement scheme, and also burden and responsibility-sharing within the EU as well as with regions of origin. ECRE took the opportunity to comment on this Communication¹ and expressed its support for the development of a genuine burden-sharing system and the proposals to explore the possibility of an EU legislative framework on resettlement, the setting up of Protected Entry Procedures and the strengthening of protection capacity in regions of origin.

As mandated by the Council, one year on the Commission has published another Communication making more detailed proposals *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 'Improving Access to Durable Solutions'*, 7 June 2004, COM(2004) 410 final. In this Communication the Commission specifically addresses the first objective of the Thessaloniki Council's Conclusion 26 to explore

¹ See ECRE Comments on the Communication from the Commission to the Council and the European Parliament *Towards a more accessible, equitable and managed international protection regime* (COM(2003) 315 final), 18 June 2003

ways of ensuring more orderly managed entry into the EU and proposes the setting up of an EU resettlement scheme. The Communication goes on to the second objective of Conclusion 26 to examine ways to enhance the protection capacity of regions of origin. Finally it suggests the establishment of EU Regional Protection Programmes which would provide a 'tool box' of measures to be taken up by the EU, envisaging the establishment of such programmes by December 2005. The Commission requests the endorsement of the European Parliament, Council and European Council of the core proposals in the Communication.

ECRE generally welcomes the tabling of these proposals and recognises that they are the beginning of a long-term plan. Considerable further development of each of the elements presented is required. The fact that it is long-term in our view reinforces the fact that it is a plan which should be embarked on now. We particularly welcome the importance attached to the search for durable solutions, urging a comprehensive and holistic approach in taking the proposals forward, and consider the Communication a positive step towards addressing the need for a more shared and balanced commitment to multilateral efforts and dialogue between EU Member States. We feel it necessary to stress however, that such proposals are and should remain a necessary corollary to the continued need for improvements in national asylum procedures, the reception of asylum seekers and the integration of refugees in Europe. Our concerns in this respect are reinforced in light of suggestions currently being put forward by some Member States to establish 'camps' in countries neighbouring the EU where persons seeking protection in Europe would have their applications processed.²

With regard to resettlement ECRE fully supports the development of and indeed stresses the urgent need for an EU-wide resettlement scheme. We further support proposals to strengthen protection capacity in regions of origin. In terms of setting standards of effective protection, ECRE underlines the need for benchmarks used by the EU to include all existing international human rights standards as well as to establish the existence of a durable solution for each individual refugee. We strongly underline however that any expanded use of resettlement and efforts to enhance protection capacities in regions of origin does not replace Member States' responsibilities to consider and process asylum applications of persons arriving spontaneously on their territory.

Regarding the proposed EU Regional Protection Programmes, ECRE's main concerns revolve around how the return element of the 'tool box' might lead to premature returns through its inclusion of the 'safe third country' concept. This could both put refugees at risk and exacerbate secondary movements of refugees, if people are sent back to countries before these have become providers of 'effective protection' as required by the Commission's proposal. We therefore urge the inclusion of clear and adequate safeguards in this area. We also warn that any focus on measures to facilitate swift returns to third countries within a discussion on supporting those same countries become "robust providers of effective protection" risks undermining the promotion of fruitful partnerships with third countries. Furthermore if a policy of return is pursued as a priority this may also undermine the EU's and Member States' important development cooperation and foreign affairs policies towards those third countries.

² This refers to the recent suggestions from Germany to set up such camps in North Africa and from Austria, Lithuania, Estonia and Latvia to set up camps in the Ukraine.

ECRE would like to remind the EU that it needs to step up efforts to tackle the reasons why refugees flee from their home countries by helping improve conditions in countries of origin.

