

# NEW ISSUES IN REFUGEE RESEARCH

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## **Refugee policy in Eurasia: The CIS Conference and EU Enlargement Process 1996-2005**

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**ABSTRACT**

This research found that significant progress has been made overall in developing a refugee policy in Eurasia (which was defined in this study as the countries comprising the Commonwealth of Independent States (CIS): Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia and Ukraine/Kazakhstan, Kyrgystan, Tajikistan, Turkmenistan and Uzbekistan; and the Central European countries of Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Hungary, Romania, Poland, Slovak Republic and Slovenia).

In Central Europe, the EU integration process was found to be the main engine for the refugee policy development (a condition for EU membership), though the situation with regard to its implementation was less impressive. However, as these countries are all EU Member States, (following Bulgaria and Romania's entry in January 2007), they are evolving into the common European asylum space, which is meant, among others, to uphold at least minimum standards of refugee protection.

The research also highlighted how institutions and implementation matter. For example, the European Court of Justice in Luxembourg could play an increasing role in upholding basic protection standards upon referrals to it from national courts in EU Member States under Article 234 of the Treaty of Rome 1957, as amended by the Amsterdam and subsequent texts, in order to provide judicial protection and to clarify the scope and meaning of European law in numerous areas, including asylum.

Prospects for functioning refugee policies are bleaker in the CIS countries, which are not part of the EU harmonization process. Despite some notable successes as well as greatly varying results achieved through the CIS Conference, most CIS countries have not yet bridged critical gaps in regards to legislative and administrative frameworks, humanitarian status, documentation and integration of refugees, or raised public awareness to reduce xenophobia, discrimination, and intolerance. However, the seven Eastern European countries of the CIS (Armenia, Azerbaijan, Georgia, Belarus, Moldova, Russia, Ukraine) are at least members of the European Human Rights Convention, which, if applied adequately, supports refugees' need for protection. In Central Asia, European judicial protection is not applicable. Despite the ratification of the international refugee standards in four of the five Central Asian countries (Kazakhstan, Kyrgystan, Tajikistan, Turkmenistan), the post September 11 climate tends to take precedence over refugees' need for protection. Nevertheless, these countries, with the notable exception of Uzbekistan, at least made initially encouraging efforts in developing and implementing refugee policies and discussed these issues in international fora.

These papers provide a means for UNHCR staff, consultants, interns and associates, as well as external researchers, to publish the preliminary results of their research on refugee-related issues. The papers do not represent the official views of UNHCR. They are also available online under 'publications' at <[www.unhcr.org](http://www.unhcr.org)>.

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# **Refugee policy in Eurasia**

## **The CIS Conference and EU Enlargement Process**

Insights from the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the CIS and Relevant Neighbouring States, and the EU Enlargement Process: 1996-2005

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This work was planned to be completed in 2000 when the CIS Conference Process was expected to conclude. However, in July 2000, after the decision to continue the CIS Conference Process, the research time frame was adapted, in order to complete this study after its conclusion, which was in October 2005. For the sake of completeness the most relevant texts prepared in the context of this final conference are reproduced in the appendices.

I would also like to thank the Center for International Studies and its Program on Human Rights and Justice at MIT for the opportunity to serve as a Fellow and to complete this ten-year research project on refugee policy in Eurasia<sup>1</sup>, of which earlier versions were presented as work in progress since 2000<sup>2</sup>.

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<sup>1</sup> Eurasia is understood here, as the countries of Eastern Europe and Central Asia (Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia and Ukraine/Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) and Central Europe (namely Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Hungary, Romania, Poland, Slovak Republic, Slovenia). This Paper examines refugee regional approaches within the context of the CIS Conference and the EU Enlargement processes and complements the Working Paper 120 of 2006 on the "Comprehensive Plan of Action: Insights from CIREFCA and the Indochinese CPA".

<sup>2</sup> Earlier versions of this work in progress were presented as follows:

- "Housing and Property Restitution for Returnees in Tajikistan in the 1990s", in: Refugee Survey Quarterly, Vol.19, Nr. 3, 2000, UNHCR Centre for Documentation and Research, Oxford University Press, pp. 113-129,

- "Capacity and Institution Building in the CIS in Refugee and Human Rights Protection with Emphasis on Central Asia and Kazakhstan", in: Revue québécoise de droit international, Volume 13.2, 2000, pp. 99-143,

- "Developing national refugee regimes in Post-communist countries" Presentation, Nov. 2003, Harvard University,

- "Refugee Regimes in post-Communist Countries", in: Series on Refugee and Migration Studies, From Ethnicity to Migration, ed. Anna Krasteva, NBU, Vol. 1, New Bulgarian University, October 2004 (in Bulgarian).

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- "Refugee Policy in Eurasia", presentation, 19th Annual Conference, Academic Council of the United Nations System (ACUNS), 9 June 2006 on "Multilateralism: Does it still matter?" Pont. Cath. University (PUC), Rio, Brazil.

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Note: The views expressed here do not necessarily represent the views of UNHCR or those of the United Nations.

## 1. INTRODUCTION

Refugee policy is understood in this paper as encompassing the development of practices and procedures, policies and legislation in the refugee and refugee-related field, situated within a human rights framework. This human rights framework also constitutes the legal basis of the rights of migrants and minorities, who do not fall within the definition of the term “refugee” under the 1951 Convention relating to the Status of Refugees, but who are still entitled to enjoy fundamental human rights.<sup>4</sup>

The research time-period of this study, while temporally limiting itself in the broadest sense to developments in the creation, development, and operationalisation of regional refugee institutions since the fall of the Berlin wall and the disintegration of the Soviet Union in 1991, focuses principally on developments over the course of the CIS Conference process and EU enlargement between 1996 and 2005.

The methodology applied was to draw primarily on materials gathered on the basis of analytical, literature and empirical research, including interviews with actors working in the field. Research materials used include field-data, reviews of practices and procedures, laws and policies as well as literature relevant to this subject. As academic research in this field is only slowly growing, a fair amount of sources are drawn from organisations dealing with refugees, human rights, migration and minorities at the international, regional and national level. Selected programs and approaches of international and regional partners are reviewed.

The geographical area of this study of EURASIA covers 22 countries (namely: Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Hungary, Romania, Poland, Slovak Republic and Slovenia, generally known as Central Europe<sup>5</sup> and Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia and Ukraine, known as Eastern Europe<sup>6</sup>; and Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan, known as Central Asia<sup>7</sup> (also known as the countries in the former Soviet Union, or the Commonwealth of Independent States (CIS) being Eastern Europe and Central Asia). This area has seen conflicts at different times and to varying degrees, often of an ethnic nature stemming from ignorance, willful violence, and many types of human rights violations or even neglect within or outside a given environment. Most ethnic conflicts also have underlying historical causes or are a function of undeveloped new social relations. Transitional periods are fertile fields for spontaneous combustion. Peoples struggling for an ethnic identity denied to them for so many years quickly become political groups demanding territory or the social and linguistic concession they believe will enhance their security for all time. The emergence of cultural and political ethnic nationalism on the part of neglected minorities and old and newly enfranchised

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<sup>4</sup> For the purpose of this paper, human rights institutions are those which are governed by and serve the implementation of international and national human rights norm, refugee institutions are those established for the implementation of international refugee law as prescribed in the UNHCR’s Statute in GA Resolution 428 of 1950 and/or the 1951 Geneva Convention relating to the status of refugees and its 1967 Protocol. Migration institutions are those established to identify, register and handle migratory movements.

<sup>5</sup> Central Europe is understood in this paper to cover the following ten countries: Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Hungary, Romania, Poland, Slovak Republic and Slovenia.

<sup>6</sup> Eastern Europe: Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia and Ukraine.

<sup>7</sup> Central Asia: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

majorities, is almost guaranteed by the absence of a usable past and a viable present, combined with widespread xenophobia and shaky or still developing state functions.

Considering that by 1991 most of the countries in Eurasia<sup>8</sup> were refugee-producing countries, the research showed that much has been achieved in refugee policy in this region through the more than ten-year multilateral effort of the CIS Conference Process in Eastern Europe and Central Asia and the EU Enlargement in Central Europe, however to very varying degrees. It also showed that institutions and implementation matter.

### *Eastern Europe and Central Asia and CIS Conference*

In 1991, when the Soviet Union broke up, the total number of people estimated living outside their 'home' republics or autonomous regions was somewhere between 54 and 65 million, or one-fifth of the total population. Many of these people were faced with a very uncertain future. Faced with the huge task of protecting and assisting millions of refugees, internally displaced persons, formerly deported people, stateless persons, involuntary resettlers and ecological and irregular migrants, the fledgling post-Soviet states turned to the international community for advice and help.

In 1996, the Geneva Regional Conference on Refugees, Displaced Persons, Migration and Asylum Issues in the CIS (also known as the CIS Conference) was set up by UNHCR, the International Organization for Migration (IOM) and the Organization for Security and Co-operation in Europe (OSCE) to address the unique and highly complex mix of problems facing refugees and other displaced persons in the CIS.

After a decade of work, several regional and sub-regional meetings, the global assessment in 2000<sup>9</sup> and more work through 2005, these states are now capable of managing displacement and migration problems. They also have to face new challenges after September 11, 2001 in the form of heightened concerns for security, terrorism and border management. It was clear that despite progress made, significant gaps still remain, however, especially as regards implementation of international legal protection standards, and that asylum and protection procedures are in still fragile or absent, as the 2005 UNHCR identification of gaps in refugee protection<sup>10</sup> illustrate. Gaps in the legislative and administrative frameworks, humanitarian status arrangements, documentation for refugees and refugee children and in integration of recognized refugees with public awareness programmes initiated to reduce xenophobia, discrimination and intolerance, are among the most important ones.

The final conference produced agreement that an updated comprehensive regional approach to the challenges, both old and new, of displacement, migration and

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<sup>8</sup> Eurasia being understood in the context of this paper, as the countries of Eastern Europe, Central Asia (Former Soviet Union countries also known as countries of the Commonwealth of Independent States or "CIS").

<sup>9</sup> A joint document of UNHCR and IOM (International Organization for Migration) in cooperation with OSCE/ODIHR on the Regional conference to address the problems of refugees, displaced persons, other forms of involuntary displacement and returnees in the countries of the Commonwealth of Independent States and relevant neighbouring states, Assessment Report of the Conference Process (1996-2000) Geneva, 2000. <http://www.unhcr.org/cgi-bin/texis/vtx/research/opedoc.pdf?Tbl=RESEARCH&id=3b0a29c75>, 23 March 2006.

<sup>10</sup> Based on the paper on "Identifying Gaps in Protection Capacity CIS Countries, Bureau for Europe, CIS Conference Process", September 2005.

protection is needed-based on a tradition of inter-governmental cooperation that has been established. Most of these countries have been brought into the mainstream of international norms and practices relating to refugees, migration and displacement, which has benefited millions of people, through exemplary CIS Conference process. As the CIS geopolitical area is not a monolithic region, the way forward determined at the end of the CIS Conference in October 2005 was to work more closely with neighbouring countries and with several new initiatives and interlocutors on the scene, including them in a broader flexible framework for Euro-Asian cooperation on displacement, asylum and migration.

### *Central Europe and EU enlargement*

In 1991, after the fall of the Wall in Berlin, most Central European states had to react to external factors beyond their control as a result of events at end of the Cold War. None of them had adhered to any of the international refugee instruments before the transition. None had refugee capacity and institutions. As new EU Member States they have been building their refugee capacities and institutions at differing speeds and eventually have become part of the evolving European asylum system according to the EU *acquis* on asylum. At the same time, these countries have been considered “buffer zones” against asylum-seekers, refugees and stranded would-be immigrants seeking to reach Western Europe. Other restrictive practices applied by these countries, include short-time limits to apply for asylum, the extensive use of accelerated and admissibility procedures and excessive resort to detention of asylum-seekers. Moreover, countries in this region are increasingly following the example of Western European countries in adopting measures aimed at better controlling irregular migration, including visa requirements; carrier sanctions; enhanced surveillance of borders and stiff penalties for smuggling; trafficking and illegal entry and stay; and bilateral readmission agreements, especially with Central and Eastern European countries.

In 2004, EU membership became reality for the three Baltic countries, the Czech Republic, Hungary, Poland, the Slovak Republic and Slovenia. Considering that Western European countries had about fifty years to develop their refugee policy, the progress made is significant, especially in such a short period of time, largely due to EU accession as the main motor in developing asylum and refugee systems in Central Europe. As in various other legislative areas, the *acquis* of the EU had to be incorporated into relevant domestic legislation, and the establishment of fair and efficient asylum procedures is one of the conditions upon which accession is predicated. Strict control of future external borders of the EU has been possible due to the emphasis placed by the Member States on these issues.

Nonetheless, the challenge continues to be access to the territory and refugee procedure, adequate reception facilities, and an inadequate use of the third safe country and the safe country of origin notion, which may lead to rejection of persons in need of international protection. Nonetheless, technical and financial assistance of the EU as an institution and of EU Member States provided directly on a bilateral basis in these countries have made a big difference and were provided in a partnership with UNHCR in the Central European countries. Certain aspects of the refugee policy in this region continue to be of concern, such as admissibility or accelerated procedures for so-called manifestly unfounded asylum seekers. These persons are in danger, without the

required safeguards applied in those procedures, nor the additional “safety nets” as they still exist in Western European countries -such as a well-functioning judiciary, Ombudsman institution, NGO monitoring of the asylum process etc.. Other areas of concern include the channelling of asylum applications into admissibility procedures on formal grounds (for example, lack of documentation, or non-respect for time limits for filing asylum applications or the flight route), which bar access to an examination of the substance of the claim and often lead to unduly long and unjustified detention of asylum-seekers. This tendency is partly due to pressures that Western European target countries exert on countries to the East to exercise more stringent controls of their Eastern and Western borders.

### *Standard setting*

The decade of the 1990s was marked by standard-setting at the national levels in terms of their national laws concerning citizenship, their succession and ratification of international conventions in the fields of humanitarian law, human rights law and refugee and refugee-related matters. All countries in Central Europe have now become State Parties to the 1951 Geneva Convention, have established institutions to deal with refugees have adopted refugee legislation and are implementing refugee status determination procedures. All the 12 Eastern European and Central Asian countries, with the exception of Uzbekistan, have ratified the 1951 Convention and are in the process of establishing national refugee regimes, with some administrative and judicial or para-judicial refugee procedures in place. <sup>11</sup>

Implementation. The September 2005 work on “Identifying Gaps in Protection Capacity, CIS Countries, by the Bureau for Europe during the CIS Conference Process” concretely identified remaining gaps in refugee policy at the conclusion of the CIS Conference process, in particular regarding:

Legislative and administrative frameworks: States agreed to adopt specific legislative and administrative measures based on high standards of international protection and in particular to provide for fair and effective asylum system, access to the territory, adequate reception facilities, refugee status determination process and integration possibilities for those found to be in need of international protection;

Humanitarian status: States recognized that where appropriate humanitarian status should be afforded to individuals and groups who have been externally displaced by conflict and who do not meet the criteria for recognition as refugees under the 1951 Convention relating to the Status of Refugees, but who are nevertheless in need of international protection, in order to legalize their refuge in a given host country on humanitarian grounds and provide effective protection;

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<sup>11</sup> The harmonization of asylum policies being still further developed in this region to be more in line with international standards, as outlined in the communication from the field of 5 June 2000: “Harmonization process of RSD (Refugee Status Determination) procedures in Central Asia” by Isabelle Mihoubi, UNHCR Senior Regional Legal Advisor in Central Asia at that time.

Documentation: States recognized the importance of providing refugees- including children- with adequate documentation and agreed to cooperate among themselves and with international agencies with regard to registration and documentation of refugees and asylum seekers;

Integration: States recognized that real opportunities for the local integration of refugees should be pursued by national governments and supported by UNHCR and other relevant development agencies. Moreover, to create a favorable climate for the integration of recognized refugees, a more positive and respectful attitude towards refugees should be fostered and public awareness programs initiated to reduce xenophobia, discrimination and intolerance<sup>12</sup>.

### *Human rights framework*

Considering that refugee protection is situated within the context of the human rights framework, the Executive Committee of the High Commissioner's Program has drawn the attention in its General Conclusion on International Protection<sup>13</sup> to the fact that a comprehensive approach to refugee protection comprises, *inter alia*, respect for all human rights. It also underlined the obligation of States to treat asylum seekers and refugees in accordance with applicable human rights and refugee law standards, as set out in relevant international instruments.<sup>14</sup>

The UN Commission on Human Rights, in its Resolution 1998/55, reaffirmed the importance of developing effective, independent and pluralistic national institutions for the promotion and protection of human rights. The Chairman of the 52<sup>nd</sup> session of the Commission on Human Rights, decided that national institutions could speak from the seat of their Government's delegation, but in their own right and with separate speaking time, during the consideration of the item of the agenda at the 53<sup>rd</sup> Session of the Commission. At the 54<sup>th</sup> Session of the Commission, the Chairman decided that national institutions addressing the Commission could do so from a special section from the floor, set aside specifically for this purpose, under the title "National Institutions", with 18 national institutions from all regions, including in Eurasia.<sup>15</sup>

### *Case study on housing and property restitution in Tajikistan*

This case study illustrated that in areas of return, the presence of and monitoring by UNHCR, together with OSCE and other UN agencies as well as the international and national NGOs, have played an essential role in the reintegration of returning refugees and internally displaced persons, and contributed positively to stabilization, peace and

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<sup>12</sup> Based on "Identifying Gaps in Protection Capacity CIS Countries, Bureau for Europe, CIS Conference Process", September 2005.

<sup>13</sup> See A/AC.96/895, para. 18.

<sup>14</sup> Note on International Protection, EXCOM, Forty-ninth session, A/AC. 96/898, 3 July 1998.

<sup>15</sup> Effective Functioning of Human Rights Mechanisms: National Institutions for the Promotion and protection of Human Rights, in Report of the Secretary General submitted in accordance with Commission on Human Rights resolution 1998/55, E/CN.4/1999/95, of 3 February 1999, p. 1 and 12.

reconciliation in Tajikistan.<sup>16</sup> The output justified the input in that the rebuilding of homes driven by a protection and prevention need, at the end of the day helped prevent further violence, contributed to the protection of returning refugees by stabilising the entire community.

*Fundraising.* During the first five years of the CIS Conference process from 1995-2000, voluntary contributions through UNHCR for the 12 CIS countries amounted to about US\$ 95 million for developing and implementing refugee regimes and operations and for assisting organisations of civil society through the Fund for refugee related non-governmental organizations (NGOs).<sup>17</sup> Despite these contributions, the funding situation during the CIS Conference progress experienced shortfalls. Overall however, the contribution of NGOs and their development throughout Eurasia, is recognized as having been one of the most successful result of the CIS Conference Process.

## **2. EASTERN EUROPE AND CENTRAL ASIA WITH FOCUS ON TAJIKISTAN**

Over the past centuries, more than 200 major different ethnic groups have been living within the cultural mosaic of the Russian Empire and the Soviet Federal system that emerged after the 1917 revolution in Russia. Artificial borders drawn to divide national groups in order to decrease possibilities of threats to the central power in Moscow still have their consequences today.

In 1995, the population of the CIS States was around 5% of the world population, that is, 285 million people, of whom about half of this total in the Russian Federation. The population of the European Union was then nearly 375 million people, including the most populated country Germany with about 82 million.<sup>18</sup> Soviet legacies make the transition toward democracy and economic reform difficult.<sup>19</sup> Stalin's policies of relocation and colonization continue to produce repercussions. Balts, Poles, Chechens, Germans, Crimean Tartars, Kazaks, Ukrainians<sup>20</sup> to name only a few, were forcibly relocated within and outside of Central Asia and Siberia. Concurrently, Stalin and succeeding Soviet leaders encouraged Russians to settle in the non-Russian Republics of the former Soviet Union and to some extent in Central Europe. This resulted in the

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<sup>16</sup> Joint evaluation SDC- UNHCR Tajikistan, Voluntary Repatriation and Local Integration of Tajik Refugees and Local Integration, Mission Report, 14-28 March 1999, (ed.) by Reto Zehnder, p. 7, 12.

<sup>17</sup> Budget of 1997 (Trust Fund, not necessarily all for the CIS) was US\$ 32,691,734 with US\$ 19,925,734 disbursed (rest carried over), budget of 1988 was US\$ 30,435,190 of which US\$ 25,022,337 disbursed (balance carried over); budget of 1999 is 30,690,072 of which as of 25.8.1999 US\$ 10,640,238 disbursed, US\$ 17,859,383 obligated, with a total income of only US\$ 18,106.481 and a shortfall of approx. US\$ 12,583,591 on 25.8.99. Source: FMIS/HQ Report XEP, Project Listing, Run 25/08/99 kindly provided by Mr. Dennis Blair, then the Resource Manager, Regional Bureau Europe, UNHCR Headquarters on 25 August 1999.

<sup>18</sup> CIS, Kazakhstan and the EC, Fact and Figures, Interregional Inter-sectorial Association 'INFECOM – Asia', Almaty, 1997, page 20.

<sup>19</sup> "Political Transitions, Democracy and the Former Soviet Union by Michael Faul; Still Soviet, why Dictorship Persists in Belarus by Vitali Silitski; Bucking the Trend, Democracy and Economic Reform by Timothy Frye, in Harvard International Review, Vol. XXVIII, No.1, Spring 2006 pp. 38-64.

<sup>20</sup> Bohdan Nahajlo, The Ukrainian Resurgence, Hurst & Company, London, 1999 pp 548.

dilution of the ethnic homogeneity of each republic and the weakening of the titular nationality, and left non-Russian minorities in a somewhat inferior status.<sup>21</sup>

The process of dissolution and reconstitution was more peaceful and consensual, than in other parts of the world, such as in Yugoslavia. It was, nevertheless marked by serious, and often deadly cases of conflict, many of them over demands for sovereignty or independence by ethno-political groups within the new states.<sup>22</sup> This disintegration by 1991 created ethnic tensions and left the region with a total ethnic minority population of more than 60 million people. This included an estimated 25 million Russians, 6.7 million Ukrainians, 2.5 million Uzbeks and about a million each of Armenians and others, who all found themselves suddenly living 'abroad'. For example, out one- third of the population of Latvia was Russian (32%). One of the priorities in handling this situation was to develop an entire new legal system. The international community expected to stem a feared massive outflow of displaced persons from this region by granting some degree of freedom of movement.<sup>23</sup>

On more than one occasion, the General Assembly of the United Nations has stressed that flows of refugees unleashed by one country can affect the entire international community. It is in this context that the new UN High Commissioner for Refugees, Sagata Ogata, approved the opening of a regional office in Moscow in September 1991. When the UNHCR held its first training activity on emergency preparedness, building on the experience gained in Central Europe, it sought to pursue a policy to play a preventive and early warning role. Drawing on lessons from experience in ethnic conflict situations such Yugoslavia, a 'primarily protection/preventive role with pragmatic measures to reduce pressures on affected populations to move out, was adopted'<sup>24</sup>. Therefore, persons having lost the protection of their home-state should be given a place to stay and the basics for survival and protection. To assist national governments in performing these tasks, the UN had created the Office of the UNHCR in 1950<sup>25</sup> which was called upon to assist in this region.<sup>26</sup>

The 1992 civil war in Tajikistan produced some 500 000 internally and externally displaced persons, some of which fled into neighboring countries (Afghanistan and former Soviet republics). This conflict caused great regional and international concern.

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<sup>21</sup> "Nationality and Statelessness Issues in the Newly Independent States", by Michel Iogna Prat, in: The Problem of Refugees in the Light of Contemporary International Law Issues, (ed) Vera Gowlland-Debbas, Martinus Nijhoff Publishers, The Hague, 1996, p. 25.

<sup>22</sup> Lapidus, Gail W.; "Contested Sovereignty, The Tragedy of Chechnya", in International Security, Summer 1998, Vol. 23, No. 1, pp. 5 and see also "Ethnonationalism and Political stability: The Soviet Case," World Politics, Vol. 36, No. 4 (July 1984), pp.555-580.

<sup>23</sup> Transition to democracy is liable to be difficult when efforts to dismantle the old state interact with the mobilization of large internal ethnic "diasporas" and the emergence of ultranationalism in internal ethnic 'homelands' to produce large scale violence and thus movement of people. Karen Dawisha and Bruce Parrott, "Democratization and political participation: research concepts and methodologies" in Conflict, cleavage, and change in Central Asia and The Caucasus, ed by Dawisha, Karen and Parrott, Bruce; Cambridge University Press, 1997.

<sup>24</sup> State of the World's Refugees, UNHCR, 1999-2000, p. 190.

<sup>25</sup> By General Assembly Resolution 428 in December 1950.

<sup>26</sup> "State Responsibility and the Country of Origin", in: The Problem of Refugees in the Light of Contemporary International Law Issues, (ed) Vera Gowlland-Debbas, Martinus Nijhoff Publishers, The Hague, 1996, p. 25.

It also led the High Commissioner for Refugees to take a proactive stance in promoting early repatriation.<sup>27</sup> In addition, roughly 300.000 Russians left Tajikistan due to the conflict, creating instability and a brain-drain in the areas of their residence and leaving those remaining in limbo. In addition, Russia's autonomous republics were demanding greater economic and political power from the central government. The arsenal of sophisticated weapons including some of mass destruction, and the trade in drugs, weapons and women showed the multiple flash points that have contributed to a relatively unstable and unpredictable situation in the former Soviet Union. Innovative approaches to restitution of property and housing for returning refugees and displaced persons are analyzed in greater detail in the case study below, which illustrates ways to overcome ethnic conflicts on the one hand and to find solutions for returning displaced persons on the other.

The conflict between Armenia and Azerbaijan over the enclave of Nagorno-Karabakh also has its roots in artificial borders drawn during the Stalin period. This resulted in the Armenian population being surrounded by Azeris who have different cultural, religious and other practices. The war has seen forced movements of Armenians from Azerbaijan and of Azeris from Armenia. As documented elsewhere, the 1993/94 conflict in the Caucasus resulted in more than 900 000 refugees and internally displaced persons (IDP's) in Azerbaijan and Armenia had 300 000 refugees and 75 000 IDPs who had fled Azerbaijan, fighting in Nagorno-Karabakh and on the border.<sup>28</sup>

Despite efforts, availability and delivery of humanitarian aid could not nearly cover all needs in this region. Many refugees and IDPs still rely on meager resources for daily subsistence from external and internal sources. Medical supplies have been a scarce commodity leaving displaced persons often in desperate situations. In light of the difficulties encountered, Azerbaijan adopted a markedly different approach to that of earlier influxes when faced by more recent arrival of displaced persons. Roadblocks denied IDPs free movement, forcing them to stay near to the border in order to prevent their dispersal throughout the country. The principal rationale for this type of action provided by the authorities was that the return of refugees to their places of origin, in due course, is to be considered as the only possible solution to the problem.<sup>29</sup>

Although no armed conflict arose in the Baltic States in 1991, their relationship with the centrally-controlled former Soviet system has started to allow the development of independent policies, also covering issues relating to migration and ethnic communities. The 1989 census in Lithuania, for example, showed that 20% of Lithuanian's 3.7 million people are not of Lithuanian origin, but are in fact mostly from other republics of the former Soviet Union. In particular they originated from Russia, the Ukraine and Belarus. About 70 % of these suddenly displaced persons are reported to have acquired Lithuanian nationality since that time. Many of the others were often

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<sup>27</sup> This was one of those situations when refugee outflows and prolonged stay in asylum countries risk spreading conflict to neighbouring states. Policies aimed at early repatriation can be considered as serving prevention. This was an important rationale in the case of repatriation to Tajikistan in 1993. See Adam Roberts, "More Refugees, less Asylum: A Regime in Transformation", in *Journal of Refugee Studies*, Volume 11, Number 4, 1998, p.390.

<sup>28</sup> The Activities of the UN High Commissioner for Refugees in the Newly Independent States, July 1994, p. 8.

<sup>29</sup> Tom Argent et al., Europe - Country reports, in *World Refugees Survey 1994*, by the U.S. Committee for Refugees, Washington, p. 115-119.

*de facto* stateless persons some of whom have applied for and obtained citizenship from their countries of origin.<sup>30</sup>

Even though the Baltic States are not part of the Commonwealth of Independent States (CIS), in 1994 they signed an agreement with the Russian Federation on matters concerning refugees termed the "Agreement on Aid to Refugees and Forced Migrants". Unfortunately, this agreement neither refers to refugees from any non-former Soviet countries, nor does it propose a unified approach to questions on how to legally treat a citizen of a non-CIS country, who crosses the border into the Russian Federation or the territory of any party to the Agreement whilst fleeing persecution or violence. This instrument also remains silent on the subject of status determination for asylum-seekers from non-CIS countries and furthermore says nothing about accommodation during the procedure. Under this Agreement, the Consultative Council for Labor, Migration and Social Defense was set up in an attempt to 'offer practical assistance in the realization' of the various points of the agreement.<sup>31</sup>

The refugee legislation in the Russian Federation dates to 1993 and, despite several subsequent amendments and the fact that the 1951 Geneva Convention served as a guide during the legal drafting of this text, has evident shortcomings. In theory, these laws intended to provide two mutually exclusive definitions for the two (not necessarily exclusive) statuses which Russia has the possibility of granting to asylum-seekers. In practice, however, the terms of 'refugees' and 'forced migrants' have been applied in an inconsistent manner. As recognized under this legislation, forced migrants, in an overwhelming majority originate from states within the CIS, only a few of them having been asylum seekers from 'far abroad' places such as Afghanistan.<sup>32</sup> The "Agreement on Aid to Refugees and Forced Migrants" between Russia and other CIS countries (that is, Armenia, Azerbaijan, Belarus, Kazakhstan, Tajikistan, Turkmenistan, and Uzbekistan with the exceptions of Georgia, Moldavia, and Ukraine) was ratified as Russian Federation law in November 1994. In 1995 Russia began conducting negotiations with Georgia and the Ukraine with the goal of attaining their participation in the Agreement, which foresees the maintaining of the citizenship of the receiving country as the differentiating factor between 'refugees' and 'forced migrants'.<sup>33</sup>

The process of transition in these countries has been characterized by the legacy of the Soviet Union, which serves as a daily reminder and often as a stumbling block to new

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<sup>30</sup> Lidija Zabulioniene, (Migration Service, Ministry of Social Affairs and Labour, Republic of Lithuania), "Special features of Lithuania's migration policy", in: International Symposium on Protection of Refugees in Central and Eastern Europe. Report and Proceedings. European Series, UNHCR Regional Bureau for Europe, Geneva, March 1995, p. 61.

<sup>31</sup> Michael Haney, "Refugees, Forced Migrants, and Asylum Seekers in the Russian Federation", in World Refugees Survey 1995, by the U.S. Committee for Refugees, Washington, p. 158.

<sup>32</sup> From 1993-1999, the total number of registered forced migrants in Russia was 880,394 originating from all the other countries with the Former Soviet Union and the Baltic countries. Source: Refugee and Others of Concern to UNHCR in Countries of the Commonwealth of Independent States (CIS) in 1999, Registration and Statistics Unit in collaboration with the Regional Bureau for Europe, UNHCR, 7 June 2000, p. 4.

<sup>33</sup> The Agreement defines "refugees" as non-citizens of the receiving country who have been forced to leave their place of permanent residence on the territory of another country that is party to the Agreement - Rapport du Haut Commissaire des Nations Unies pour les réfugiés. E/1995/52, 25 avril 1995 (à l'Assemblée général par l'entremise du Conseil économique et social, établi conformément à l'article II du Statut du Haut Commissaire des Nations Unies pour les réfugiés, (adopté par l'Assemblée générale en application de la résolution 428 (V) du 14 décembre 1950), p. 9.

developments, especially in fields which hitherto practically did not exist, such as in the refugee field. In environments fraught with conflicts, such as in this region then, NGOs have been better suited to perform certain functions needed for survival and development, prevention and protection. NGOs devoted to conflict-prevention or conflict-resolution have been capable of opening a dialogue between certain perpetrators and victims of endemic hatreds. They often provided public witness to grievances, and introduced. They have been working to educate local populations about human and civil rights and teach them skill sets such as how to spot signs of trouble and what to do when "hate comes to town". They also trained community leaders, designed projects on which mixed populations in local communities could work together and mounted creative media campaigns to help spread the word. But no NGO, be it international, national or local, can alone prevent an ethnic conflict or bring about its resolution in the absence of a political, economic, and civil environment that honors at least some of the major principles and practices of the rule of law and the rudiments of public discourse.

Millions of dollars and much effort have been invested, sub-optimally, because foreign governments, major funders, and overzealous activists have neglected to understand that transitions do not emerge with fully developed civil societies in tow. The rhetoric of transitions no more creates democratic practices than does the scheduling of elections. These are hard but essential truths. The contours of the relative or fragile stability which chemists call meta- stability are clear. Mankind today is condemned and accustomed to living in a world in which everything seems stable but is not and in which awesome energies sleep a light sleep. NGOs dealing with ethnic-based conflicts, are reassuring only to the extent that another "spontaneous combustion" does not consume them nor great power politics fan a casual spark into a bonfire. In any example we can propose, previous regimes inevitably have a much stronger grip on hearts and minds, habits and practices, vision and experience during transitions than most people were prepared to allow beforehand.

A number of characteristics carry over from previous regimes into transitional periods. The form of the authoritarian one-party regime, personal or military dictatorship, subtly frames expectations about post-transition politics. The existence and extent of systemic and systematic use of violence by the state to enforce its rule and the degree to which a high level of violence was also internalized (and hence legitimized) by both the opposition and the populace has been appearing in certain contexts again in new guises. The deliberate confusion of dissidence with criminality by the old regime, the suppression of ethnic minorities, and the identification of criminality with a minority group, such as the Roma or the Chechens, are also reflected in the public response toward democratic opposition and minority claims to the new regime.

Civil society, through NGOs, is an indispensable factor in facing the challenge of building effective human rights and refugee institutions anywhere, including this part of the world. Whereas women and men enjoyed roughly equal access to education before transition, women's issues have since experienced the disintegration of support systems for child care and educational opportunities. Strains on resources and people alike have resulted from economic transformation separate from central government planning as well as from a painful privatization process. The predictability of the previous regime is gone, leaving whole groups and people in limbo, as much political and economic, and social and cultural. While in the past few years the impact of worldwide globalization

trends through networking and communication is beginning to be felt, this is largely limited to capitals and larger agglomerations. This causes huge disparities between generations as well as among economic and social groups. There are commonalities and differences in the challenges of developing refugee institutions in Eurasia. As diverse as they may be, one common theme might be summarized as follows: ‘As long as the old is not dead, the new cannot be born’, in varying degrees and depending on the differing stages of developments in these regions<sup>34</sup>. It is in this environment, that the first steps for the CIS Conference process were taken in 1993 when the UN General Assembly took an interest in this region, which is discussed in the next chapter.

### *2.1. CIS Conference process and related activities, 1996*

The challenges posed by the disintegration of the Soviet Union after 1990, as analyzed above, were daunting. Since 1990 border traffic grew rapidly in the countries of Central and Eastern Europe. For example, in Poland, the largest country in the region of Central Europe bordering with Eastern Europe, border traffic increased from 84 million in 1990 to 273 million persons in 1997. As these countries gradually introduced entry control system to eventually be comparable with those existing in Western Europe, it was found that in 1996-97 alone nearly 400,000 persons were refused entry to Central European countries.<sup>35</sup> But the opportunities for laying solid new foundations and helping to integrate the countries concerned into the mainstream of international norms and practices related to refugees and displaced populations were also unique.

Thus, the UNHCR and its partners IOM, OSCE and subsequently the Council of Europe, responded by developing a comprehensive and forward-looking regional approach containing remedial, preventive and normative elements. The main aim was to help the states concerned to build national capacities to address complex issues of displacement and protection. The intense preparatory work, involving bilateral and sub-regional consultations, clarifying and standardizing terminology, identifying categories of displaced populations needing protection and assistance, agreeing on the ground rules and modalities of cooperation, lasted almost two years<sup>36</sup>. Finally, the CIS Conference held in Geneva 30-31 May 1996<sup>37</sup> with the three organizing entities on the

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<sup>34</sup> For a more detailed study on these challenges, see article on “Displacement in the Former Soviet Union”, *State of the World’s Refugees* of 2000, published by UNHCR Geneva, which provides relevant insights, pp. 185-296.

<sup>35</sup> These statistics are based on the Migration in Central and Eastern Europe 1999 Review, by the International Organization for Migration (IOM) and the International Centre for Migration Policy Development (ICMPD), Geneva, 1999, p. 37 and on the ICMPD 1997 Questionnaire.

<sup>36</sup> The latter part of the preparatory process leading up to the Conference. It contains documents from the second round of sub-regional meetings, which were held to devise solutions to the problems identified in a first series of meetings, and a report from the second Meeting of Experts that followed. See: “The CIS Conference on Refugees and Migrants”, European Series, UNHCR Regional Bureau for Europe, Vol. 2, No.2, May 1996.

<sup>37</sup> In implementation of United Nations General Assembly Resolutions 48/113 of 20 December 1993, 49/173 of 23 December 1994 and A/RES/50/151 of 9 February 1996, UNHCR convened the Regional Conference to Address the Problems of Refugees, Displaced Persons (DPs), Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States (CIS) and Relevant Neighbouring States in May 1996 under the joint auspices of UNHCR, the International Organisation for Migration (IOM) and the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Co-operation in Europe (OSCE). Participants at the Conference included the CIS countries themselves; neighbouring and other countries concerned with the impact of displacement problems on regional and international stability; and international organisations

agenda,<sup>38</sup> produced a coherent and comprehensive strategy embodied in a Programme of Action in line with the 1951 Geneva Convention<sup>39</sup> and equipped with new criteria for treatment of persons tailored to this region<sup>40</sup>. It enabled the UNHCR and its partners to identify more effectively the challenges and needs in the area, and on the basis of the cooperation achieved with the respective Governments, to refine and step up their capacity building programmes, as well as to energize the NGO sector. The mechanisms of cooperation during the CIS Conference process included also the Executive Committee of the UN High Commissioners Program, where CIS Conference matters were discussed also within its Standing Committee Sessions<sup>41</sup>. The follow-up process was initially expected to last for five years. Despite the significant progress which had been made during this first phase to achieve its objectives, more work remained to be done to implement the Programme of Action. In July 2000, the fifth meeting of the Steering Group of the CIS Conference Process decided to extend the follow-up by a further five years and a Thematic Work Plan was developed for this purpose.

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and nongovernmental organisations (NGOs) active or interested in the region. The objectives of the process were to provide a forum for discussion such that CIS states could exchange ideas and information concerning migration challenges in the region; review the types of migration movements in the region and to establish categories of concern; and devise an integrative strategy for the region by establishing a Plan of Action (POA) in response to these above mentioned challenges in the areas of asylum, migration and forced displacement that had been resulting from the dissolution of the Soviet Union.

<sup>38</sup> Mr. Sergio Vieira de Mello, Assistant High Commissioner (UNHCR), Rolf Jenny, Coordinator of Policy and Operations, IOM, Ambassador Audrey Glover, OSCE-OHIHR on 30 May 1996 and Sadako Ogata, UN High Commissioner for Refugees, James Purcell, Director General, IOM, Wilhelm Hoyneck, Secretary-General, OSCE, see Information Note for the Press on CIS CONFERENCE on Refugees and Migrants (Geneva, 30-31 May 1996).

<sup>39</sup> Convention refugees are persons escaping from persecution for the reasons spelled out under the 1951 Geneva Convention relating to the Status of Refugees. If persons flee for a variety of other reasons, including armed conflict, ecological disaster or/and political motivated poverty, they are usually given humanitarian status, in some countries also called 'complimentary forms of protection. As established in article 1 of the 1951 Convention, a person is a refugee if:

"...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, or membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such a fear, is unwilling to avail himself of the protection of that country." As is well known, refugees leave their country and seek admission to another country not from choice or reasons of personal convenience, but to save life or liberty. Throughout the 20th century and especially since the end of the Second World War, refugees have been considered as persons who cannot or are unwilling to avail themselves to the protection of their national government. Through UNHCR, nation states have been providing refugees with international protection, in order to: "first, safeguard the lives and liberty of people whose basic rights have been threatened in their country of origin; and second, to safeguard their own interest by ensuring that population-movements are managed in a predictable manner and in accordance with agreed principles." *The State of the World's Refugees 1997-1998. A Humanitarian Agenda*, UNHCR, Oxford University Press, 1997, pp. 52-53.