Comments are presented in detail below in the order set out by the Communication and address all the three chapters

CHAPTER I

First objective Conclusion 26: “to explore all parameters in order to ensure more orderly and managed entry in the EU of persons in need of international protection”

ECRE welcomes the importance attached in the Communication to expanding resettlement opportunities within Europe and fully supports the European Commission’s proposal for an EU-wide resettlement scheme as it feels strongly that there is a need for a concerted increase in the use of resettlement by European countries, both by individual Member States and collectively.

ECRE believes that resettlement fulfils many important roles at the global level, three of which are fundamental and should act as the guiding principles for any expanded resettlement activities in Europe:

1. A tool of international protection

Resettlement is, first and foremost, a tool for meeting the special needs of refugees whose life, liberty, safety, health and other fundamental human rights are at risk in the country where they sought refuge. Such protection considerations should be at the core of all resettlement activities and shape its priorities, which should not only respond to political pressures or priorities in the resettlement country.

2. A durable solution

Resettlement is the only durable solution for individual refugees or groups of refugees for whom both local integration and voluntary repatriation are deemed not to be viable durable solutions in the medium to long term.³ Resettlement may also be used strategically as part of a comprehensive solution for protracted refugee situations.⁴

3. Demonstration of international solidarity and responsibility sharing with countries of first asylum.

Engaging in large-scale, sustained and predictable resettlement activities may preserve first asylum in the regions of origin, by supporting those countries in the regions of origin where refugees first arrive in search of asylum to continue to play their crucial role, while making the global refugee regime more equitable, and therefore sustainable.

Recognising that there is generally good public support in host societies for refugees who are resettled, we regard resettlement as an important means of facilitating public understanding of refugees, their plight and the situations they flee. It can also increase

³ See: UNHCR, *Resettlement Handbook*, Chapter 4.9, 2002.

⁴ See: Working Group on Resettlement “The Strategic Use of Resettlement”, UN Doc. EC/53/SC/CRP.10/Add. 1, 3 June 2003.

support for the principle of protecting refugees. On the other hand no resettlement scheme should be used to promote the idea that there are ‘good’ refugees (who are resettled) and ‘bad’ refugees (who arrive spontaneously) and responsible leadership from political actors and the media is required to ensure this does not happen.

The availability of more resettlement places through an EU scheme would clearly make an invaluable contribution to meeting the global resettlement needs: currently the size of the refugee population in urgent need of resettlement is far greater than the number of places available. A collective EU scheme would also be a welcome addition to present European resettlement activities by increasing general awareness and understanding of resettlement and its benefits among EU Member States, which could have a positive impact on the development of national resettlement programmes in Europe.

More extended use of resettlement clearly holds the promise of long and short-term benefits for the receiving states.⁵ Short term benefits include the way the resettlement process builds in the necessary information for States to be able to plan better for the arrival of refugees, for example in relation to housing, education and financial support provisions. Ensuring close coordination among service providers and devising integration programmes is also facilitated, as mentioned in the Communication. Moreover in relation to the implementation of the resettlement procedures, if modelled wholly or in part on the current global resettlement efforts, States would be able to substantially share the operational role with UNHCR and NGOs in ways which have been proven to be beneficial to all parties, including the refugees. A key benefit is also how the preparation of local communities to receive refugees would be greatly facilitated. One of the main reasons that refugee resettlement has been so well supported in some of the current resettlement countries around the world is that local communities have become directly involved in the reception and integration of refugees through resettlement programmes, which reduces the vilification of refugees so often seen in some media and resorted to by political figures.⁶

ECRE strongly underlines the point that in as much as it may be considered a form of orderly and managed entry to the EU, resettlement should not be considered a potential substitute for States’ obligations under international law to consider applications for asylum on their territory.⁷ We also recall that the development of resettlement activities in no way diminishes the continuing need for Member States to strengthen their national asylum systems. We therefore consider the inclusion of specific references in the Communication to the fact that resettlement should be complementary and **without prejudice to the proper treatment of individual requests in the context of spontaneous arrivals in the EU** a crucial premise that must remain at the centre of any further proposals. The fact that a person’s flight from

⁵ The US Office of Refugee Resettlement has reported that “initial resettlement expenditures are a long-term investment for the social benefit of the nation” *The Integration of refugees into American Communities: how to make group resettlement work*, presentation to UNHCR Annual Tripartite Consultations, Geneva, June 2004 by Nguyen Van Hanh, Director of Office of Refugee Resettlement, Dpt of Health and Human Services, USA.