<sup>40</sup> The new category is that of 'persons in refugee like situations'. The rights of this category of people converge with those of refugees, however there may arise situations when the definition of their rights is unclear, as there is no legally binding international or regional instrument regulating their status as such. This uncertain situation requires a multi-dimensional approach, including human rights, refugee and migration considerations in order to allow for their appropriate treatment by making their status-definition clear along with their rights. Pirkko Kourula, *Boadening the Edges. Refugee Definition and International Protection Revisited*, Martinus Nijhoff Publishers, The Hague, 1997, p. 169.

<sup>41</sup> CIS CONF Meeting in Almaty, Brief on UNHCR in Kazakhstan, 8 April 1999, by the author, then Head of the UNHCR Office in Kazakhstan, which summarizes also points of Kazakhstan's participation, for example, in the Standing Committee of EXCOM on 9-11 February 1999, on file with the author.

In its second stage, the follow-up process framework was flexible enough to provide opportunities not only for regular consultations and reviews among all the parties involved, but also for sub-regional initiatives, such as the Soderkoping Process<sup>42</sup> involving the countries on both sides of the European Union's new Eastern neighbours. There were also thematically-focused activities, e.g. consideration of issues connected with asylum system development, the *propiska* system (registration system), citizenship, the prevention of statelessness, and the role of NGOs. At last year's High-Level Review Meeting in Minsk it was decided to conclude the CIS Conference process in 2005 and to continue building on its achievements to move towards a flexible new framework of cooperation adapted to changing conditions.

The key questions were how to ensure cooperation and coordination in addressing the gaps and challenges that lie ahead? Undoubtedly, the countries concerned have made impressive headway in establishing legislative and administrative frameworks addressing issues of involuntary migration and protection. Nevertheless, the latest UNHCR gaps analysis highlights the continuing central problem of ensuring the effective and efficient implementation and development of asylum systems. In some cases, new laws are incompatible with existing ones. Access to asylum sometimes is not even possible or restricted. There remain problems with the admission, reception and registration of asylum-seekers and in the processing of their applications. Efforts towards capacity building are still often frustrated by administrative reforms and a high turnover of staff.

Some countries do not provide subsidiary forms of protection to those who may not qualify as refugees but who are nevertheless in need of international protection. Not all of the CIS countries have ratified the 1954 and 1961 Conventions concerning statelessness and, while substantial progress has been achieved, certain outstanding problems remain. Internal displaced persons (IDPs), often the long-standing and sometimes overlooked victims of unresolved conflicts, also need proper attention. The most vulnerable of them require assistance, but all of them are also entitled to the protection of their rights, as human beings and as citizens. National poverty reduction and economic growth programmes agreed with the international community are increasingly important here, as are the UN's Guiding Principles on Internal Displacement. Accurate, up-to-date information on the numbers of IDPs and their needs is essential for the work ahead.

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<sup>42</sup> When in 2004 EU enlargement came closer, the European Union stepped up its efforts to establish a critical mass of programmes, agencies and resources to assist the Ukrainian government (among others) to relieve the new EU border of excessive migration pressure. The control of migration became a centrepiece of the newly declared EU New Neighbourhood programme, which codified EU policy priorities towards states excluded from EU accession in the foreseeable future. A "Soderkoping Process" was launched, an inter-agency initiative of the United Nations High Commissioner for Refugees, the European Commission and the Swedish Migration Board to foster cross border co-operation on migration and asylum between EU member states on the one side and Ukraine, Belarus and Moldova on the other. This Process finances regular meetings of senior officials of all participating states. Furthermore, the EU agreed an Action Plan on Justice and Home Affairs with the Ukrainian government, that drew up priority targets to be monitored by way of a "Scoreboard" and that included the elusive readmission agreement and more effective migration border management. In February 2004 the IOM announced further funding had been secured to combat "human trafficking in Ukraine" within the framework of the EU's Action Plan, <http://www.eurozine.com/articles/2005-01-12-bojcun-en.html>.

In some countries, the apparent growth of xenophobia and ethnically-related violence is raising concern. Although the CIS Conference process promoted the involvement of NGOs in activities related to refugees and forcibly displaced, for various reasons, their role seems to have become more, not less, problematic in these spheres. These examples show that much more needs to be done to fully implement the objectives of the 1996 Geneva Conference. As before, clearly, the remaining work, is beyond the scope and capacity of any one organization requiring a new form of framework for facilitating cooperation.

The CIS Conference process has been the only forum which included the CIS countries from Eastern Europe and Central Asia, and UNHCR and its partners, interested neighbours, friends and observers in a multilateral “non-political” framework where a balanced approach to asylum and migration issues could be pursued. Moreover, its broad scope has covered other aspects of forced migration in the post-Soviet era, such as IDPs, statelessness and formerly deported peoples.<sup>43</sup> But there have been many developments during the last decade which have made the entire environment more politically complex and added new factors that have to be taken into account. These include changes in the international landscape and the appearance of new initiatives and actors, the threats posed to asylum by the intensification of security concerns, and the increase of migration transiting the area, and issues connected with labour migration and migrants’ rights.<sup>44</sup>

Looking back at several stages in the process we find that the efficiency of implementing refugee and post-conflict reconstruction strategies depended largely on the political will for resolving conflict, stabilization and the promotion of peace. This process started slowly. This was especially so in regions in which conflict was ongoing, such as the Caucasus and Tajikistan, and where there were a great number of obstacles to developing the refugee regime in a consolidated manner.

Regional approaches applied elsewhere for dealing with refugee situations serve as useful examples for this region, even though basic premises are of course different. Models include the two International Conferences on Assistance to Refugees in Africa (ICARA and ICARAI), Geneva, April 1981 and April 1984 respectively; the International Conference on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa (SARRED), Oslo, August 1988. The International Conference on Central American Refugees (CIREFCA), adopted in Guatemala, May 1989 and the Comprehensive Plan of Action of the International Conference on Indochinese Refugees (CPA), Geneva 1989<sup>45</sup> have been of particular relevance. They are considered

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<sup>43</sup> Soviet mass deportations of the 1940s amounted to 3,089,000 persons, including 843,000 Soviet German and 366,000 Volga Germans, see: “Displacement in the former Soviet region, in *State of the World Refugees*, 2000, p. 187.

<sup>44</sup> Drawn from the Opening Statement on Behalf of UNHCR by Ms Pirkko Kourula, Director, Regional Bureau for Europe at the Concluding Meeting of the CIS Conference Process, 10 October 2005.

<sup>45</sup> See also research published on previous regional refugee situations, namely on the “Comprehensive Plan of Action: Insights from CIREFCA and the Indochines CPA” of January 2006 by Alexander Betts, published as Working Paper 120 in *NEW ISSUES IN REFUGEE RESEARCH* by UNHCR in <http://www.unhcr.org/cgi-bin/texis/vtx/research/opensdoc.pdf?tbl=RESEARCH&id=43eb6a152>.

<sup>45</sup> See details on these five previous regional initiatives in: *Collection of Policy and Legal Texts on Refugees and Persons in Refugee Like Situations in Kazakhstan with comparative research and analyses on countries in Central Asia and the CIS*, of some 500 pages in Russian and English and in 250 pages in the Kazakh language in a joint effort with the Government of

example, of effective regional action plans during the early 1990s<sup>46</sup>. In addition, the case of Cambodia's UNTAC operation can be taken as a good example for reconstruction planning, though the country had greater external resources at its disposal than countries in the CIS on a per population and or per area basis.<sup>47</sup>

In the region of Eastern Europe and Central Asia, the re-establishment of confidence and stability, for example, through returnee reintegration programs in Tajikistan, despite some difficulties, has proved to be noteworthy. During and especially by the end of the civil war in 1995, UNHCR deployed operational mobile teams inside the country, in order to assist 60 000 returnees in the country. The International Committee of the Red Cross (ICRC) and other agencies were providing emergency assistance to some 600 000 IDPs with the additional aim, where possible, of preventing further displacement.<sup>48</sup>

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Kazakhstan and the Kazakh Red Cross, which is the result of a stocktaking of policies and laws both in Kazakhstan, Central Asia and the CIS, published by UNHCR in Kazakhstan, 1998 and in 1999, pp. 65 & 66 (English version).

<sup>46</sup> The background dates back to August 1987, when the Central American leaders signed the "Esquipulas II" accords laying down plans for a "firm and lasting peace" in the region. In September 1988, the Governments of Mexico, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua met in San Salvador and - with the support of UNHCR - agreed to call the first CIREFCA meeting in June 1989 in Guatemala City, when these governments adopted what eventually become a five-year (1989-1994) plan, the CIREFCA "Concerted Plan of Action" for uprooted people in the strife torn region with the following objectives:

1. To identify solutions to problems of uprooted ness,
2. To respect the rights of refugees to return voluntarily to their countries,
3. To help refugees play a wider role, where voluntary repatriation was not yet possible,
4. To improve the situation of displaced persons in the regions,
5. To counteract the negative consequences which uprooted populations may cause on the employment, social services, economic conditions and the environment of the receiving communities, by also ensuring to foresee programs to benefit local populations. The target of CIREFCA was more than 1.9 million persons for a wide variety of projects from general infrastructure development and national reconstruction to meeting special needs of individual communities. More than US\$420million was spent on CIREFCA projects, including nearly US\$80 million channeled through UNHCR, benefiting humanitarian issues and the political peace process. Ron Redmond, in: *Refugees*, UNHCR Publication, No. 99, 1-1995, p.16-17.

<sup>47</sup> By the end of 1994, UNHCR had invested in Cambodia over US\$ 10 million in nearly 100 projects in ten sectors of assistance in all the 21 provinces of the country largely through the network of NGO operational partners, the work was, however, difficult, ongoing due to low intensity conflict, the slow pace of demining, of land even in peaceful areas, the lack of land for the returnees, and most importantly, UNTAC, despite its integrated response mechanism for transitional needs and to the lacking strategy for rehabilitation. In addition, the building of civil society and its institutions was slow, though it is a prerequisite for effective post-conflict reconstruction. Sergio Vieira de Mello, Paper presented at the International Colloquium on Post-Conflict Reconstruction Strategies. Stadt Schlaining/Austria, 23-24 June 1995, p. 6.

<sup>48</sup> In a situation where rule of law was negligible, initially, and the returnees were viewed as being on the opposite side, the conditions for organized and safe repatriation were far from easy. Eventually the establishing of rule of law and confidence among the returnees were among the key elements which helped to return stability to the country, that is to:

1. Provide returnees with better protection with UNHCR's network for monitoring the situation of returnees extended to the smallest communities and villages,
2. Work together with the local authorities to bring together the conflicting parties at the local level by Negotiations rather than by violence;
3. Support, at the national level, the Tajik Government's adoption of international and national legislation, which contributed to the reconciliation and stabilization of the country. Already in November 1993, Tajikistan acceded to the 1951 Convention on the Status of Refugees and the 1967 Protocol. Vieira de Mello, *ibid*, pp. 9 and 10.

A number of significant efforts helped in the peaceful transition process in the former Soviet Union. Among these are the CISCONF News, a quarterly newsletter produced by UNHCR, IOM, and OSCE/ODHIR in the follow-up to the Regional Conference [...], such as Vol. 2, Issue 1, October-December 1997, on issues such as UNHCR and IOM Appeals launched, Expert Group Meeting on Freedom of Movement and Choice of Place of Residence, that took place in Kiev on 8-10 December 1997, which specifically highlighted inconsistencies and contradictions in practices, creating at times and in some CIS countries obstacles to access to registration and protection.<sup>49</sup>

One year later, the Central Asian Conference on NGO Legislation (5-6 May 1998, Almaty, Kazakhstan), organized by the UNHCR in cooperation with the International Center for Not-for-Profit Law, was the first in the series of regional meetings in the countries of the CIS which were initiated by UNHCR in cooperation with the International Center for Not-for-Profit Law, the Open Society Institute and the Council of Europe. This Conference focused on NGO legislation is an important issue referring to a set of legal and fiscal provisions that affect and regulate the relationship between the state and NGOs. In particular, the NGO legislation as the legal framework that guides the establishment of NGOs as legal personalities and the activities and use of public and private funds by NGOs<sup>50</sup>. The Conferences on NGO Legislation in Almaty in May 1998 reviewed NGO legislation in Central Asia. In September 1998 in Kiev Eastern European countries worked on taxation and customs treatment of NGOs, government's supervision and reporting requirements of NGOs and self-regulation of the NGO sector.

These conferences contributed to better cooperation between and with NGOs in Eurasia in general, and in the countries covered in particular.<sup>51</sup> The OCSE on the basis of its Work Program in the Helsinki Document took an active role on behalf of refugees and displaced persons in the region. The work both through the High Commissioner on National Minorities has been a useful example of cooperation between a regional and an international organization, such as UNHCR. Furthermore, the "efforts undertaken by UNHCR to prepare a regional conference to address the problems of refugees, displaced persons, other forms of involuntary displacement *and* returnees in the countries of the CIS and other interested States" were recognized by States in the region<sup>52</sup>, as well as by those in neighboring states and donors, especially the Nordic countries and the USA.

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<sup>49</sup> There are also news on the NGO Meeting in Moscow in December 1997 with over 100 NGO representatives from all over the CIS countries to prepare their work in the context of the CIS Conf. Meeting in Geneva in June 1998. Valuable information is there available also on the European Union Technical Assistance to CIS countries in the early nineties to help achieve transition to market economies and strengthen democratic institutions in a program with some 2,224 million ECU for the period of 1996-99 for (EU /Takis). The section on country reports informed about major developments at national levels within the CIS countries and proved to be a useful tool for cooperation between country representatives of governments, NGOs, UNHCR and other partners in the region, which the author can confirm from her own experience as Head of the Office in Kazakhstan October 1997-Nov. 1999. See: The CISCONF News, a quarterly newsletter produced by UNHCR, IOM, and OSCE/ODHIR in the follow-up to the Regional Conference [...], such as Vol. 2, Issue 1, October-December 1997. 25 pages.

<sup>50</sup> Opening Statement of Luise Druke as the UNHCR Head of the Office in Kazakhstan and host of the Central Asian Conference on NGO Legislation, 5-6 May 1998, Almaty, page 1.

<sup>51</sup> Kyiv Conference on NGO Legislation [May 1998 in Almaty] September 1998, Kyiv, Ukraine, organized by the UN High Commissioner for Refugees in cooperation with the Council of Europe, pp.1-55.

<sup>52</sup> "The Human Dimension", in The Budapest Document of the CSCE on Migration, p. 26.

Latent and open security concerns for those persons who worked towards adapting statutes, functions and organizations to NGOs as known elsewhere were still present.<sup>53</sup> In recognition of these challenges which NGOs have been facing in the post-Communist transition, the CIS Conference process focused specially on supporting NGOs and on capacity building of NGO representatives and institutions. The CIS Plan of Action, directly and indirectly supported more than 3 000 national NGOs. Many of them are still operating, however, often with decreasing resources.

Therefore, in light of the commitment undertaken in paragraph 149 of the Program of Action (POA) toward supporting the work of civil society, there was broad agreement for further follow-up of the CIS Conference Process beyond 2000 from both the NGOs and governments' perspectives. Though the role of NGOs and of civil society on the whole has been strengthened, post-Soviet realities are still making work increasingly difficult for NGOs in the world, where transparency, open discussion and constructive criticism continue to be viewed with scepticism and suspicion. There are indications that NGOs with ambitions contrary to the ruling power would not quite be acceptable<sup>54</sup>.

At the CIS Conference Process Steering Group meeting in June 1999, an extension was already considered to continue beyond 2000 in order to more adequately achieve the objectives set out in 1996, including in the following areas:

- Narrowing the gap between enacted legislation and its implementation;
- Building the human and technical capacities of governments to develop humane migration management systems;
- Developing an enabling environment for local NGOs;
- Strengthening local NGOs/Government partnerships, including financial assistance by the governments in the region;
- Passing development assistance programs from UNHCR to the development organizations such as the World Bank and UNDP; and
- Encouraging countries in the region to incorporate funds for displaced persons, refugees and NGOs in loans from international lending institutions.

In the course of the implementation of the original CIS Plan of Action, a number of activities were undertaken, including capacity- and institution building, many of them to help solve old refugee situations and to prevent new ones from arising. These activities were not intended to obstruct flight if and when that was the only means of

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<sup>53</sup> Report Central Asian Conference on NGO Legislation, 5-6 May 1998, Almaty Kazakhstan, Organized by the UNHCR in cooperation with the International Center for Not-for-Profit Law, published by UNHCR Geneva in 1999. The author co-chaired this regional conference, with 120 NGO representatives and some government representative attending. It produced a catalogue of issues needing to be tackled in order to help NGOs in their functions, such as NGO legislation to give these organization a proper status and tax free fund raising possibilities, as well as some standing vis a vis governmental bodies, especially those in charge for national security questions.

<sup>54</sup> US State Department Report on the Situation of Human Rights in Kazakhstan for 1997, March 1999.

survival,<sup>55</sup> but rather to foster an enabling environment in which meaningful preventive interventions are feasible,<sup>56</sup> including the following:

<b>Checklist of UNHCR activities which can contribute to the prevention of refugee-producing situations<sup>57</sup></b>
1. Undertaking international advocacy on behalf of the purposes and principles of the UN Charter;
2. Engaging in “preventive diplomacy” at the national, regional and international levels;
3. Disseminating international refugee, human rights and humanitarian law;
4. Collection and analysis of data to identify those countries/populations which are most at risk
5. Legal and judicial capacity building in actual and potential refugee producing countries;
6. Encouraging social/political tolerance by means of educational, cultural and mass media activities;
7. Advocacy and capacity building activities with regard to regional and sub regional organisations;
8. Strengthening national NGOs and other institutions of civil society;
9. Promoting comprehensive and regional approaches to refugee problems;
10. Providing and international presence in areas of actual or potential displacement;
11. Establishing humanitarian assistance programmes on behalf of war affected populations;
12. Providing educational, training and recreational activities for refugees in countries of asylum; and
13. Consolidating peace in war-torn societies and voluntary repatriation and reintegration programmes.

Already in 1996, the Executive Committee of UNHCR, recognized that UNHCR’s mandate to seek permanent solutions for refugee problems gives the organization a legitimate interest in the prevention of refugee movements by means of operational activities within countries of origin. It also mentioned that the notion of prevention refers strictly to initiatives which are designed to safeguard security and well-being of persons with their countries, thereby removing or mitigating the causes of flight, and that however, such measures, should not be considered to provide a substitute for the right to seek asylum in another country.<sup>58</sup> While UNHCR’s direct role in prevention is a limited one, it can contribute in the building of national capacities and institutions which are more suitably equipped to act swiftly and directly when refugee producing situations occur. One of UNHCR’s major goals has been the focus on partnerships for protection both in the governmental but also in the NGO sector, as for example in questions of statelessness, nationality and citizenship.

As is well known, the large number of Russians on the move within but especially outside the Russian Federation following the beginning of transition in 1991 and later has raised important issues as to de facto and de jure stateless persons deprived of

<sup>55</sup> Luise Druke, Preventive Action for Refugee Producing Situations, Diss. European University Studies, Peter Lang, Frankfurt, 2<sup>nd</sup> ed. 1993.

<sup>56</sup> Endorsed also by the Executive Committee of the High Commissioner’s Programme, in the document entitled “Follow-Up to ECOSOC Resolution 1995/56: UNHCR Activities in Relation to Prevention”, 3<sup>rd</sup> meeting, Standing Committee, EC/46/SC/CRP.33, 28 May 1996.

<sup>57</sup> Jessen-Petersen, Soren; Policy Series Paper on Prevention, “UNHCR’s role in the prevention of refugee-producing situations”, 28 September 1998, AHC/98/302, (JC/CDR) UNHCR Geneva.

<sup>58</sup> “Follow-up to the ECOSOC Resolution 1995/56: UNHCR Activities in Relation to Prevention. EXCOM, Standing Committee, 3<sup>rd</sup> meeting, EC/46/SC/CRP.33, 28 May 1996.

national protection. Over many centuries the history of Russia has been connected particularly closely to active resettling of different peoples, namely Russians to the territories known today as Central Asia. Between 1897 and 1917 more than 2.5 million people migrated to different areas of the Russian Empire. Many of these movements were due to the need of skilled specialists in the Republics of Central Asia, many of whom remained and became citizens upon completion of their work. During the Second World War, some 2 million Russians migrated to Central Asia.

Following the collapse of the Soviet Union, and the independence of the former Soviet Republics, about 9.5 million Russians left Central Asia. Some 25.3 million Russians were then in CIS States outside the Russian Federation<sup>59</sup>. “Soft nationalism” and “Forced migration” were among the causes of Russians leaving and migrating. Persons of Russian ethnic origin persons who left Kazakhstan, for example, often did so not just due to the infringement of their political and civil rights, but also often due to psychological discomfort arising from a feeling an uncertainty in economic and political chaos. For example, from 1992 through the end of 1995, a total of 939 206 Russians left Kazakhstan<sup>60</sup>, causing problems on both sides of the border. A survey under the direction of the IOM in 1998 on migration potential in Central and Eastern Europe indicated that at that time, few people wished to migrate permanently (between 7% to 26%) and if they did, they preferred to go to the ‘new world’ (USA, Canada, Australia, New Zealand).<sup>61</sup>

In the framework of the Organization for Security and Co-operation in Europe (OSCE), groups of people on the move, especially those migrating involuntarily due to membership to specific minority groups, became the mandate of the OCSE High Commissioner on National Minorities. Through this office a number of actions were taken throughout the region, such as the signing of a bilateral agreement between Hungary and Slovakia, within the framework of the OSCE conflict prevention mechanism.<sup>62</sup> The strengthening of the organization and the change of name to OSCE, effective from 1 January 1995, which had been decided at its Budapest Summit in December 1994, recorded in the "Budapest Decisions" introduced also for the post-Soviet area a "new era of security" in shaping common security.<sup>63</sup> In the chapter on Migration, *the Budapest Document* mentions that the participating States expressed their concern at mass migratory movements in the CSCE region.

Under a simplified procedure agreed to by Ukraine and Uzbekistan, a number of formerly deported people (FDPs) acquired their citizenship. Displaced persons in Azerbaijan are now in a position to apply for citizenship in that country on the basis of new citizenship legislation, while by May 1999 over 6.300 refugees in Armenia had acquired Armenian citizenship. In addition to the 25 million Russians, there were some

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<sup>59</sup> Nour Kirabaev, “Repatriation or Integration: Russians Outside Russia, Russia and Central Asia: Problems of Migration”, in: *Refugees and Migration in Central and Eastern Europe, From Principles to Implementation: The Role of NGOs, Regional Programme*, Moscow, November 11/15, 1996, jointly organised by the Canadian Human Rights Foundation and the Moscow Centre for Human Rights, pages 91 and 92.

<sup>60</sup> Interviews conducted in Kazakhstan, 1997-1998, on file with the author.

<sup>61</sup> IOM Migration Potential in Central and Eastern Europe, by Claire Wallace, Institute for Advanced Studies, Vienna, 1998, page 9.

<sup>62</sup> “Minorities, UNHCR and Central Europe”, *European Series*, Volume I, No 2, July 1995, p. 17.

<sup>63</sup> CSCE Budapest Document 1994. *Towards a Genuine Partnership in a New Era*. DOC.RC/1/95, Corrected version 21 Dec. 1995, p. 1.

6.7 million Ukrainians, 2.5 million Uzbeks and about a million each of Armenians and Tajiks, who found themselves suddenly living abroad after 1991, which also caused problems related to nationality and statelessness.

Though most of the newly independent States have by now adopted their own citizenship laws, the citizenship laws in force in the mid-nineties in Azerbaijan, Kyrgyzstan and Tajikistan were adopted under Soviet rule. For example, the Law of the Republic of Georgia “On Citizenship of Georgia”, adopted on 25 March 1993, foresaw in Article 1 that a citizen of Georgia could not simultaneously be a citizen of another country.<sup>64</sup> Kazakhstan adopted the Law on Citizenship of the Republic of Kazakhstan on 20 December 1991, which was modified by a Decree of the President of the Republic of Kazakhstan which has the effect of law dated 3 October 1995, according to which citizenship may be obtained after residing five years in the territory or due to marriage with a citizen of Kazakhstan (Article 16), and may be refused on grounds including “if an applicant is a citizen of another country (no double nationality, Article 17,7).

The developments in the CIS countries over the past years since 1991 have generated new and complex problems of statelessness and still have a potential to do so. UNHCR’s involvement in nationality issues<sup>65</sup>, derives from United Nations General Assembly Resolutions 3274 (XXIX) of 10 December 1974 and 31/36 of 30 November 1976 to perform the functions foreseen under the Convention on the Reduction of Statelessness in accordance with its Article 11 after the Convention has come into force.<sup>66</sup> The Executive Committee of the UN High Commissioner’s Program (EXCOM) adopted Conclusion 78 (XLVI) /1995 on “The Prevention and Reduction of Statelessness and the Protection of Stateless Persons”, which recognizes “the right of everyone to a nationality and the right not to be arbitrarily deprived of one’s nationality and that “statelessness, including the inability to establish one’s nationality, may result in displacement”. It also stressed that “the prevention and reduction of statelessness and the protection of stateless persons are important in the prevention of potential refugee situations”.<sup>67</sup>

The Council of Europe has played an active role in the development of nationality issues within its Eastern European Member States. Its Committee of Ministers adopted the European Convention on Nationality and Explanatory Report, dated 14 May 1997. This Convention represents one of the most contemporary reference point for issues pertaining to nationality in the area under the Council of Europe. Figuring prominently in the provisions of the Convention are the reduction of statelessness and the right to nationality.

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<sup>64</sup> Citizen, UNHCR Newsletter No 7, March 1999, published by UNHCR FO Simferpool, p. 10.

<sup>65</sup> Michel Iogna Prat, “Nationality and Statelessness Issues in the Newly Independent States”, in: The Problems of Refugees in the Light of Contemporary International Law Issues, ed. Vera Gowlland Debbas (ed.), Martinus Nijhoff Publishers, The Hague, 1996, pp. 25 to 31.

<sup>66</sup> Article 11 provides for the following: “The Contracting States shall promote the establishment within the framework of the United Nations, as soon as may be after the deposit of the sixth instrument of ratification or accession, of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority”.

<sup>67</sup> For more details see “What would life be like if you had no nationality?”, Document, published by the UNHCR Division of International Protection, UNHCR, Geneva, undated.

As a member of the drafting group in which forty States participated, UNHCR has provided information on the problem of statelessness and assisted in the drafting of suggestions intended to ensure that statelessness is avoided. The European Convention on Nationality and the 1961 Convention on the Reduction of Statelessness, the latter in respect of which UNHCR has a mandate for promotion and an advisory role, are compatible instruments, each serving to promote the other. This approach will have a global impact both on the nationality of persons originating from or moving to States concerned, as well as on the future course of nationality legislation, nationality capacity, institution building, and practice.

The Executive Committee of the High Commissioner's Programme (ExCom), which, at the time of writing in 2006, made up of 70 member States, ExCom meets in Geneva annually to review and approve UNHCR's programmes and budget, advise on international protection and discuss a wide range of other issues with UNHCR and its intergovernmental and non-governmental partners. ExCom's Standing Committee meets several times each year to carry on ExCom's work between plenary sessions. Specifically, the Standing Committee of ExCom in its session from 28 June to 1 July 1999 considered, among other things, a Progress Report on UNHCR Activities in the Field of Statelessness. This report underlines that this issue is a problem of global concern and one that creates an ever growing workload for UNHCR. The report reviews activities during the past years, including work with UN bodies, the Organization for Security and Cooperation in Europe, NGOs, the Council of Europe and individual government. (Document EC/49/SC/CRP.15).<sup>68</sup>

The CIS Program of Action of May 1996, reiterates in Article 44, that “in order to prevent situations of statelessness, existing legislation should be amended where necessary, to be brought into conformity with international standards”. In addition, “States should grant their citizenship to any child born or foundling found on their territory who would otherwise be stateless, in accordance with national legislation and with the provisions of the Convention on the Reduction of Statelessness (1961). Legislation should provide simplified procedures for granting citizenship to persons who would otherwise be stateless.”

By 31 December 1999, only two CIS States, Armenia and Azerbaijan, had ratified both the 1954 and the 1961 Conventions on Statelessness. UNHCR and partners have invested a significant amount of efforts into this subject. For example, in December 1998 it supported the “Memorial” Human Rights Center, also with the support of the EU Tacis Democratic Program to work in a Seminar series on legal problem of citizenship acquisition.<sup>69</sup> The UNHCR Office in Kazakhstan, in fulfillment of its mandate to actively promote accession to the ratification these two Conventions, and to provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States<sup>70</sup>, presented the ratification documents for both Conventions on 19 July 1999 to the Ministry of Foreign Affairs in Almaty/Astana, launching the ratification process. As in the other CIS countries, this

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<sup>68</sup> Prima facie, The Newsletter of UNHCR's Department of International Protection, June 1999, p.4.

<sup>69</sup> “Legal problem of citizenship acquisition by forced migrants and their job placement on the territory of the Russian Federation”, Proceedings of the 5<sup>th</sup> Seminar held by “Memorial” Human Rights Center on December 3-5, 1998 under the program “Migration and the Law”, supported by UNHCR and the EU Tacis Democratic Program, Valent, Moscow, 2000, page 4.

<sup>70</sup> EXCOM Conclusion 78 of 1995 The Prevention and Reduction of Statelessness and the Protection of Stateless Persons, paragraph c.

issue has a special relevance, since the new independent states, have their own national passports, and set cut-off dates at differing dates among the twelve States when passports of the former Soviet Union were no longer valid. Lack of awareness in this field has been a key problem of reducing de facto and de jure statelessness in CIS countries during the past several years of the advanced independence.

The 1997 Consultations on Population Displacements in Central Asia, Southwest Asia and the Middle East (CASWANAME Process) were geared to specifically help building constituency among actors concerned in a co-operative atmosphere to get population displacement issues as one of their main agenda, mainly regarding Afghan refugees<sup>71</sup>. In order to stem the flow westward through Central Asia and Eastern Europe, the European Union, through the EU High Level Working Group on Asylum and Migration in 1999 considered a Plan of Action, with input of UNHCR. For this purpose, the then Assistant UN High Commissioner for Refugees, in his memorandum of 5 February 1999 invited concerned UNHCR offices in Central Asia to provide input for designing and implementing a preventive strategy, especially that asylum-seekers from Afghanistan obtain protection in Central Asia, not needing to move further westward in search of protection and assistance.<sup>72</sup> The continuing conflict in northern Afghanistan has contributed to an increasingly tense working environment in Central Asia.<sup>73</sup>

At the 1999 at the CIS Conference meeting, which the author attended<sup>74</sup>, the Delegation of Kazakhstan highlighted the progress made in the country in the area of refugee and migration capacities and institutions as a basis for further development of asylum and migration systems, indicating however, the need for international assistance for the strengthening of state refugee and migration capacities and bodies. On behalf of her country, Kyrgyzstan and Tajikistan, the Kazakhstani Head of Delegation listed common problems for Central Asian countries requiring a concerted action and international support, such as continuing influx from Afghanistan and weakness of national

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<sup>71</sup> Evaluation of the Regional Consultations on Refugees and Displaced Populations in Central Asia, South-West Asia and the Middle East (CASWANAME Consultations), CASWANAME Bureau – UNHCR, December 1999, p. 2. The process started with meetings held in Amman, Jordan 12/13 March 1997, a Second Meeting of the Regional Consultations on Refugees & Displaced Populations (CASWAME Process) in Ashgabat, Turkmenistan, 3/4 March 1998, and a Sub-Regional Meeting held in Bishkek 10/12 February 1998 intended to enhance cooperation with States of the region for strengthening refugee institutions and developing regional preventive approaches. The 1998 Report highlighted that despite political difference between certain countries in the region, all participants recognized the serious nature of population displacements and the need to find durable solutions, inter alia, through building of national refugee capacities and institutions. For the purposes of this paper, the CASWANAME Porcess considered as one of its issues at the sub-regional meeting on Afghans in Bishkek in February 1998, to include the refugee registration system and a Russian language database at the Bishkek Migration Management Center (BMMC) in Kyrgistan, of country of origin information on the countries of origin of main refugee groups in the region. According to the source in “Refugees and Others of Concern to UNHCR in Countries of the Commonwealth of Independent States (CIS) in 1999”, UNHCR Headquarters, Geneva, 7 June 2000, page 6, 71% of the asylum-applications submitted in CIS – countries in 1999 were from Afghanistan.

<sup>72</sup> Note for the File, EU High Level Working Group on Asylum and Migration (HLWG), Initial comments: HLWG and Central Asia, by the author, then still Head of the UNHCR Office in Kazakhstan and designated Focal Point for the HLWG in Central Asia, 5 March 1999.

<sup>73</sup> Central Asia, Regional Overview, UNHCR Global Report 2000, page 286.

<sup>74</sup> Note for the File, Mission to Geneva for Consultations with different services and participation in the CIS Steering Group on 22-25 June 1999, by Luise Druke, then Head of the UNHCR Office in Almaty, on file with the author.

migration and border control services. She proposed the setting up of a working group to assess achievements and develop a new strategy; taking a sub-regional approach to follow-up activities while maintaining and developing the cooperation on common issues with other CIS and European and OSCE States and institutions.

The continuation of these regional efforts with a thematic approach was led by the four main agencies in a cooperative mechanism grouping the interested governments and NGOs together (namely UNHCR, IOM, the Council of Europe and the OSCE).

Further building national refugee and migration capacities and institutions will require regular financial and technical assistance to the governments, partly from UNHCR, but mostly from the development agencies, international financial institutions (World Bank, the International Monetary Fund) and donor countries through the intermediaries such as OSCE, the EU Presidency, TACIS, etc. For these issues to retain sufficient priority on national agendas, donor countries must realise that their resolution is also in their own interests (control of irregular movements, etc.) thus representing a suitable area for continued bilateral and multilateral aid.

The presence of refugees and displaced persons, many of whom came from Afghanistan, in the countries of Central Asia in particular and in many of the CIS countries have in the past, will continue to represent a challenge which has yet to be met with refugee regimes that meet international standards and practice. In conclusion, recognizing the important role the NGO sector can play in preventive refugee work and developing national refugee regimes, main donors have been providing considerable input into the development and strengthening of civil society, mainly during the first years of the implementation of the CIS Plan of Action.

Besides attempts by NGOs at strengthening civil society, the greater integration of Central Asia and Eastern Europe with Western Europe and North America remains an important objective. In all of the CIS and neighbouring States there are experienced people and institutions who have gone through capacity and institution building programmes since the start of the 1990s, thanks largely to increased funding made available during the CIS Conference Process and its follow-up which supported both the governmental and the NGO sectors to handle refugee and refugee-related matters.<sup>75</sup>

The refugee institutions that exist in these countries are either semi-independent agencies for refugees, migration and demography or bodies integrated within the government. NGOs have proven to be a source of teaching staff in universities where refugee, and human rights law as well as humanitarian law (with the involvement of the International Committee of the Red Cross ICRC) has been taught and studied. In 1998 in Kazakhstan<sup>76</sup>, for example, UNHCR established a Refugees Research Network throughout the country, which has been aiming to connect with some 25 universities. In

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<sup>75</sup> "Central Asia: Current Situation and new challenges", presentation of Dr. Elena Sadovskaya, at the CIS Conference in July 2000 in Geneva, outlining the current situation in the Central Asian Republics and main problems faced by non-governmental organizations.

<sup>76</sup> Collection of Documents on Refugees and Persons in Refugee Like Situations in the Republic of Kazakhstan with comparative research and analyses concerning countries in Central Asia and the CIS, eds. Druke/Rogov/Turisebekov/Argumbaev, published by UNHCR in Kazakhstan, October 1998 in English and Russian and a selection of the publication was translated and published in September 1999 in the Kazakh language.

a number of cases, fruitful co-operation has promoted teaching and research,<sup>77</sup> and raised awareness of these refugee issues.

UNHCR's strategic approaches to Eurasian refugee policy have included encouraging economic assistance for stability-building measures, including the development of an early warning and action facility.<sup>78</sup> One of the main objectives - averting mass population movements in a still-fragile region - has been achieved, despite its being an ambitious goal. Furthermore, the US Government proposed the establishment of a mechanism to evaluate achievements and provide concrete suggestions for after 2000, including such actors as the World Bank, EBRD, UNDP, the Council of Europe, the High Commissioner for National Minorities and NGOs, in cooperation with the EU and the OSCE.<sup>79</sup> In conclusion, recognizing the important role the NGO sector can play in preventive refugee work and developing national refugee regimes, main donors have been providing considerable input into the development and strengthening of civil society, mainly during the first years of the implementation of the CIS Plan of Action.

## *2.2. Assessment report and prolongation of the CIS Conference Process in 2000*

The CIS Conference participants received the 2000 *Assessment Report of the Conference Process (1996-2000)*,<sup>80</sup> which stated in its Summary of Conclusions for Governments: The original objectives of the Conference (1996), were threefold:

- Provide a reliable forum for countries in the region to discuss population displacement problems in a humanitarian and non-political setting;
- Review the population movements taking place in the region, clarifying the categories of concern; and
- Devise an integrated strategy for the region by elaborating the Plan of Action (POA).

These immediate objectives of the Conference in 1996 were met. The follow-up period was also marked by a number of successes, namely 1) the recognition of migration and protection issues within and outside the CIS; 2) the establishment of a legislative base; 3) the development of organizational capacity; 4) the forging of intergovernmental relations (between CIS states); 5) the improvement of bilateral/ multilateral relations (between non-CIS states); and 6) the strengthening of inter-organizational co-operation.

At the implementation level, however, the success rate varies between different CIS states. CIS states have had to make hard choices from a wide array of immediate needs, thus migration, protection and asylum issues are not always a priority. Nevertheless,

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<sup>77</sup> Activities of UNHCR in Kazakhstan (1997/1999), 31 March 1999.

<sup>78</sup> See also "Mainstreaming Strategies for the CISCONF NGO Follow-up" UNHCR Working Document, received from Kirsti Floor, Policy Officer (NGOs), UNHCR Headquarters 31 December 1999.

<sup>79</sup> Report of the Meeting of the Steering Group of 24/25 June 1999 in Geneva, CISCONF/1999/SG4/3, 8 July 1999, p.8.

<sup>80</sup> A joint document of UNHCR and IOM (International Organization for Migration and United Nations High Commissioner for Refugees in cooperation with OSCE/ODIHR Regional Conference to address the problems of refugees, displaced persons, other forms of involuntary displacement and returnees in the countries of the Commonwealth of Independent States and relevant neighbouring states, Assessment Report of the conference process (1996-2000) Geneva, 2000, page 6, <http://www.unhcr.org/cgi-bin/texis/vtx/research/opedoc.pdf?tbl=RESEARCH&id=3b0a29c75>, visited on 23 March 2006.

migration-related matters are increasingly tied to issues of vital importance to CIS states. National security considerations and regional stability are intrinsically linked to illegal and transit migration. CIS states' active endorsement and implementation of IOM-assisted Capacity Building in Migration Management Programs (CBMMPs) underscore their growing concerns for such issues.

The levels of co-operation envisaged today reflected by, for instance, talk of region-wide harmonization of entry requirements such as visa policy, would have been inconceivable only half a decade ago. Similarly, the legal and administrative tools being established to address growing problems related to refugees, IDPs and other DPs represent national systems for humanitarian response that are compatible with international standards in this field.

Though considerable work is still required for their efficient and effective implementation, the foundation has been laid for CIS states to cope with persons in vulnerable situations. It is clear that the process has directly and indirectly assisted CIS states towards the goal of establishing migration management and protection mechanisms to cope with migration challenges particular to the region. Moreover, the process has achieved a new level of understanding, dialogue and exchange between: CIS governments as well as CIS states and non-CIS states. Moreover, the process has achieved a new level of understanding, dialogue and exchange between CIS governments; CIS states and non-CIS states; CIS governments and NGOs; and international organizations working in the region.

It is also evident that progress is still required in a number of areas. For this reason alone, special attention and effort must be sustained beyond the year 2000, while mainstreaming activities. It is only now that the benefits of five years of effort are beginning to materialize. Donors should maintain a level of expectation that is appropriate. CIS states, for their part, must demonstrate their will to continue the process through effective implementation of migration and refugee programs and policies.