⁶ See NGO Statement on the Convention Plus Strand on the Strategic Use of Resettlement, UNHCR’s Forum, 12 March 2004

⁷ Note this has been the case in Australia where the setting up of a good resettlement scheme has clearly been at the expense of spontaneous arrivals.

persecution is an inherently chaotic act cannot be ignored within efforts to increase orderly and managed entry into the EU.

The pressing need for the development of legal ways of entering the EU for persons in need of international protection is widely acknowledged and is evident through the many desperate actions of refugees, such as the undertaking of perilous journeys at sea and the numbers placing themselves in the hands of human traffickers. Despite States' concerns to reduce such illegal entry into the EU, the possibility of developing Protected Entry Procedures has to date not been taken up. However ECRE notes and supports the idea suggested in the Communication of further exploring the facilitation of **protected entry into the EU** as an 'emergency strand' of a resettlement scheme as one way to begin to address this issue.

In relation to other specific elements of the EU-wide resettlement scheme being proposed, ECRE also supports the Commission's approach regarding its objective to encourage the participation of all EU Member States and recognises that in order to achieve this aim, **flexibility** would need to be built in such as through a 'general procedural framework' as proposed. It is still important however for all Member States to participate on the same basis. We would therefore emphasise that in order to build up an effective scheme and maximise its potential benefits, the aim should be for all Member States to participate through the *physical* resettlement of people into their countries, although we recognise that some Member States may initially only be able to resettle relatively low numbers of refugees, which could progressively be increased over time.

ECRE welcomes the possibility put forward by the Commission that the EU might take 'some special responsibility for **vulnerable groups** of refugees'. While European countries currently accept fewer refugees for resettlement in a given year than the United States, Canada and Australia, they accept vulnerable refugees who might not otherwise be resettled. In doing so, they play an important role in complementing the larger resettlement countries in global resettlement efforts. The willingness to concentrate on the resettlement needs of the most vulnerable is therefore already the 'added value' of the European approach to resettlement and any EU-wide initiative should reinforce this.

The Communication states that an EU resettlement scheme could operate in the way that national European schemes currently do with **UNHCR playing a key role** in the selection process, and it suggests there may also be a role for NGOs. Firstly we emphasise that firm agreement on the roles and responsibilities of all involved actors prior to its establishment is crucial to the success of an EU-wide scheme. We are also of the view that any developments in European resettlement, either collectively through the EU or independently on the part of Member States, should involve UNHCR which, according to its mandate, is charged with the international responsibility for seeking durable solutions for refugees. This is not only mindful of the dangers of competing parallel systems, but also in recognition of the fact that the coordination of resettlement programmes globally has led to more efficient and more responsive resettlement activities.

In addition, whilst bearing in mind the widely differing European national contexts for example in terms of the extent to which there is a well-functioning NGO sector,

ECRE believes that significant **NGO involvement** in an EU resettlement programme could help ensure its success, while ensuring that the resettlement process remains focused on the protection needs of refugees. Important lessons may be drawn from the active involvement of some European NGOs in their national resettlement programmes and the involvement of NGOs in various stages of the US Resettlement Programme, which ranges from level-setting, to the identification of refugees in need of resettlement consideration, the processing of resettlement claims, the facilitation of pre-departure formalities, and, most significantly, the reception and integration of resettled refugees, which constitute the key elements in ensuring that both the resettled refugees and the receiving States access the maximum potential benefits afforded by such a scheme.