The NGO sector has become a vibrant part of civil society. Despite the achievements made during the process period, however, significant obstacles still hinder NGOs' full potential to address refugee and refugee-related issues, to grant humanitarian assistance and to strengthen civil society as a whole. The sense that considerable improvements are still required is reflected in virtually all NGOs' responses in interviews conducted by the author. Most NGOs responded that continued assistance was required in order to pursue their objectives beyond the year 2000. Some NGOs specifically referred to the need for personnel training, others to technical support, and others to general guidance from international actors. Most specified the need for continued financial assistance, and a continuation of the framework established by the Conference (1996) and process.<sup>81</sup>

In 2000, having taken note of the Joint Assessment Report at the above-mentioned at the Fifth Meeting, in Geneva, stock of achievements was taken. The meeting was structured to accommodate a review of progress made since the 1999 Steering Group Meetings and to examine Government-NGO relations with a view of preparing

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<sup>81</sup> Ibid, page 7.

activities after the completion of the institutionalized CIS Conference process previously planned for 2000.<sup>82</sup> With 329 participants from 41 states, 11 intergovernmental organizations, four other entities and 126 international and national NGOs who attended the Conference, this gathering created some fresh momentum for the continuation of another five years of work<sup>83</sup>.

The Fifth Meeting of the Steering Groups at the 13-14 July 2000 meeting adopted recommendations for the follow up after 2000<sup>84</sup> and reviewed the Work plan for Thematic Issues, which foresaw the following four themes:

- A. Assuring continued focus on groups of concern as listed in the Program of Action, including refugees, displaced persons, illegal migrants, persons in refugee-like situations, repatriants, internally displaced persons (IDPs),<sup>85</sup> Formerly Deported Peoples (FDPs)<sup>86</sup> and ecological migrants;
- B. Migration management, including combating illegal/illicit migration and trafficking, particularly trafficking of women, improving border management with due respect to asylum issues and the human rights of the individuals concerned;
- C. Sustaining the achievements and activities of the NGO sector and civil society and promoting further participation by international and local NGOs; and
- D. Implementing legislation and avoiding implementation gaps<sup>87</sup>.

In his opening remarks, the Assistant High Commissioner for Refugees, Mr. Soren Jessen-Petersen looked back at the original objectives of the Conference and reminded participants that there had been three, namely, to:

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<sup>82</sup> Report of the Meeting of the Steering Group in the Follow Up to the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States, CISCONF/1999/SG4/3, 8 July 1999.

<sup>83</sup> List of Participants, Meeting of the Steering group in the follow-up to the Regional Conference to Address the problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and returnees in the Countries of the Commonwealth of Independent States and relevant Neighbouring Sates, CISCONF/2000/SG5/2Rev., 17 July 2000.

<sup>84</sup> Report and Recommendations for the Follow-up to the Regional Conference to Address the problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and returnees in the Countries of the Commonwealth of Independent States and relevant Neighbouring Sates, CISCONF/2000/SG5/3, 14 July 2000.

<sup>85</sup> Statement of the Representative of the Secretary-General on Internally Displaced Persons, Francis Deng, delivered by Simon Bagshaw to the Fift Meeting of the Steering Group of the Regional Conference [...], Geneva, 13 July 2000.

<sup>86</sup> "The Report on the Situation with the Formerly Deported Peoples in the Republic of Kazakhstan, prepared by: A. Dederer, Chairperson of the Associations of Germans in the Republic of Kazakhstan, 2000.

<sup>87</sup> Joint Conference Room Paper of UNHCR/IOM/OSCE/COE on the Follow-up to the 1996 Geneva Conference on the Problems of Refugees, Displaced Persons, Migration and Asylum Issues (Working Document on Thematic Issues), of 12 July 2000

- Provide a reliable forum for countries of the region to discuss population displacement in a non-political setting;
- Review population movements and clarify categories of concern; and
- Devise an integrated strategy on the basis of the Program of Action aimed at both addressing existing problems of displacement and preventing further population movements. It became clear, that one of the most important aspects of the CIS conference process had been the fact that it has contributed significantly to making the NGO sector a vibrant part of civil society.<sup>88</sup>

It was acknowledged, however, that there were major obstacles which continued and still continue to hinder NGOs' full involvement in refugee and refugee-related matters and the need for continued support was made very clear. UNHCR and its partners (IOM, the OSCE and the COE) evaluated these developments in 2000 and the summary results presented at the last meeting of the process. Even though it is encouraging that the rights of the category of persons known as 'persons in refugee-like situations' converge with those of 'Convention refugees', situations may arise where the definition of their rights is unclear, as there is no international or regional legally-binding instrument regulating the status of such persons. Refugees and displaced persons resulting mainly from war, armed conflict, civil strife and grave human rights violations are a category of persons on which the OSCE has increased its attention.

Non-governmental organizations (NGOs) that developed and grew during and with the support of the CIS process made a major impact, which is generally recognized as one of the most successful components of the CIS Conference Process Follow-up actions, and the CIS NGO Fund created in 1997.<sup>89</sup> Through this fund, UNHCR was able to provide financial support and a coordinating leadership role for capacity- and institution-building through training, funding of projects and documentation.<sup>90</sup> This NGO cross-border cooperation, at the national, regional and international level, resulted in, among other things, the mechanism Partnership in Action (PARinAC). In March 2000, the first PARinAC Conference for this region was hosted by the UNHCR Office in Turkmenistan.

In the concluding session of the 2000 Meeting with the non-governmental organizations (NGO CIS CONF meeting), the UNHCR NGO Coordinator encouraged the NGO participants to consider the Framework Agreement on Operational Partnership that had been jointly developed between UNHCR and NGOs to build an active operational

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<sup>88</sup> Opening remarks by Mr. Soren Jessen-Petersen, Assistant High Commissioner for Refugees, at the Fifth Steering Group Meeting (13-14 July 2000), p. 1 and 2.

<sup>89</sup> Sixth meeting of the informal Steering Group to prepare for the regional conference to address the problems of refugees, returnees, displaced persons and related migratory movements in the Commonwealth of Independent States (CIS) and relevant neighbouring States, Geneva, 28 June 1995, Summary of the Meeting, p. I and 4.

<sup>90</sup> Tools created for this purpose with funding from governments through UNHCR include:

- UNHCR Catalogue of NGO Capacity-Building Resources for the Countries of the Commonwealth of Independent States, UNHCR, Bureau for Europe, CIS Unit, January 2000,

- UNHCR Directory of Non-Governmental Organizations Working on Involuntary Displacement Issues in the Countries of the Commonwealth of Independent States. In addition, the SWOT Analysis on the CISCONF NGO Working Group on Protection, assisted in analysing Strengths, Weaknesses, Opportunities and Threats, that needed to be taken into consideration for increasing capabilities and decreasing vulnerabilities of the NGOs working in this region.

partnership through common commitment to understanding of each other's roles and responsibilities whilst striving to ensure highest standards and conduct both professionally and personally. Other goals include the improvement of mechanisms for consultation and cooperation, such as information-sharing; the coordination of program planning and implementation; the seeking of durable solutions; the ensuring of complementarity of activities and maximization of effective use of resources as well as avoiding duplication of effort and unhelpful competition; benefiting from each other's competence and expertise and to organizing joint training and capacity-building activities.<sup>91</sup> Furthermore, the US Government proposed the establishment of a mechanism to evaluate achievements and provide concrete suggestions for post 2000, which would include such actors as the World Bank, EBRD, UNDP, the Council of Europe, the High Commissioner for National Minorities and NGOs, in cooperation with the EU and the OSCE.<sup>92</sup>

The contributions of the non-governmental sector during the CIS Conference process, however, have been recognized as one of the most successful aspects of the whole process. NGOs existed prior to the transition in this area. They had to operate, however, under quite different political and financial conditions. The impact of the European Harmonization in refugee matters in the framework of policies under the Maastricht Treaty of 1993, the Amsterdam Treaty of 1999, and especially of the Phare Horizontal Programmes in countries of Central Europe though not comparable, has been the engine of developments. Whereas, the external repercussion of EU refugee policy on refugee policy in Eurasia even though of some importance, it is much less developed than in Central Europe, about all becoming EU Member States. Nevertheless, the EU and many other donors, including US governmental and NGO bodies, Switzerland and others also played a supportive role in Eastern Europe and Central Asia, though progress was compared to the rapid progress of countries in Central Europe where the EU integration process drove developments according to a set of criteria that were not applicable in the CIS States.

Successful models of work on the issues of refugee protection, voluntary repatriation and local integration<sup>93</sup>, conflict management, humanitarian assistance and dealing with formerly deported people were pioneered with the guidance and support of the below-mentioned international lead agencies in these areas<sup>94</sup>:

<b>Issue:</b>	<b>Lead agency/ies:</b>
Refugee law and protection	Danish Refugee Council/ ECRE
Repatriation, resettlement and integration	Counterpart International
Conflict management and prevention	International Alert/Centre of Conflict Management

<sup>91</sup> Report of the NGO Consultation, Organized in Conjunction with the Fifth Meeting of the Steering group of the CIS Conference, Geneva, 11-12 July 2000, p. 38-40.

<sup>92</sup> Report of the Meeting of the Steering Group of 24/25 June 1999 in Geneva, CISCONF/1999/SG4/3, 8 July 1999, p.8.

<sup>93</sup> "Local Integration for Refugees in the CIS" Report of a workshop held in Chisinau, Moldova, November 2003, by Greta Uehling, Consultant, EPAU/2004/01, January 2004.

<sup>94</sup> Report of the NGO Consultation, Organized in Conjunction with the Fifth Meeting of the Steering group of the CIS Conference, Geneva, 11-12 July 2000, p. 8.

Humanitarian and emergency assistance	Norwegian Refugee Council
Formerly deported peoples	Facilitated by UNHCR. <sup>95</sup>

With the guidance of the Danish Refugee Council, the NGO Working Group on Refugee Legislation and Protection carried out its work together with the European Council for Refugees and Exiles, and organized a groundbreaking Seminar on Refugee Status Determination in December 1999 in Prague, which brought together 90 participants from 11 of the 12 CIS countries from governmental and NGO refugee sectors which UNHCR co-hosted to look specifically at standard of proof and undocumented asylum-seekers, which is also a serious issue in the CIS countries<sup>96</sup>.

This work was presented at the Fifth Meeting of the Steering Group in July 2000, where it was stressed that the review of refugee legislation highlighted the lack of normative acts determining the procedure and regulations regarding refugee status determination procedures as well as lack of those regulating the passport and visa regime for asylum-seekers and refugees as compared to other foreign citizens in countries of the CIS. Specific reports by Members of the Working Group presented particular developments on Armenia, Kyrgyzstan, Russian Federation and Uzbekistan, as well as on the Legal Information Center for Human Rights with an analysis of the situation of persons kept in a camp for alien deportees and stateless persons in Estonia.<sup>97</sup>

One of the main purposes of the CIS Conference has been developing the national refugee systems for addressing old and preventing new refugee problems. One of the issues needing attention was and still is, the integration of refugees in CIS countries. Therefore UNHCR held a workshop bringing together 24 persons where all 12 CIS countries were present. Critical issues discussed included the fact that in several countries refugee status determination was suspended in order to restructure the governmental bodies responsible for deciding applications leading to long delays and gaps in protection and integration.<sup>98</sup> It should be kept in mind that the number of asylum seekers from countries in this region, in particular from the Russian Federation are some of the highest in the Western European countries. Data on asylum-seekers and refugees, and other persons of concern, as in the context of the CIS Conference, are available in UNHCR's Statistical Overviews<sup>99</sup>. Between sessions of 2000 and 2005, a

<sup>95</sup> Report on the NGO Consultations held in Geneva on 23-24 June 1999 in conjunction with the Fourth Steering Group Meeting of the CIS Conference, prepared by Bohdan Nahajlo, Geneva, UNHCR, 27 August 1999.

<sup>96</sup> Note on the file of the author who attended the Prague Meeting in her capacity as UNHCR Research Scholar, 3-4 December 1999 of the Working Group on Refugee Protection and Legislation.

<sup>97</sup> Final Statement and Report to the 2000 CIS Conference Steering Group, July 2000, of the NGO Working Group on Refugee Legislation and Protection to the Regional conference to address the problems of refugees, displaced persons, other forms of involuntary displacement and returnees in the countries of the Commonwealth of Independent States and relevant neighbouring States, Conference Steering Group in July 2000, pp. 1-3 and 61-64.

<sup>98</sup> Greta Uehling, "Local integration for refugees in the CIS region, Report of a workshop held in Chisinau, Moldova, November 2003, published by UNHCR Geneva, EPAU/2004/01, January 2004, pp 1-8.

<sup>99</sup> Refugees and Others of Concern to UNHCR in Countries of the Commonwealth of Independent States (CIS) in 1999, UNHCR Headquarters, Geneva, 7 June 2000, "Refugees and others of Concern to UNHCR, 1999 Statistical Overview, Chapter IV, Individual Asylum Applications and Refugee Status Determination, Registration and Statistical Unit, UNHCR, Geneva, July 2000, pp. 56 and 2004 Global

number of activities were carried out; to analyze and name them here all would go beyond the scope of this paper.

With the EU Enlargement, the European Union took steps, on both sides of the new EU Eastern borders, concerning issues such as “stopping migrants”. Since the former Soviet Union’s once-formidable frontier defences are under-funded and decaying, and the alarm systems will soon be cut off, but dealing with those who are stopped from transiting further to the West, will fall to the EU’s neighbours”<sup>100</sup>. One of the last major sessions was the High Level Review Meeting (HLRM) for which preparatory meetings took place in Geneva, such as on 25-26 February 2004 for preparing the HLRM Minsk meeting.<sup>101</sup>

The High Level Review Meeting, which the author attended, as UNHCR Representative in Bulgaria, a CIS neighbouring state, was arranged by the original three organizations involved with the CIS Conference process, along with the Council of Europe and the European Commission, in coordination with all 12 CIS countries, and UNDP.<sup>102</sup> Significant levels of migration across the region, human trafficking, security concerns, unresolved conflicts and the fact that the largest group of asylum seekers arriving in Central and Western Europe – namely Russians, most of whom are Chechens – are being produced within the CIS, were among the issues discussed<sup>103</sup>.

This Minsk meeting agreed that the CIS Conference Process as started in 1996 should be concluded the following year, in order to move on with an updated framework of cooperation adapted to the new challenges these countries are now facing. This will be discussed in the next chapter. Participating States also assessed the progress made and identified remaining gaps and concerns which were highlighted in the Chair’s conclusions and elaborated upon in the UNHCR report in the context of the concluding

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Refugee Trends, Overview of Refugee Populations, New Arrivals, Durable Solutions, Asylum-Seekers, Stateless and Other Persons of Concern to UNHCR, 17 June 2005, UNHCR Geneva <http://www.UNHCR.org/statistics>.

<sup>100</sup> Behind the crystal curtain, Special report on Russia’s Western borders, *The Economist*, October 25<sup>th</sup> 2003, pp.21-24.

<sup>101</sup> Summary Note on the Fourth Preparatory Working Group Meeting for the High Level Review Meeting for the 1996 Geneva Conference Follow up Process, Geneva 26 February 2004, by UNHCR Geneva, dated 17 March 2004, and Presentation on “Other Regional Migration and Asylum Dialogue Processes of Interest to the 1996 Geneva Conference Follow-up, by Michael Petersen, UNHCR Headquarters, undated, presented to the fourth session of the Working group for the High-level Review Meeting of the 1996 Geneva Conference Follow-up, which provides a comparative analysis of the most important other migration and asylum dialogue processes of relevance to the sub-region it covers. It looks at The Soderkopping Process, which was created in 2001 initiated by the Swedish Migration Board for cross border co-operation between the countries on both sides of the new eastern EU border. It also reports on the Budapest Process, created in 1991, in response to an increase in irregular immigration into Western Europe from and through Central Europe, in which by 2004, practically all, that is 41 European Countries, plus Australia, Canada and the USA as observers participate. Then it reports on The Issyl-Kul Dialogue, which were organized by the International Migration Program (IMP), comprising in 2004 14 states, i.e. the 12 CIS countries, except Belarus, Moldova, Ukraine and Uzbekistan, as well as Afghanistan, China, Iran, Mongolia, Pakistan and Turkey.

<sup>102</sup> The meeting reviewed progress made within the CIS Conference and objectives of the High level Review Meeting, set for April 2004 with a view to determine outstanding activities to be undertaken until the closing meeting in 2005. 25 February 2004 in Geneva, notes on file of the author.

<sup>103</sup> Minsk meeting to conclude CIS Conference process, Summary of what was said by UNHCR spokesperson Ron Redmond – to whom quoted text may be attributed – at the press briefing, on 25 May 2004, at the Palais des Nations in Geneva.

meeting of the Follow-up to the 1996 Geneva “Regional Conference [...]” 10 October 2005, reproduced below in full in the appendices.

In all of the CIS and neighbouring States there are experienced people who have gone through capacity and institution building since the beginning of the 1990s and especially with increased funding during the CIS Conference Process and its follow-up in order to support both the governmental and the NGO sectors to handle refugee and refugee-related matters. The refugee institutions that exist in these countries are either semi-independent agencies for refugees, migration and demography or integrated bodies operating within the government. NGOs have proven to be a source of teaching staff in universities where refugee, and human rights law as well as humanitarian law (with the involvement of the International Committee of the Red Cross ICRC) has been taught and studied. In Kazakhstan<sup>104</sup>, for example, UNHCR has established in 1998 a Refugees Research Network throughout the country, which has been aiming at connecting with 25 universities, and in a number of cases fruitful co-operation has allowed developing teaching and research,<sup>105</sup> as well as raising higher awareness of these issues through and with these people and contacts.

Between sessions of the CIS Conference Process from 2000 to October 2005, there have been significant developments in the political area, including 9/11, EU enlargement related issues, developments in Afghanistan and Iraq<sup>106</sup>. These developments also impacted to no small extent on the continuing work in the context of the CIS Conference process. One of the last major sessions was the High Level Review Meeting (HLRM) with work in Geneva on 25-26 February 2004 for preparing the High Level Review Meeting, emerging from the ten-year CIS Conference Process. This was held in Minsk from 26-28 May 2004 to analyze and identify the achievements and remaining gaps in the region’s asylum and migration systems, which formalized that the dissolving of the CIS Conference structure in 2005, and its replacement by a framework of cooperation and flexible groupings of States around key thematic issues.<sup>107</sup>

One of the main purposes of the CIS Conference had been developing policies and systems, in order to also address old and prevent new refugee problems. This is a long process with progress and problems in the way. One of which is that the number of asylum seekers from countries in this region, in particular from the Russian Federation especially in 2004 was one of the highest in Western countries.

The final meeting of the Geneva “Regional Conference [...]” 10 October 2005 produced results and reports of the process, which are reproduced here below in the appendixes. Among other, the meeting reiterated that there were still significant levels of migration across the region, human trafficking, security concerns, unresolved

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<sup>104</sup> Collection of Documents on Refugees and Persons in Refugee Like Situations in the Republic of Kazakhstan with comparative research and analyses concerning countries in Central Asia and the CIS, eds. Druke/Rogov/Turisbekov/Argumbaev, published by UNHCR in Kazakhstan, October 1998 in English and Russian and a selection of the publication was translated and published in September 1999 in the Kazakh language.

<sup>105</sup> Activities of UNHCR in Kazakhstan (1997/1999), 31 March 1999.

<sup>106</sup> See footnote 97.

<sup>107</sup> EXCOM 2004, 22 September 2004, UNHCR, Geneva, see: <http://www.unhcr.org/cgi-bin/texis/vtx/excom/opendoc.pdf?tbl=EXCOM&id=4153d5604>, visited 20 May 2006.

conflicts and the production of large numbers of asylum seekers arriving in Central and Western Europe – namely Russians, most of who are Chechens<sup>108</sup>.

### *2.3. Final CIS Conference meeting in 2005 and results, leading to a framework for Euro –Asia cooperation on migration, asylum and displacement<sup>109</sup>*

With the October 2005 meeting in Geneva, the CIS Conference came to an end following UNHCR's report of August 2005<sup>110</sup>. Besides the UNHCR August 2005 report, a short brief on the run-up to the conclusion of the CIS Conference process, the opening and closing statements respectively of the Director for Europe and the UN High Commissioner for Refugees as well as the concluding document are reproduced below. The CIS Conference has ended, but charts the way ahead with a flexible framework on migration and asylum<sup>111</sup> having received a full report from UNHCR to the Secretary General on this.<sup>112</sup>

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<sup>108</sup> Minsk meeting to conclude CIS Conference process, Summary of what was said by UNHCR spokesperson Ron Redmond – to whom quoted text may be attributed – at the press briefing, on 25 May 2004, at the Palais des Nations in Geneva.