ECRE regrets the lack of attention within the Communication to **the participation of refugees** themselves - the often-neglected partner in the resettlement process. Engaging refugee populations, as far as possible, in resettlement planning would ensure that resettlement expectations were more effectively managed, that more credible information on the functions and limits of resettlement would be transmitted within the refugee population and that instances of fraud and corruption were more quickly and credibly reported. Involving refugees in the resettlement process might also facilitate integration in the resettlement country, as possible links, family and otherwise, may be more thoroughly explored. We therefore hope that further proposals will recognise the importance of involving refugees and refugee community organisations.

ECRE very much welcomes the Commission's stated goal "to provide an EU level budgetary mechanism to support those Member States which have or will have a resettlement programme, in particular by ensuring reasonable **financial support** for the resettling of refugees during their first year" and would emphasise that whatever the shape of such a mechanism, the EU must ensure that the funds made available are sufficient in order to effectively achieve the scheme's aims and to encourage participation from *all* Member States.

Chapter II

Second objective Conclusion 26: "to examine ways and means to enhance the protection capacity of regions of origin"

ECRE welcomes the importance attached in the Communication to assisting countries in the regions of origin provide refugees with effective protection, which is crucial in the way it would for example increase access to durable solutions such as local integration. According to UNHCR statistics, at the start of 2003, Europe, one of the richest regions of the world, hosted only 20% of the global refugee population, while over 70% were hosted in developing countries. Of this number, few refugees find 'effective protection' close to the countries from which they flee. They often have no prospect of a durable solution, living for many years in unsuitable camps or scraping out an impossible existence on the margin of their host society. Recognising that many countries in regions of origin, often developing countries, struggle to provide protection to large numbers of refugees in contexts where their own nationals often do not enjoy basic human rights, ECRE believes not only that European States can and must do more to assist countries in regions of origin to receive asylum seekers, but

that they would also benefit from doing this. Helping to increase access to protection beyond the boundaries of the European Union would enlarge the asylum space and clearly contribute to the successful implementation of Member States' national and collective development cooperation policies and programmes.

At the same time any European measures aimed at enhancing effective protection globally and in regions of origin must be based on the **fundamental principles of international solidarity and burden and responsibility sharing**, and should not result in responsibility shifting or the devolution of European responsibilities. More effective protection of refugees in regions of origin does not replace European States' obligations to share the responsibility for hosting its fair share of the world's refugee caseload, and neither does it reduce their responsibilities related to processing the asylum applications of spontaneous arrivals on their territory.

Current international law already sets out minimum standards to ensure refugees' basic rights and it is therefore essential that any 'benchmark of effective protection' used by the EU, and the principles on which these are based, include all these international human rights standards (see below) and additionally take into account any UNHCR guidelines on effective protection benchmarking.⁸ ECRE welcomes the 'protection components' and principles elaborated in the Communication, such as accession and adherence to the refugee instruments, including regional refugee instruments as well as other human rights and international humanitarian law treaties. We also particularly welcome the recognition of the need for support for self-reliance and local integration to be available. We note that the recognition of the need to respect international obligations is qualified throughout the Communication by the need to "take into account the socio-economic situation prevailing in the host country".⁹ In this regard ECRE would like to recall that existing international standards on social and economic rights¹⁰ contain fundamental human rights which signatory governments are obliged to provide irrespective of their economic situation.

ECRE would like to clarify that the content of any benchmarks used should, without exception, clearly include the following components, comprising the **basics of human rights and refugee law**:

- ✓ Accession and adherence to the refugee instruments, including regional refugee instruments as well as other human rights and international humanitarian law treaties
- ✓ Documentation and legal status in the host country (where a state permanently denies a refugee access to any form of legal status, it violates its Refugee Convention obligations, even if it refrains from *refoulement*. For long-standing refugees, such a State cannot be said to offer effective protection)¹¹
- ✓ Protection from torture, inhumane or degrading treatment¹²

⁸ For example the *Summary Conclusions on the Concept of "Effective Protection" in the context of Secondary Movements of refugees and asylum seekers*, Lisbon Expert Roundtable, 9-10 December 2002.