<sup>109</sup> Selected documents relating to the CIS Conference Process are available at:

<http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&page=home&id=434beb064> :

May 1996 [Geneva conference to tackle massive displacements in CIS](#)

Jul 1996 [UNHCR and IOM seek funds for CIS programs](#)

Dec 1997 [UNHCR seeks \\$37 million for CIS programs](#)

Jun 1999 [Fourth CIS Conference Steering Group meeting](#)

Jun 1999 [UNHCR urges the world not to forget CIS and other troubled regions](#)

Jul 2000 [Two-day meeting to pursue initiatives in dealing with displacement in the Commonwealth of Independent States](#)

May 2004 [Minsk meeting to conclude CIS Conference process](#)

Oct 2005 [CIS Conference Process – concluding meeting](#)

Oct 2005 [CIS Conference ends, but charts way ahead for flexible framework on migration, asylum.](#)

<sup>110</sup> Report 25 August 2005<sup>110</sup> to the sixtieth session of the General Assembly, A/60/276, 19 August 2005 of the United Nations High Commissioner for Refugees, on questions relating to refugees, returnees and displaced persons and humanitarian questions and follow-up to the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States, Report of the Secretary-General. Full text, see: <http://www.unhcr.org/cgi-bin/texis/vtx/excom/opendoc.pdf?tbl=EXCOM&id=43abd9552>.

<sup>111</sup> Geneva, October 11 (UNHCR) Briefing on the the concluding meeting on Monday 11 October 2005 in Geneva.

<sup>112</sup> Report of the United Nations High Commissioner for Refugees, on questions relating to refugees, returnees and displaced persons and humanitarian questions Follow-up to the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States, Report of the Secretary-General. In short, the report is submitted pursuant to General Assembly resolution 58/154 of 22 December 2003 in which the Assembly noted with satisfaction the efforts of the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and the Organization for Security and Cooperation in Europe (OSCE) in developing strategies and practical tools for more effective capacity-building in countries of origin and enhancing programmes to address the needs of various categories of concern to the countries members of the Commonwealth of Independent States (CIS). In resolution 58/154, the Assembly, inter alia,

In October 2005, the Geneva Regional Conference on Refugees, Displaced Persons, Migration and Asylum Issues in the CIS (also known as the CIS Conference) set up by UNHCR, the IOM and the OSCE came to an end.<sup>113</sup> UNHCR welcomed an increased role of regional organizations such as the OSCE in the promotion of economic security, advocating for specifically targeted development aid towards areas hosting refugees, internally displaced persons and returnees in the CIS region, in an approach that requires new partnerships between humanitarian, development actors and security organizations, and can yield many benefits, including reducing tensions between refugees and host communities, enhancing the self-reliance of refugees and local communities, redressing the economic or environmental impact of the presence of large numbers of refugees, easing pressures which generate secondary movements, supporting local integration of refugees, ensuring the sustainability of return, and generally contributing to peace and security.

At the end of the CIS Conference, there was agreement to further address the unique and highly complex mix of problems facing refugees, and various other types of displaced people in the CIS. This led to a flexible framework for cooperation in recognition of these important issues, such as the implementation of a fair and effective asylum system involving access to the territory, adequate reception facilities, the implementation of a refugee status determination process and the creation of integration possibilities, a great number of which still needed to be addressed. In order to build on the decade of joint effort a post-CIS Conference process was discussed, with a view to establishing a “Framework for Euro-Asian Cooperation on Migration, Asylum and Displacement”.

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- (a) reaffirmed the importance and continuing validity of the Programme of Action, adopted in Geneva in May 1996 by the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States;
  - (b) recognized the ongoing acuteness of the migration and displacement problems in CIS member countries and the necessity, as affirmed by the Steering Group of the Conference at its fifth meeting in July 2000, to continue the follow-up process for a further period of five years; (c) called upon the Governments of CIS member countries, in cooperation with UNHCR, IOM and OSCE, to strengthen their efforts and mutual cooperation relating to the follow-up to the 1996 Geneva Conference;
  - (d) noted with concern the decision to postpone the high-level review meeting concerning the implementation of the decisions of the Conference;
  - (e) welcomed sub-regional initiatives within the framework of the new Söderköping Process; and
  - (f) recalled that the protection and promotion of human rights and the strengthening of democratic institutions are essential to prevent mass population displacement.’

The report concluded by saying that ‘during its 10-year duration, the process has been successful in fulfilling many of the original goals of this historic multilateral effort by developing strategies and practical tools for more effective capacity-building and enhancing programmes; promoting adherence to international standards and practices; and facilitating cooperation through partnership at the regional and international levels and that a second generation of intervention is now being witnessed, informed by the full range of interests in the European Union neighbourhood and by an overhauled global security agenda, that work be pursued in partnership within a new, revamped post-1996 Geneva Conference framework tailored to the needs of the evolving environment within which the 12 CIS member countries coexist and which affects their relationships both within and beyond their geographical borders, maintaining a framework of cooperation and consultation after its formal conclusion’.

Sixtieth session, General Assembly, A/60/276, 19 August 2005.

<sup>113</sup> Presentation of UNHCR to the OSCE Summit Meeting on 5 December 2005 in Slovenia.

Active partners and actors on the scene include the ICMPD<sup>114</sup> and the Budapest Group<sup>115</sup> who have been working proactively on the EU's New Neighbourhood Policy and its Hague Programme in order to advance their work programmes in the broader CIS region. They also had been obtaining European funding for activities such as capacity building and managing the nexus between migration and asylum, areas in which UNHCR and its partners have also been active in for the last decade within the framework of the CIS Conference process. As a result of EU funding for its projects, IOM<sup>116</sup> is also successfully raising its profile in the CIS region.

Ensuring a concerted and well-coordinated effort of the new post-CIS Conference will promote cooperation and dialogue within the broader Euro-Asia region on issues of migration, asylum and displacement generally (including statelessness, internally

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<sup>114</sup> International Center for Migration Policy Development (ICMPD), see: <http://www.icmpd.org>

<sup>115</sup> With regards to the ending of the CIS Conference Process, the 3rd meeting of the Budapest Group of Senior Officials held in conjunction with the final meeting of the project "Re-direction of the Budapest Process towards the CIS region" 29-30 June 2005, organized by the ICMPD in Vienna. ...

1. Hosted by Austria, under the chairmanship of Turkey, in its capacity as co-chair of the Budapest Process and gathered representatives of Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Czech Republic, Denmark, Finland, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russia, Serbia and Montenegro, Slovakia, Sweden, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, United Kingdom (upcoming EU Presidency), Uzbekistan, as well as the Commonwealth of Independent States (CIS) Executive Committee, Euro-Asian Economic Community (EURASEC), International Organisation for Migration (IOM), Organisation for Security and Co-operation in Europe (OSCE), United Nations High Commissioner for Refugees (UNHCR) and the International Centre for Migration Policy Development (ICMPD), as Secretariat of the Budapest Process.

2. In his opening statement the Secretary General for Foreign Affairs of Austria underlined the importance of the more than ten years work of the Budapest Process and its achievements in furthering a comprehensive approach towards the prevention and control of irregular movements in the Euro-CIS region and welcomed the broadening of the Process as a result of the project on the Re-direction of the Budapest Process towards the CIS region.

3. The United Kingdom, in its capacity as upcoming EU Presidency, introduced the main priorities on the agenda of the Presidency which will build on achievements since the Tampere European Council, taking into account the Hague Programme and the European Neighbourhood Policy. These priorities are in three broad themes: stronger EU engagement with the rest of the world in migration issues, strengthening border security, including tackling organised immigration crime and practical co-operation to manage migration, including partnership with third countries.

4. Hungary, as Chair of the Budapest Group and Turkey, as co-Chair of the Budapest Group in their opening statements pointed to the need for further regional co-operation in addressing the various issues related to migration and emphasised the instrumental role of the Budapest Process in this regard.

5. The Secretariat recalled that the meeting has the overall aim of analysing the findings of the CIS project and agreeing on the ways to include and address the identified challenges in the framework of the Budapest Process, in an effort to continue the prevention and control of irregular movements through the Euro-CIS region. It furthermore recalled the main elements characteristic for the Budapest Process, an informal and flexible mechanism for the exchange of information and experience among countries of destination, transit and origin of irregular migration, based on the principles of equality, sovereignty and partnership among States; and its open character, which involves a wide area of international actors. ... In their interventions, international organisations, present at the meeting, emphasized the complex migration dynamics in the CIS region, including forced displacement, and the various efforts undertaken in other relevant fora and international frameworks to address them. In particular, the 1996 CIS Conference on issues of forced migration and protection and the follow-up process were mentioned as having produced achievements in this regard that should be built on. Participants recognised the benefits to be gained through improved co-ordination, through exchanging work plans and maintaining and fostering contacts among regional processes, notably the Bali and Söderköping processes and the succeeding activities to the CIS 1996 Conference- Process. Source visited 25 March 2006, see:

[http://www.icmpd.org/uploading/Vienna\\_Final\\_Conclusions.pdf](http://www.icmpd.org/uploading/Vienna_Final_Conclusions.pdf).

<sup>116</sup> International Organization for Migration, <http://www.iom.int>.

displaced persons (IDPs), and Formerly Deported Peoples, including Germans, Meskhetian Turks and others<sup>117</sup>. What is important is that there is clearly a broadly-perceived need for some sort of structure in which the countries of Eastern Europe and Central Asia, their neighbours and other interested actors might continue to cooperate to address these issues<sup>118</sup>.

The CIS Conference process has proven a useful method of proceeding through unchartered refuge terrain, producing some notable achievements, which in line with UNHCR's Global Appeals, contribute to the foundations for the new framework of cooperation, including working consultations on refugees and asylum, migration, statelessness and related issues in this region<sup>119</sup>. However, as this chapter has illustrated, its progress does not compare favourably<sup>120</sup> to that made in Central Europe, where EU Integration has largely driven the formulation of refugee policy.

The following case study on the restitution of housing and property for returnees in Tajikistan, is included here as a demonstration of coordinated action taken to solve specific issues before and during the CIS Conference process. It is a significant example of a 'success story' in the reconstruction of homes driven by a protection and

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<sup>117</sup> *People in Exile: The Oral History of Meskhetian Turks (Akhyskha Turkleri)*, by Malika Mirkhanova, Washington University, St. Louis, presented at the 6<sup>th</sup> Central Asian Studies Society Conference, in Boston University, September 2005.

<sup>118</sup> Drawn from "Short Brief", Bohdan Nahajlo, UNHCR Geneva, 2005.

<sup>119</sup> UNHCR Global Appeal 2005, pp. 265, and UNHCR Global Appeal 2006, both on Eastern Europe, which among other things foresees a first successful application to the UN Human Security Trust Fund to allow the launch of a three-year multi-agency recovery program. This program aims primarily to provide solutions to Ossetian refugees from Georgia but is expected to also assist internally displaced people from Chechnya who are either seeking local integration in Ingushetia or are willing to return to their place of origin in Chechnya, pp. 292. The UNHCR Global Appeal 2006 on Central Asia, highlights that in May 2005, several hundred Uzbek asylum-seekers fled to southern Kyrgystan following the violence in Andijan, Uzbekistan, of whom 439 persons UNHCR arranged a humanitarian transfer to Romania to assure their protection. These developments, in addition to post 9/11 and the conflict in Afghanistan, have changed the operational environment for UNHCR in Central Asia, pp. 258.

<sup>120</sup> In fact there have been serious developments, for example, see "Uzbekistan: UNHCR regrets office closure, alternative arrangements in place for care of refugee caseload, This is a summary of what was said by UNHCR spokesperson Jennifer Pagonis – to whom quoted text may be attributed – at the press briefing, on 18 April 2006, at the Palais des Nations in Geneva. After 13 years, UNHCR yesterday (Monday) closed its office in Uzbekistan on orders of the government, which gave us one month's notice. The move follows a March ultimatum by the Uzbek Ministry of Foreign Affairs for UNHCR to end its work in the country by 17 April. The government said UNHCR had "fully implemented its tasks and there are no evident reasons for its further presence in Uzbekistan." UNHCR expressed regret over the decision as our work in the country was ongoing and many refugees continued to depend on assistance from us. But we only work in a country by invitation and in support of the government. So in those exceptional situations where we are asked to leave, we leave. UNHCR staff worked hard over the past 30 days to prepare for the end of our activities in Uzbekistan and to ensure alternative arrangements are in place for those in need of protection. We are pleased that the United Nations Development Programme (UNDP) in Tashkent has agreed and will be allowed under an alternative arrangement to continue providing basic care and assistance to some 1,800 refugees, most of whom are Afghans, and assist with voluntary repatriation and resettlement for those refugees for whom alternative solutions have already been arranged and for those who still need solutions. UNHCR started providing humanitarian assistance to refugees in Uzbekistan soon after establishing our presence in the country in 1993. Uzbekistan is the only Commonwealth of Independent States (CIS) country that is not a party to either the 1951 Refugee Convention or its 1967 Protocol. UNHCR has, however, advised the government on the development of national legislation and provided refugee law training to officials". UNHCR Geneva, Briefing Notes of 18 April 2006, visited 3 June 2006. See: <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&page=home&id=4444cb6516>.

prevention programme ultimately helped to prevent further violence and contributed to the protection of returning IDPs and refugees, and stabilized the entire community.

#### 2.4. Case study: Restitution of housing and property for returnees in Tajikistan<sup>121</sup>

This chapter seeks to contribute to an understanding of issues related to housing and property restitution for refugee and IDP returnees in Tajikistan, taking into account the particular background prior to independence in 1991, when a centrally-controlled governmental system of state-owned property prevailed. It reviews the civil war of 1992, the causes of internal and external displacement of approximately 900 000 Tajiks and the implications of that displacement. Furthermore it reviews how international and regional organizations contributed to resolution with a pioneering, proactive approach. UNHCR's role in creating a 'humanitarian space' by the restitution of returnees' housing and property is analysed in some depth. The Tajik *General Agreement and Protocol on Refugees of 1997* and national framework for its implementation, which codified and consolidated progress made in the Peace Process and the return of refugees, are also discussed.

Six months after the break-up of the Soviet Union and subsequent independence of Tajikistan, the civil war of May – December 1992 caused an estimated US\$ 7 billion in physical damages in addition to producing some 600 000 IDPs, approximately 60 000 refugees who fled to Afghanistan and a substantial number of refugees who fled to Central Asian countries and Russia (estimated at 200 000 persons, though no precise registration data is available). At 143 000 sq.km. Tajikistan is the smallest of the five countries in Central Asia. Its 5.5 million inhabitants are situated at the crossroads of Asia, sandwiched between several larger regional powers key to regional stability.

The war involved political, "ethnic" or "clan", and to a lesser extent, ideological elements. Certain clan, ethnic or regional groups traditionally held political or economic power, such as the Khojandi and Kulyabi, and were perceived as more *russified* while others, including the Garmi and Pamiri, were systematically excluded from government positions. These latter groups formed the bulk of the refugees and the IDPs.

The presence and interventions of international and regional humanitarian actors since 1992/93 contributed to establishing some degree of political stability. The ICRC with a mandate for victims of armed conflicts had arrived early on and worked on behalf of IDPs in the areas of conflict and displacement. UNHCR opened an office in early 1992 and made the immediate policy decision to offer protection and assistance to returnees from within Tajikistan and from Afghanistan without discrimination. Most significantly, UNHCR mediated at all levels to help ensure that both local and national authorities took responsibility for the reintegration and national protection of the returnees. UNHCR facilitated the return of the bulk of the refugees (59 000 of the 60

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<sup>121</sup> The author published a previous version of this chapter in the *Refugee Survey Quarterly* (2000), on the issue of rights of restitution for returnees UNHCR. Many colleagues contributed to this work directly and indirectly, particularly appreciation goes to Pierre Francois Pirlot and Daniel Bellamy for their time and advice, Rick Towle, Gang Li, Annika Linden, Yuka Hasegawa, Gregory Balke, Monique Malha, Irene Khan, Volker Turk, Stephane Jaquemet, Taslimur Rahman, Prof. Mohammad-Reza Djalili. Any errors or omissions are accountable to the author. The views expressed herein are not necessarily shared by UNHCR or the UN.

000) and almost 100% of the 600 000 IDPs between early 1993 and late 1995. It subsequently continued to support return during the consolidation and completion of international peace and reconciliation support for which the total budget is estimated to have been US\$31.5 million.

Active human rights field-monitoring proved an effective way of operating in this context. So, too, did direct intervention on a case-by-case basis to investigate reports of serious human rights violations and resolve disputes (such as unlawful house and property occupations) at an early stage before these incidents degenerated into larger conflicts. These tactics helped to ensure successful linkage between individual returnees and the national authorities. This process consolidated and further encouraged refugee returns. It also enhanced public confidence in rights-based criteria, which were gradually developed and accepted by those involved in the return and the monitoring process, and which, despite numerous difficulties, remained open and transparent throughout.

Legal capacity and institution-building, judiciary assistance programs for advising and building an independent judiciary as well as active human rights monitoring by UNHCR and the OSCE are considered useful precedents for future similar situations. UNHCR's active encouragement of, among other things, the satisfaction of an estimated 19 800 housing restitution claims by judicial and executive authorities, as well as its program for reconstruction of some 20 000 destroyed houses, driven by a the need for protective and preventive measures – helped to prevent further violence, to protect returning IDPs and refugees, and to stabilize the entire community.

The following serves as background<sup>122</sup> for a better understanding of refugee institutions and policy in Tajikistan,<sup>123</sup> a landlocked country in Central Asia bordering China (to the east), Uzbekistan (to the west and the north), Kyrgyzstan (to the north) and Afghanistan (to the south). Seventy percent of the population reside in rural areas. The population is divided among several ethnic groups, including: Tajiks (65%); Uzbeks (25%) and Russians (5%) with additional smaller numbers of Tatars and Kyrgyz. Russian is widely used as a language for inter-ethnic communication. Tajikistan is a Persian-speaking enclave in a Turkic language area of the ex-Soviet Union. The issue of language thus lies at the heart of the foundation of the Tajik State.<sup>124</sup>

Although a country rich in potential mineral resources, the economy in Tajikistan produces a limited number of products, mostly cotton, aluminium, fruits and vegetables. The Soviet system had strongly encouraged the development of vast state owned cooperative units ('kolhozes' and 'sovhozes') for cotton production, largely at the expense of food crops. When the Soviet economy and support mechanisms collapsed, this history of mono-crops left a newly-independent nation without immediate food self-sufficiency.

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<sup>122</sup> Global report on UNHCR's activities in Tajikistan since January 1993, UNHCR Geneva, 5/1996.

<sup>123</sup> Based on discussions with and drawn from the Briefing Note – UNHCR Tajikistan prepared by Pierre Francois Pirlot, the UNHCR Regional Co-ordinator in Tajikistan from January 1993 through Spring 1997; updated by UNHCR colleagues in Dushanbe, namely Gregory Balke, Acting Snr. Liaison Officer, UNHCR Dushanbe January to November 1996, Gang Li, Snr Liaison Officer/Head of UNHCR Dushanbe 1997 through January 2000; George Labor, Snr. Program Officer late 1997 through May 2000; Yuka Hasegawa Associate Field Officer March 1998 through February 2000.

<sup>124</sup> Tajikistan, The Trials of Independence, Ed. By Mohammad Reza Djalili, Frederic Grare and Shirin Akiner, Central Asia Research Forum, Cruzon Press, 1998, p. xi.

Limited resources and fiscal policy and an inadequate operating budget made it extremely difficult for the government to pay salaries. The prevailing difficult economic conditions (including the significant lack of foreign investor confidence in a lingering civil war environment) have not been conducive to privatisation and employment generation. Teacher salaries being extremely low, thousands of teaching posts in the education sector remained vacant, also as a result of displacement and migration. As the general salary level has been very low, so has the purchasing power. Many skilled and other professionals left the country during the war period to Central Asia, CIS and Russia in search of better paying jobs and have still not returned. Less than one third of the population have access to clean water. Food security has been weak.