⁹ Paragraph 44 d.

¹⁰ eg International Covenant on Economic, Social and Cultural Rights

¹¹ Human Rights Watch, *An Unjust "Vision" for Europe's Refugees*, June 17, 2003, p. 18.

¹² Universal Declaration of Human Rights, Article 5; International Covenant on Civil and Political Rights, Article 7; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 4.

- ✓ Protection from generalised and targeted violence
- ✓ Guarantee of *non-refoulement*¹³
- ✓ Access to fair status determination or prima facie recognition
- ✓ Freedom of movement within the State of asylum¹⁴
- ✓ The rights to freedom of thought, conscience, religion or belief, opinion or expression¹⁵
- ✓ Right to seek employment and engage in income earning activities¹⁶
- ✓ Right to an adequate standard of living,¹⁷ which includes the ability to sufficiently provide and care for oneself and one's family¹⁸
- ✓ Freedom from discrimination¹⁹
- ✓ Freedom from arbitrary detention²⁰
- ✓ Right to education²¹ - at a minimum, primary education for school-aged children, and, ideally, secondary school education and access to skills training programmes for young people and adults
- ✓ The provision of shelter, food/nutrition, health care, water and sanitation
- ✓ Other rights provided by the 1951 Convention relating to the Status of Refugees
- ✓ Access to family reunification
- ✓ Freedom from forced recruitment
- ✓ Special consideration and services for vulnerable groups – women, children and the disabled
- ✓ Access to a timely durable solution.

Chapter III

A comprehensive approach to asylum and migration

ECRE welcomes the fact that the tools within the proposed EU Regional Protection Programmes tool box “would be mainly protection-oriented”. We are very concerned however to see the inclusion of **return** as it relates to “other third country nationals for whom the third country...could have been a country of first asylum”, fearing that

¹³ 1951 Convention Relating to the Status of Refugees, Article 33; Convention Against Torture, Article 3; International Covenant on Civil and Political Rights, Article 7.

¹⁴ Universal Declaration of Human Rights, Article 13; International Covenant on Civil and Political Rights, Article 12; 1951 Convention Relating to the Status of Refugees, Article 26.

¹⁵ *Ibid.* Guiding Principles, Principle 22; Universal Declaration of Human Rights, Article 18 & 19; International Covenant on Civil and Political Rights, Article 18.

¹⁶ Universal Declaration of Human Rights, Article 23; 1951 Convention relating to the Status of Refugees, Articles 17, 18 & 19.

¹⁷ International Covenant on Economic, Social and Cultural Rights, Article 11; Universal Declaration of Human Rights, Article 25.

¹⁸ An adequate standard of living as per the Convention on Economic, Social and Cultural Rights, Article 11 (1) includes adequate food, adequate housing clothing, and to the continuous improvement of living conditions. The Universal Declaration of Human Rights provides that: “Everyone has a right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” (Article 25)

¹⁹ Universal Declaration of Human Rights, Article 7; Convention on the Elimination of all Forms of Racial Discrimination, Article 5; 1951 Convention Relating to the Status of Refugees, Article 3.

²⁰ Universal Declaration of Human Rights, Article 9.

²¹ Universal Declaration of Human Rights, Article 26; International Covenant on Economic, Social and Cultural Rights, Article 13.

this could result in EU States shifting responsibilities to countries in regions of origin.²² This could put refugees at risk and it could exacerbate secondary movements of refugees if people are sent back to countries before these have become providers of ‘effective protection’ as required by the Commission’s proposal. We would also warn that any focus on measures to facilitate swift returns to third countries within a discussion on supporting those same countries become ‘robust providers of effective risks undermining the promotion of fruitful partnerships with third countries. Furthermore if a policy of return is pursued as a priority, this may also undermine the EU’s and Member States’ important development cooperation and foreign affairs policies towards those third countries.