The proactive field monitoring in the return process, first by UNHCR and, as of the mid-1990s, by the OSCE played a crucial role in solving practical problems at the field level in the areas of return, reintegration and restitution of houses. Most of the 600 000 IDPs who returned to their various places of origin, and the bulk of the roughly 60 000 refugees who came back from Northern Afghanistan and Central Asia between 1993 and late 1995 benefited directly or indirectly from an active field presence monitoring the organised voluntary repatriation. The pioneering outreach in assisting the Tajik authorities with the reconstruction of about 20 000 homes in close cooperation with the returnees themselves, and with some assistance from UNOPS which sub-contracts to private firms. A large part was done through NGO implementing partners (Acted, Shelter Now International (SNI), Save the Children – US (SCF-US)). Although at times raising doubts about occupancy rates and control over use of material, a joint evaluation arrived at a positive global appraisal for the housing component.<sup>125</sup>

As in other post-conflict situations, many returnees found their homes either occupied by other persons or destroyed. Where homes were occupied, they were most often occupied by members of the 'opposing' ethnic group who may have actively driven the homeowner away during the original displacement crisis. Clearly, UNHCR could not simply transport persons to their home villages and then depart. Instead, a sensitive and lingering UNHCR field presence was required.

UNHCR and its partners, the International Federation of the Red Cross (IFRC) and the aforementioned NGOs have been co-operating in rebuilding homes or roofing and providing materials and assistance in the form of plastic sheeting and blankets to assist in the reconstruction of homes and of communal facilities. Destruction of the houses kept the primary occupancy rate low. As field reports indicate, reasons for not occupying houses, which were reconstructed by the UNHCR project, included financial constraints, in other words beneficiaries often did not have enough financial resources to purchase windows and doors and therefore could not move in during the winter time even though the roofing might have been completed.<sup>126</sup>

Especially in rural areas, where the majority of the returnee population is engaged in agricultural production, it was deemed desirable that returnees might lease or be

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<sup>125</sup> Joint evaluation SDC-UNHCR Tajikistan, Voluntary Repatriation and Local Integration of Tajik Refugees and Local Integration, Mission Report, 14-28 March 1999, (ed.) by Reto Zehnder, p. 7, 12.

<sup>126</sup> Field report from Yuka Hasegawa, Associate Field Officer, in Tajikistan March 1997 through February 2000, on file of the author dated 10 May 2000.

provided land. Ongoing conflicts and post-conflict situations made the implementation of this idea very difficult. Moreover, returnees were often discriminated against, by only being allowed non-agricultural land by particular owners (including returnees). In most cases, through the intervention of either the Central Migration Service or active UNHCR or OSCE field monitoring, the situation could be rectified. Considering the increasing number of repatriations into conflict and post-conflict situations, securing housing and property restitution for returning IDPs and refugees constitutes a concern which took an increasingly prominent place in UNHCR's work on the ground in the 1990s, as in the case Tajikistan. In early 1996, UNHCR handed over protection and security related tasks to the OSCE, and reintegration projects to the UN Development Program (UNDP). The World Bank and later also the Asian Development Bank significantly helped in the funding and implementation of the material aspects.<sup>127</sup>

According to reports from the Tajik Government and the National Red Crescent Society of Tajikistan about 6 000–10 000 Tajik returnees from various CIS countries and Pakistan, Iran and Northern Afghanistan came home spontaneously without UN assistance, especially to the Garm and Karategin valley, which are not accessible to the UN because of the unsatisfactory security situation. Returnees in the Khatlon Province benefited from UNHCR's assistance in securing housing, water, sanitation and income-generating projects. Promoting confidence and building social stability were the two most important features of UNHCR's efforts to meet the returnees' desire to return under less-than-ideal conditions. All of these efforts and achievements directly contributed to the peace process through confidence building, mediation, prevention or mitigation of further violence, returnee protection and the stabilization of the entire community. The cumulative budget of this operation will have been some US\$ 31.5 million<sup>128</sup>.

The strategy of UNHCR's intervention in Tajikistan has been to help prevent an escalation of the displacement of population in the country, which by extension could also generate refugee flows to neighbouring countries in the region. UNHCR's early intervention helped to create a humanitarian space what was often a tense situation both for voluntary repatriation and the restitution of housing and property. The foci of the Office were 1) to assist the Tajik Government in creating a conducive atmosphere for peace and reconciliation, 2) to build the required absorption capacity for the returnees, 3) to ensure that the rights of returnees were protected, 4) to assist with food production and rehabilitation of some social infrastructure units (e.g. houses, schools, clinics, and water facilities in returnee-affected areas), and to facilitate the reintegration of returnees. UNHCR also promoted economic reintegration among returnees through promotion of small business and small grant assistance to the most needy persons (including single mothers) until they gained a certain economic or financial

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<sup>127</sup> Note on the discussion with Gang Li, previous Senior, Liaison Office Head of UNHCR Dushanbe on discussion held on 28 April 2000 on the file of the author.

<sup>128</sup> UNHCR in Tajikistan Voluntary Repatriation and Reintegration Programme Budget: 1993-1997:US\$22 million; 1998: US\$7 million; 1999: US\$1.5 million; 2000: US\$ 1 million; total US\$ 31.5 million (not including about US\$2 million for care and maintenance and administrative activities some of which indirectly benefited the returnees return and reintegration). Source: Briefing Note – UNHCR Tajikistan prepared by Pierre Francois Pirlot, the UNHCR Regional Co-ordinator in Tajikistan from January 1993 through Spring 1997; updated by UNHCR colleagues in Dushanbe, namely Gang Li, Head of UNHCR Dushanbe 1997 through January 2000; George Labor, Senior Programme Officer late 1997 through May 2000; Yuka Hasegawa Associate Field Officer March 1998 through February 2000, p. 3.

independence. This initiative took the form of quick impact projects which have played a central role in the implementation of the emergency assistance program. Micro-credit/finance and micro-enterprise projects are in the vanguard of these activities.

On 27 June 1997, in Moscow, the President of the Republic of Tajikistan E. Rakhmonov, the leader of the United Tajik Opposition, A. Nuri, and the Special Representative of the Secretary-General of the United Nations G. Merrem (hereinafter referred to as Parties) finally signed the Agreement, to which UNHCR greatly contributed, known as the General Agreement on the Establishment of Peace and National Accord in Tajikistan. This Agreement, which codified and consolidated progress that was made in a pragmatic manner, consisted of several documents<sup>129</sup> one of which – the Protocol on Refugees, outlines the plan of action. Paragraph 2 of the Protocol specifies the following:

“The government of the Republic of Tajikistan assumes the obligation to reintegrate returning refugees and displaced persons into the social and economic life of the country, which includes the provision to them of humanitarian and financial aid, assistance in finding employment and housing and the restoration of all their rights as citizens of the Republic of Tajikistan (including the return to them of dwellings and property and guaranteed uninterrupted service)...”

This protocol provided the foundation to step up mutual efforts to ensure the voluntary return of all remaining refugees and displaced persons to their homes within 12 to 18 months from the date of its signature. To this end, the Parties called upon the United Nations, the OSCE and UNHCR to provide assistance to ensure the safety of returnees and to establish and expand their presence where such persons were living. In paragraph 3, the Parties confirmed their decision to resume the work of the Joint Commission (created in 1994 and since interrupted in its work) on problems relating to refugees and, within one month from the date of its signature to draw up the statute of the Commission, with the assistance of UNHCR. In order to facilitate the implementation of this work, the Parties decided to instruct the Joint Commission, with the participation of representatives of local *hukumats* (executive committees) and the United Tajik Opposition, to visit the refugee camps in the Republic of Afghanistan and in countries of the CIS where there were groups of Tajiks, as well as districts in Tajikistan to which refugees and displaced persons intended to return. This provided

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<sup>129</sup> General Agreement published in the document on “International Support to Peace and Reconciliation in Tajikistan”, by the United Nations, September 1997 with a Preamble signed by Emomali Rakhmonov, President of Tajikistan and Said Abdullo Nuri, Chairman of the Commission on National Reconciliation, contains the following documents: The Protocol on the fundamental principles for establishing peace and national accord in Tajikistan of 17 August 1995; The Protocol on political questions of 18 May 1997 and the related Agreement between the President of Tajikistan, E. Rakhmonov and the leader of the United Tajik Opposition, S. Nuri, on the results of the meeting held in Moscow on 23 December 1996; the Protocol on the main functions and powers of the Commission of National Reconciliation of 23 December 1996; the Statute of the Commission on National Reconciliation, of 21 February 1997; the Additional Protocol to the Protocol on the main functions and powers of the Commission on National Reconciliation, of 21 February 1997; The Protocol on military issues; The Protocol on refugees of 13 January 1997; The Protocol on the guarantees of implementation of the General Agreement on the establishment of Peace and National Accord in Tajikistan, of 28 May 1997.

the overall political and legal framework for return from Afghanistan and eventually from neighboring countries in the region, such as Kazakhstan starting in 1999<sup>130</sup>.

The building of a national framework for the implementation of the 1997 General Agreement started early on in the process, when it was determined that the return of refugees and IDPs was a priority. So was ensuring their personal security in places of residence, in addition to safeguarding their social and economic rights, such as housing and property rights. However, in the absence of an effective national authority for the implementation of these plans, UNHCR took this role in early 1993 and helped to develop a legal and administrative framework.<sup>131</sup> At the end of 1994, based on national legislation on refugees and forced migrants (IDPs and Tajik refugees in neighboring countries), the Central Department for Refugees and Forced Migrants (CDRFM), a specialized agency was established within the Ministry of Labor and Employment of Population. This Department became the central competent authority for these matters and UNHCR's main partner in charge of returning IDPs and Tajik refugees from abroad, including of handling the housing and property issues.

During the course of 1997 the CDRFM was reorganized into the Central Migration Service (CMS) under the Ministry of Labor and Population Employment, with structural autonomy from the Ministry, a separate bank account and an increased number of staff. UNHCR had been providing assistance to the Ministry of Labor since 1992 to deal with these tasks.<sup>132</sup> According to the General Agreement, the main mechanism for implementation - the Commission for National Reconciliation (CNR) was established and commenced its work in July 1997. The CNR was a provisional body created for the transitional period before the convening of a new Parliament and the formation of the latter's governing bodies. The CNR has four sub-commissions, which dealt with the specific areas of the implementation of the General Agreement including the Joint Commission on Refugees (the Joint Commission). The Joint Commission was composed of three government members and three opposition members. President Mr. Emomali Rakhmonov who was confirmed in office in 1994, had headed the government since the beginning of independence,<sup>133</sup> following the adoption of the constitution by referendum and independent Tajikistan's' first presidential elections.<sup>134</sup>

UNHCR, having opened its office in Tajikistan in January 1993, immediately started to develop an operational role to respond to emergency needs, opened eight field offices covering the Khatlon Province in the south of Tajikistan and Gorno-Badakhshan with over 15 international and numerous national staff members. Its presence facilitated a broad understanding of the conflict. Appropriate measures to foster reconciliation at

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<sup>130</sup> Project Description of Letter of Instruction "Repatriation of Tajik Refugees from Kazakhstan", 4 May 1999 (99/TJ/KAZ/RP/370), Page 1.

<sup>131</sup> Note on file of the author of a discussion with Mr. Pirlot, UNHCR Regional Co-ordinator in Central Asia from January 1993 through April 1997, based in Tajikistan.

<sup>132</sup> Note on file of the author of discussions with Gang Li, Head of the UNHCR Office in Tajikistan mid 1997 through January 2000.

<sup>133</sup> Note on file with the author of a discussion with Pierre Francois Pirlot on 2 June 2000.

<sup>134</sup> The February 1995 Parliamentary elections were held resulting in 181 deputies in the Parliament (Majlisi Oliy), with a Speaker of Parliament in the person of Mr. Abdulmajid Dostiev. A referendum to change the Constitution was held on 26 September 1999 (foreseeing the establishment of religious parties and extending the term of President to 7 years), followed by Presidential elections in November 1999 and Parliamentary elections in 2000.

both central governmental and local community levels were devised in the process and implemented as feasible. As in other country-of-origin operations, neither protection nor assistance could be refused to returning refugees but the needs of IDPs demanded attention as well.<sup>135</sup>

The stability and continuity of the Tajik refugee institutions and of their officials have been considered by many familiar with this situation as having played a key role that eventually also helped strengthen regional and sub-regional integration in the field of refugees and migration as a whole.

The Law of the Republic of Tajikistan on Forced Migrants, 20 July 1994, provided the first national legal references relevant for housing and property issues. Next came the Resolution No. 542 of 22 August 1995 entitled: *Additional Measures Facilitating the Return of Refugee-Citizens of the Republic of Tajikistan and Forced Migrants to the Places of Permanent Residence and Their Social and Legal Protection*. In addition, the before-mentioned 1997 Refugee Protocol of the General Agreement on Peace and Reconciliation provided the legal basis for the return and restitution of property.

The Tajik judicial branch strongly encouraged by UNHCR, played a crucial role at the regional and provincial level to help implement housing and property restitution to returnees. It has been dealing with about 23 000 cases submitted by returnees from Afghanistan and elsewhere, including cases of destroyed houses or secondary occupancy, and has been able to decide on most of the cases, leaving only a small number of some 200 cases pending a decision/resolution at the time of writing this article. Thus, even though housing and property problems posed a challenge in the implementation of the repatriation programs in post-conflict Tajikistan, they were solved in most cases through judicial decisions and amicable, administrative settlements. Most of the unlawful occupants eventually vacated the homes peacefully. Only in a few instances were there reports of active eviction following procedural safeguards, including formal issuance of the court order.<sup>136</sup>

Although Tajikistan has been undergoing transitions since independence in 1991, the legal regime remained largely the same during the period of flight and return. Therefore, legal titles did not and could not revert to anyone else than the original inhabitant. Tajikistan was among the first CIS countries to ratify and implement the 1951 Geneva Convention in 1993. As a follow-up to the CIS conference, the government enacted decree No. 555 on 25 December 1997, re-organising the Central Department for Refugees and Forced Migrants of the Ministry of Labour into a State Migration Service under the then leadership of Mr. Tabarov as the central authority handling refugee and migration matters in Tajikistan.

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<sup>135</sup> Tajikistan: Lessons Learned from a Country of Origin Operation, UNHCR, 3 April 1996.

<sup>136</sup> Some of the most comprehensive programmes undertaken by UNHCR in support of national legal judicial and capacity-building have been in Central Asia. In particular in Tajikistan, UNHCR has been carrying out a judicial assistance programme whose main objective was to provide technical support and training to the judiciary and law enforcement organs. The aim has been to promote their active contribution to the reconciliation and peace-building process in post-conflict areas, especially in the returnee areas. UNHCR has also been directly involved in drafting and promoting the adoption of human rights and refugee legislation. See: "UNHCR's Role in National and Judicial Capacity-Building", EXECUTIVE Committee of the High Commissioner's Programme, EC/46/SC/CRP.31 of 28 May 1996, p. 3.

International human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenants on Economic, Social and Cultural Rights (ICESCR), of which Tajikistan is a signatory,<sup>137</sup> provide even broader legal protection than the 1951 Convention. While these international human rights instruments provide such guarantees equally to all persons without restriction,<sup>138</sup> the 1951 Convention only guarantees equality of treatment to refugees with other non-nationals, as regards housing rights and social security. Even though international human rights standards, especially in the social and economic domains, might be difficult to meet (because implementation is costly) they constitute important guidelines for negotiation and contribution to social justice, including to housing and property restitution for returnees. In this context it is relevant to mention that human rights standards as specified as 'minimum core entitlements' under the ICESCR described by the ESCR Committee in General Comments 3, Para 10, as the right "to essential foodstuffs, of primary health care, of basic shelter and housing..."<sup>139</sup> They represent important guidelines for legal agreements and practical application.<sup>140</sup> Even though the 1951 Convention relates to refugees more specifically, (which Tajikistan ratified in 1993), the ICESCR's provisions provided otherwise lacking guidance on property issues.<sup>141</sup> One of the more recent UNHCR policy guidelines explaining UNHCR's involvement noted that Tajikistan was an instance when geography and history dictated the flight of some 600 000 persons and that in such instances it "makes little sense to base international assistance on location alone"<sup>142</sup>. This situation demonstrates that there are situations where a distinction between refugees and returnees is sometimes blurred.<sup>143</sup>

A number of practical elements affected returnees' actual ability to enjoy these rights to housing, property and access to land. For instance: Land in Tajikistan used to be administered in the framework of state owned cooperatives ('kolhozes' and 'sovhozes'). Even if housing or land were available, ensuring access to land for returnees may give rise to conflicts. Their property in the form of houses or land may

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<sup>137</sup> Joint Document of UNHCR and IOM, Regional Conference to address the problems of refugees, displaced persons, other forms of involuntary displacement and returnees in the countries of the Commonwealth of Independent States and Neighbouring States, Assessment Report of the Conference Process (1996-2000), Geneva 2000, p. 43.

<sup>138</sup> "Human Rights and Refugees: Enhancing Protection through International Human Rights Law", by Brian Gorlick, *Nordic Journal of International Law*, Publisher: Brill Academic Publishers, ISSN: 0902-7351 (Paper) 1571-8107 (Online), DOI: 10.1163/15718100020296224  
Issue: Volume 69, Number 2, Date: February 2000, Pages: 117 – 177.

<sup>139</sup> General Comment 3, CESCR 5<sup>th</sup> Session, 14 December 1990.

<sup>140</sup> "Human Rights Standards, A Paradigm for Refugee Protection?" by Richard Towle, Paper presented to the Conference: "Human Rights and Forced Displacement: Toronto, May, 1998, p. 15.

<sup>141</sup> The 1951 Convention in 1993 foresees on property issues in article 13: "The Contracting States shall accord to a refugee treatment as favorable as possible and, in any event, not less favorable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property."

On housing rights in article 21:

"As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favorable as possible and, in any event, not less favorable than accorded to aliens generally in the same circumstances".

<sup>142</sup> "Internally Displaced Persons: The Role of the United Nations High Commissioner for Refugees", UNHCR, 6 March 2000, p. 4.

<sup>143</sup> UNHCR Handbook on Voluntary Repatriation: International Protection, 1996, Geneva, page. 93.

have been occupied by others, or taken up in reform programs. If restitution was unfeasible, compensation and/or other solutions needed to be identified, as outlined in the UNHCR Inspection and Evaluation Service's study of May 1998, which reviews these issues and UNHCR's role in supporting restitution rights for returnees in their home countries.<sup>144</sup>

Experts on housing and property issues for refugees and IDP's in the context of return have been stressing that UNHCR should refrain from promoting voluntary repatriation to countries unless housing and property restitution issues are adequately clarified, to a maximum possible extent, prior to return. Though it is recognized that it may not always be possible to arrange mechanisms, procedures and policies designed to secure restitution, every effort should be made to try prioritizing focus and concern for clarifying housing and property restitution issues throughout all phases of refugee repatriation.

In the many major repatriation operations which UNHCR has carried out in its fifty years of existence, returnees and refugee workers alike are first and foremost concerned about basic and practical issues of housing. If occupied by others or destroyed, the rebuilding or securing of shelter and cultivating of land takes precedence over aspiring political and civil rights. If the question of housing and property issues is to be properly treated as a basic human right, housing-related policies and practices need to be treated as protection issues in negotiations before, during and after repatriation. Relevant agreements and national legal texts need to reflect this in order to achieve a durable solution.

In similar or even larger return operations, as for example in Iraq, Bosnia and Herzegovina, and Kosovo, efforts undertaken toward housing and property-restitution for returnees yielded significant results in terms of restoring individual livelihoods as well as establishing relevant policies, laws and institutions for this purpose. A number of international references provide guidance for handling housing and property issues, including "Shelter for All", the basic framework for housing with a focus on 'minimum standards' of various kinds.<sup>145</sup> Also, the Centre on Housing Rights and Evictions (COHRE) has undertaken a wide variety of activities supporting the full realization of housing rights for everyone, everywhere basically through its two co-directors Scott Leckie and Miloon Kothari.<sup>146</sup>

UNHCR began the phasing out of voluntary repatriation and mainstreaming of international protection activities, while still placing an emphasis on completing tasks in the housing and property sectors for returnees. The agency increasingly focused on

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<sup>144</sup> "The Problem of Access to Land and Ownership in Repatriation Operations" (EVAL/03/98), by the UNHCR Inspection and Evaluation Service, May 1998, p.6.

<sup>145</sup> UNCHS, 1997b : Shelter for All: The Potential of Housing Policy in the implementation of the Habitat Agenda, Nairobi, (HS/488/97E), Chapter VII, fourth para in "Housing, Urban Planning and Poverty: Problems Faced by Roma/Gypsy Communities with particular reference to Central and Eastern Europe", by Prof. Dr. Vladimir Macura, Assoc. AIA, Council of Europe, MG-S-ROM (99) 1, Strasbourg, 22 February 1999.