ECRE welcomes the inclusion of some safeguards, such as the fact that the country must offer effective protection for the individual, UNHCR should be involved and an agreement should be in place. However we believe **other safeguards** are essential and that these should include the need for a meaningful connection with the third country;²³ that the links with the requested EU country should be demonstrably weaker than the links with the third country being considered for return; and that exceptions to return should be made on grounds of family and cultural links in the EU Member State. Moreover even when a third country could provide effective protection, return is prohibited if it were to violate the person’s internationally recognised right to family unity.

In general, any country of return or transfer, in addition to meeting the conditions for effective protection, must be a stable country with democratic structures²⁴ governed by the rule of law with monitoring allowed by and cooperation with international, inter-governmental organisations and NGOs of its observance of human rights. Consideration should therefore also be taken of the potential impact of returns on the third country, such as economic conditions and political stability²⁵ – this includes the possibility that returns can destabilise the situation in a country if they are likely to trigger additional returns from countries in the region. Overall it is imperative that the question of return is considered firmly in the context of the principle of international solidarity, and burden and responsibility sharing.

The reference to opportunities for **monitoring returns** in the Communication is hopefully an indication of a commitment to providing post-return follow-up and monitoring. This is a matter of pragmatism as much as principle, since such monitoring will instil confidence in potential returnees and can be used to later

²² For further details of ECRE’s concerns related to the ‘safe third country’ concept please see: ECRE Position *Safe Third Countries-Myths and Realities*, February 1995 and ECRE Report *Broken Promises-Forgotten Principles. An ECRE evaluation of the development of EU minimum standards for refugee protection, Tampere 1999 - Brussels 2004*, June 2004 on www.ecre.org

²³ The consistent position of UNHCR has been that asylum seekers should not be returned to third countries with which they lack sufficient connection. UNHCR Observations on EC Proposal on Determining Responsible State for Deciding Asylum Application, Feb. 2002, para. 7; UNHCR Observations on EC Proposal on Asylum Procedures, July 2001, paras. 31(ii), 37; UNHCR Global Consultations in Budapest, Conclusions, 6 – 7 June 2001, para. 18.

²⁴ Defined, for example, as having free and fair elections, an independent judiciary, a balance of power between legislative, judicial, and executive branches of the government, freedom of assembly, etc.

²⁵ Cf the report *Responding to the Asylum and Access Challenge-An Agenda for Comprehensive Engagement in Protracted Refugee Situations*, ECRE/US Committee for Refugees, August 2003 for a discussion of conditions and limited repatriation possibilities in East Africa and the Middle East.

evaluate the success of programmes (measured in terms other than just total numbers returned). It should be noted that monitoring by independent international and non-governmental agencies will often be more credible and objective than that conducted solely by the returning State or States.

We further welcome the ‘tool box’ element stating that these Regional Protection Programmes’ action to enhance protection capacity would take a “coordinated and systematic approach”. But it is also important to bear in mind that these programmes would be one means of supporting the development of effective protection in regions of origin - processes which are likely to be long-term - and therefore the establishment of such Programmes should not be taken to signal that the countries involved can automatically provide effective protection.

ECRE would also like to underline that the use of EU Regional Protection Programmes to “add genuine leverage to partnership arrangements with the third countries involved” should not be the main objective and that the programmes should in no way lead to the possibility of existing development aid becoming tied on the basis of a third country’s cooperation with the programmes. The EU needs to step up efforts to tackle the reasons why refugees flee from their home countries by helping improve conditions in countries of origin. There should be better targeting of development assistance provided that it is aimed at reducing poverty, improving protection and benefiting host communities as much as refugees. Moreover such aid should not be tied to cooperation on border controls, as this is likely to result in burden-shifting.

The proposed EU Regional Protection Programmes have the potential to greatly enhance the situation of refugees in regions of origin, such as those languishing in refugee camps for many years, and the programmes should therefore focus on achieving this very difficult but crucial and urgent task.

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