<sup>146</sup> "The first four years, 1992 – 1992, The Centre on Housing Rights and Evictions", the COHRE's main objectives include Ensuring the full enjoyment of human right to adequate housing, halting and preventing forced evictions and other mass displacements, protecting the housing rights and human rights of vulnerable, disadvantaged and threatened groups and communities throughout the world and promoting popular education and awareness of international housing rights standards..."

consolidating progress achieved, implementing preventive activities, as well as promoting refugee law and institutions. The review of UNHCR's Phase-out Strategies in Tajikistan highlighted the initial lack of implementing partners also in UNHCR's refugee operation in this country.

Unlike other major operations, such as in Cambodia, UNHCR's involvement did not follow a peace agreement, but was initially conceived as establishment of a pre-emptive presence during an ongoing internal conflict, aimed at preventing massive population displacement from becoming a major refugee problem. Due to the absence of suitable implementing partners, whether local or international, UNHCR had to assume an operational role in the early stage and it took a long time for UNHCR to identify those operational partners willing and able to work in housing/shelter and other activities.<sup>147</sup> The human rights abuses and violence against returnees and IDPs, which were chronic since the early days of the operation and which required UNHCR to focus on convincing national and local authorities to step in, needed to be addressed throughout the phasing out period.

In the framework of the Plan of Action adopted at the Regional Conference to address the problems of refugees, displaced persons [...],<sup>148</sup> activities for strengthening the country's capacity in management of population movement continued. With the objective to help consolidate the peace and reconciliation process in Tajikistan, UNHCR and its partners continue a number of preventive activities, such as the promotion of rule of law in the area of return through training of local juridical personnel, distribution of new issued laws, and various public awareness activities. The phasing out of the Tajik repatriation operation in 2001<sup>149</sup> also brought to an end the main aspects of the work on housing and property restitution.<sup>150</sup>

Concluding, it can be stated that most of the 600 000 IDPs and the 60 000 refugees who returned into conflict and post-conflict situations in Tajikistan, have seen to an important extent their housing and property restitution rights respected. Of about 19 800 cases submitted to the local and provincial courts, only a few cases are reported to be pending a judicial decision. The co-operation with the different branches of government (legislators, executive and judiciary) has been crucial in achieving a relatively smooth reintegration process, considering prevailing conflict and post-conflict difficulties. The pioneering role of the ICRC, the UNHCR, the OSCE and their partners boosted confidence among the beneficiaries and the rest of the local population.

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<sup>147</sup> Executive Committee of the High Commissioner's Programme, EC/48/SC/CRP.16, 26 March 1998, "Summary of the Synopsis Report on the Review of UNHCR's Phase-Out Strategies: Case Studies in Selected Countries of Origin, pp. 3-4.

<sup>148</sup> CISCON/1996/5, 11 June 1996, Geneva, 30 – 31 May 1996, in the Collection of Documents on Refugees and persons in Refugee Like Situations in the Republic of Kazakhstan with comparative research and analysis concerning countries in Central Asia and the CIS, published by UNHCR Almaty in co-operation with the Government of Kazakhstan and with the support of the UK Know How Fund, p. 3-28.

<sup>149</sup> Standing Committee of ExCom, February 2000, Contributions of Desk 1 to the speech of the Director, p. 1.

<sup>150</sup> Discussion on 30 May 2000 with Mr. Daniel Bellamy, Head of Desk for Central Asia, Note on the file of the author.

The quick impact projects and micro-finance enterprise activities assisted individuals to face the challenges of rebuilding homes and live, despite an almost absent infrastructure due to disintegration of the centrally-controlled bureaucracy and atrophy of national decentralised administrations. US\$ 7 billion in physical damages was endured by the country during and after the civil war. Without the funding provided by the international community, it would not have been feasible to perform active human rights monitoring and direct intervention on a case-by-case basis, nor to address property and land restitution issues.

This pioneer operation in Tajikistan would not have been possible without the close co-operation among national, regional and international actors, especially in the areas of judicial training, protection of returnees and human rights monitoring by ICRC, UNHCR, the CSCE/OSCR-ODIHR and a number of local and international NGOs as UNHCR's partners.

The government of Tajikistan, as well as outside evaluators of this returnee operation, have confirmed that UNHCR's housing and shelter program intervention had a positive impact in forwarding peace and stability, as serious risk of potentially serious clashes between resident populations and returnees did not take place. Through its presence and monitoring in areas of return, UNHCR, together with OSCE and other UN agencies as well as the international and national NGOs, has played an essential role in this critical reintegration, and contributed positively to peace and reconciliation in Tajikistan.<sup>151</sup> The outcome justified UNHCR's investment: The rebuilding of homes driven by a protection and prevention need, ultimately helped prevent further violence, contributed to the security of returning IDPs and refugees, and stabilized the entire community.

Having examined one country – Tajikistan – we will now take a regional perspective on analyzing the process of developing a refugee and asylum systems in Central Europe and the Baltic States (CEBS). All of the 12 CIS States are signatories of the 1951 Geneva Convention, except Uzbekistan, though both legislation and implementation is lacking.

Those institutions responsible for reception, status determination and integration of recognised refugees have not grown in proportion to the numbers of asylum-seekers in Eurasia, and will likely remain overstretched in the future. The consequence could be a counter-reaction on the part of concerned governments and their border authorities who may become even more reluctant to allow entry into the country and access to the asylum procedure. Technical and financial assistance provided to Eurasia for the purpose of immigration control appears to exceed assistance with institution and capacity-building in the asylum field. The aim of such assistance is that those countries adopt standards for refugee protection, including immigration control, appropriate management of carrier sanctions, and visa policies similar to those of Western European states. If indiscriminately applied to those seeking protection and to those who do not, such measures will gradually hinder persons in need from finding it in at least part of the CIS countries in Eurasia.

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<sup>151</sup> Joint evaluation SDC- UNHCR Tajikistan, Voluntary Repatriation and Local Integration of Tajik Refugees and Local Integration, Mission Report, 14-28 March 1999, (ed.) by Reto Zehnder, p. 7, 12.

The ‘exported’ negative repercussions of restrictive EU refugee policies should not be underestimated. Policy makers and legislators, UNHCR and refugee NGOs alike, will have to be aware of these challenges to the developing refugee policies in Eurasia. Experience and research have revealed that externalities associated with EU refugee policy, in the form of heightened refugee influx pressures, affect non-EU member states in inverse proportion to their geographic proximity. Finally, while recognizing this geographical optic of radiation, the EU integration process in terms of refugee policy should be seen in a broader perspective, which highlights the deeper impact of the developing EU refugee within the EU on the one hand and within Eurasia on the other. With formal EU accession completed between 2004 and 2007, there will be a need to assess afresh the new radiation which the enlarged European Union, including Bulgaria and Romania, will have on neighboring states further east of Eurasia. This will open a new chapter altogether and is presented as food for thought and future research.

The Study showed that the EU integration process has to varying degrees been the key engine for developing refugee policies in Central European, though much work and progress has been accomplished in these areas. By implication, once the enlarged Europe of 27 countries after 2007 has taken shape, new challenges will emerge. Already, some countries in Eastern Europe and Central Asia see their progress in refugees-related matters quickly eroded and then some – a sort of “one step forward, two steps back”. Thus much work remains to be done if, in the interest of a healthy global society, refugee policy imbalances are to be righted between today’s EU and Eurasian countries. There have been atrocious wars in Europe during the past century, yet the construction of a unified Europe, since the Treaty of Rome in 1958, has had a largely war-preventing effect. The continuous challenge will be to maintain and seek to strengthen the balance between national security and the protection of the individual on the one hand and the internal policy developments within the EU on the other. This is and will continue to be a challenge for an enlarging Europe and a shrinking Eurasia.

### **3. CENTRAL EUROPE: FOCUS ON THE EU INTEGRATION PROCESS & BULGARIA**<sup>152</sup>

Among the neighboring countries of the CIS Conference process, certain Central European governments had, even prior to the fall of the Berlin Wall, begun developing refugee work to face realities of pending transition. Due to the presence of refugees within some of their territories, though the massive westward migration did not occur, challenges had to be faced.

During the decade following 1991, more than one million persons took up a westward migration to neighboring states.<sup>153</sup> UNHCR opened offices in the region starting in Hungary in 1989 and in Bulgaria in 1992, where, from the beginning the focus was on protection activities, promotion of refugee law and institution-building, as well as operating limited programs of material assistance. Early on in the decade, the

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<sup>152</sup> The discussions with and ideas from Michael Petersen are herewith gratefully acknowledged and are drawn on with his permission.

<sup>153</sup> In Bulgaria alone, 111,390 persons applied for asylum in industrialized countries between 1990-1999 of whom 75% in Germany (83,210) and 5% in Belgium (5800), see UNHCR 1999 Statistical Overview, and alone in 1999, 270 Bulgarian asylum seekers were still recognized as refugees, see page 61 in the UNHCR 1999 Statistical Overview.

authorities ratified the 1951 Convention and took an active role in the process of individual refugee status determination procedures, as foreseen under the international refugee regime.

The problems faced by Central European governments were becoming increasingly similar to those in Western European countries as they sought to control migratory movements through their territory. The Central European states started to perceive a double threat: first a possible massive population displacement from the East and the South, and second the closure of the Western borders to the East. The lack of resources has been a chronic problem which has been alleviated to some extent by support from the international community, mainly through the UNHCR and the European Union, especially during the EU accession process. Another problem has been the lack of infrastructure and at times perhaps the lack of political will or capability to deal with refugee problems.

In light of the request of the High Commissioner in 1992 to states in the region to extend temporary protection for persons forced to flee the fighting and human rights violations in the former Yugoslavia, some of the affected Central European states were involved in developing a temporary protection regime with prima facie recognition where forced mass displacements were involved or where persecution was of the underlying factors for flight.

Many Central European states had to react to external factors beyond their control as a result of events at end of the Cold War. UNHCR became active in most of these countries early on in the nineties in order to counterbalance some national legislation and practices that raised concern in view of the increasing number of readmission agreements as well as arbitrary and /or inhuman conditions of detention to which refugees were being subjected.<sup>154</sup> The countries in the Central Europe and the Baltic States (CEBS) region made significant progress in building their refugee and asylum systems in the decade of the 1990s. Before their transition to democracy, most of these countries used to be refugee-producing countries. None of them had adhered to any of the international refugee instruments before the transition. None had refugee capacity and institutions.

Through the EU accession process, all of the countries from Central Europe and the Baltic States are now parties to the 1951 Refugee Convention and its 1967 Protocol, and have adopted national refugee laws and by-laws required for the implementation of those instruments. Especially since accession negotiations started with the EU, they have been building their refugee capacities and institutions at differing speeds to eventually get ready for the EU integration process.

At the same time, these countries have been considered “buffer zones” against asylum-seekers, refugees and stranded, would-be immigrants seeking to reach Western Europe. This is prompted by Western European states’ attempts to limit their responsibilities regarding asylum-seekers and refugees by increasingly putting into usage the ‘safe third country’/‘safe country of first asylum’ concept which EU countries themselves are using to return asylum-seekers and refugees to these countries. For example, as of 31

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<sup>154</sup> International Symposium on Protection of Refugees in Central and Eastern Europe in Sofia, 21-23 June 1994, Report and Proceedings, UNHCR, European Series, Vol.1, No. 1, April 1995, 22 pp.

December 2004, Bulgaria had concluded more than 30 readmission agreements<sup>155</sup>, which have been traditionally used by Western European countries for the return of asylum-seekers to their (usually) immediate neighbors. Such readmission agreements do not normally offer proper guarantees that returned asylum-seekers will gain access to the asylum procedure in receiving countries.<sup>156</sup>

Other restrictive practices applied by these countries include short time limits to apply for asylum, the extensive use of accelerated or admissibility procedures and excessive resort to detention of asylum-seekers. Moreover, countries in this region are increasingly following the example of Western European countries in adopting measures aimed at preventing irregular migration, including visa requirements; carrier sanctions; enhanced surveillance of borders and stiff penalties for smuggling; trafficking and illegal entry and stay; and bilateral Readmission Agreements, especially with Central and Eastern European countries.<sup>157</sup>

### *3.1. EU accession as the main motor in developing refugee policies*

None of the countries in Central Europe had the capacity to deal with the problems stemming from this new type of movement after the regime change in the early nineties. Therefore, there was a need to assist those countries by building the institutions and capacities necessary for coping with this phenomenon. This began with the ratification and accession to international refugee instruments, through to the adoption of national refugee legislation conforming to international and EC/EU standards, in order to develop the national asylum systems for eventual integration into the European common asylum system in accordance to evolving EU *acquis* on asylum.

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<sup>155</sup> Refugee Protection and Integration in Bulgaria, This 2004-2005 edition of the UNHCR Representation in Bulgaria and the State Agency for Refugees with the Council of Ministers, with refugee-assisting NGO partners, especially the Bulgarian Red Cross, Bulgarian Helsinki Committee, CARITAS and the Association for Integration of Refugees and Migrants, in consultation with UNHCR colleagues in Brussels and Geneva as well as the Delegation of the European Commission in Bulgaria is a follow up of the „Reference Book Refugees in Bulgaria Building the National System for Refugee Protection 1993-2003“.

<sup>156</sup> UNHCR has recommended that, unless they contain clauses having regard to the specific situation of asylum-seekers, these agreements should not be used as a basis for the automatic return of asylum-seekers to intermediate countries. Rather, the Office of UNHCR has suggested that such returns should be undertaken on the basis of agreements that determine responsibility for examining asylum applications, such as the Dublin Agreement linking EU Member States.

<sup>157</sup> The objective of READMISSION agreements is usually to allow country A to speedily send back an alien to country B who has entered irregularly the territory of country A. Moreover, such agreements can make sure that, fearing that a given country will be flooded with returnees, country B will adopt the same immigration and police standards and mechanisms at its borders with country C, thus preventing aliens from even entering its territory and indirectly protecting country A. This in turn will force country C to do the same at its own border with country D, and so on. The Schengen-Poland READMISSION agreement is the best example of such a scheme. In terms of effective return from Germany to Poland, the agreement is a complete failure, but all Central European states have now signed READMISSION agreements with their neighbours. In effect, Western States have created a buffer zone, where their protection duties are being implemented upon foreign territories by foreign authorities. By Francois Crepeau, in “International Co-operation on the Interdiction of Asylum seekers: A Global Perspective”, published in Refugees and Migration in Central and Eastern Europe, published jointly by the Canadian Human Rights Foundation and the Moscow Research Centre for Human Rights, Moscow, 1996, pp. 14,15.

In addition to funding from the international community through UNHCR, the EU's PHARE Program has made a significant contribution to institution and capacity building in the asylum field in these countries. In most cases, UNHCR has been involved in the implementation of PHARE projects, including in particular the PHARE Horizontal Program on Asylum (PHP), involving many EU countries and UNHCR. These projects have aimed at identifying and filling "gaps" in the respective asylum systems of Central European EU member countries. The "gaps" are measured against the EU *acquis* of selected EU Acquis in the field of asylum and refugees. As compared with the early years of the asylum EU *acquis*, the current system is now more in line with international standards, especially since the conclusion and entry into force of the Amsterdam Treaty in 1999. The latter clearly stipulates that matters in the refugee field are to be pursued in full compliance with the 1951 Geneva Convention relating to the Status of Refugees and other relevant international refugee standards.

The EU integration process has been a powerful driving force for these countries to conform to the EU *acquis* on asylum (which incorporated relevant international refugee protection standards). Norms adopted for EU accession must, however, be managed carefully and balanced with other arguments. A particular problem has been that some of these countries adopted certain concepts, for example, the safe third country/ country of first asylum notion, the safe country of origin notion, or the notion of manifestly unfounded claims, which often are applied lacking minimum safeguards of protection. Also, their increasing familiarity with Western European laws and practices brought about by the accession preparations has negatively impacted new EU countries and contributed to undesirable practices there.

The full and inclusive application of the international refugee standards is subject to political commitment of governments, which, in turn, depends on a variety of factors, be they economic, social or cultural. Whereas it may be possible to ensure that adequate legal norms are adopted, bringing about a change in the mindset and perceptions, as well as creating refugee-related commitment, can prove more challenging than amending policy. Therefore, in an effort to formulate refugee policies and build refugee capacities and institutions, it has been important to involve civil society and to grapple with the economic and social problems faced by economies in transition, which have found the financial consequences of establishing liberal asylum policies difficult to bear.

Western donor countries and international agencies have supported these countries in their efforts to build institutions and capacities in the asylum area<sup>158</sup>. It is clear that refugee NGOs are still almost fully dependent on external financial resources, particularly in those countries which have most recently undergone EU accession, namely Bulgaria and Romania.

As EU Member States, these countries have yet to develop from transit countries to refugee-hosting countries. However, there are a number of practices that need continued monitoring, such as applying readmission agreements for the return of

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<sup>158</sup> For example, UNHCR has invested in Bulgaria's national asylum system from 1993-2003 some US\$5 million and the EU is about to approve another 5 million Euros bringing the estimate to some 7million Euros through 2005, sources: Reference Book Refugees in Bulgaria Building the National System for Refugee Protection 1993-2003 and Refugee Protection and Integration in Bulgaria 2004-2005, published by UNHCR Sofia in 2004 and 2005 respectively.

asylum-seekers from the region to their neighbours further East; using admissibility procedures and accelerated procedures for manifestly unfounded claims; and resorting to the detention of asylum-seekers. Nevertheless, there have been important achievements in building their asylum systems. Progress achieved in the area of asylum in recent years is significant considering that those countries have concurrently been faced with complex economic, political and social problems stemming from their transitions to market economies. Some Central and Eastern European countries impose restrictive time limits for applying for asylum, but there are several problems that need attention. Consequences of non-respect of such time limits may be that the applicant is refused access to the asylum procedure, the result may be a violation of the principle of *non-refoulement*, or restrictive use of the definition of 'refugees'. Whereas the restrictive interpretation of the inclusion clause of the 1951 Refugee Convention prevails mainly in Western Europe, a broad application of the Convention exclusion and cessation clauses is a well-known phenomenon in the region.

In recent years, Western European countries have been strengthening immigration control at their borders have stepped up the fight against illegal migration, smuggling and trafficking of human beings. Countries in this region seem to have been encouraged to do the same. Among other measures, visa requirements and carrier sanctions, enhanced surveillance of borders and the introduction of or increase of existing penalties for trafficking and illegal entry and stay, are among the measures taken to this effect largely developed in the context of the Budapest Group dealing with illegal migration<sup>159</sup>. The combination of visa requirements and carrier sanctions could have such a border-strengthening effect. The consequences are further reinforced by the out-posting, in countries where serious human rights violations occur, of immigration officers with objective to ensure that persons who do not possess valid visas and/or appropriate travel documents do not board any aircraft destined for those target countries, regardless of their need for protection.<sup>160</sup>

Therefore, in the process of building asylum and refugee systems, it is important to keep in mind how immigration control measures could be balanced in order to reduce a possible negative impact on refugee protection. If, for example, carrier sanctions (in the context of the Schengen requirements) cannot be avoided they should not be implemented in a manner inconsistent with international human rights and refugee protection principles, notably Article 14 of the Universal Declaration on Human Rights,

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<sup>159</sup> For a number of years, the main focus of the Budapest Process, a forum where European countries meet to co-ordinate their efforts to prevent illegal migration, has been on the harmonisation of the policies and practices of Central and Eastern European countries in this area with those of western European states. The implication of immigration control measures and efforts to combat illegal migration may in some instances be to prevent people in need of international protection from obtaining such protection. This is, of course, particularly serious if it entails people attempting to flee their country of origin due to serious human rights violations being prevented from doing so.

<sup>160</sup> The question arises as to whether such measures may in themselves constitute violations of international human rights law, or whether they could be considered as indirect violations of the principle of non-refoulement as contained in the international human rights and refugee instruments. In any event, in recent years, a consensus has emerged among a number of human rights and refugee lawyers, government officials and politicians that not only restrictive asylum policies, but also a number of measures aimed at combat of illegal migration adopted by European states, are at variance at least with the spirit of the 1951 refugee Convention. It is believed that these States have in this manner retracted from their moral commitment to protect of refugees that they undertook when signing this Convention.

according to which each person has the right to seek asylum.<sup>161</sup> In order to prepare stable asylum regimes, the building of partnerships is crucial.<sup>162</sup> This is necessary in all aspects, in particular for legislative revisions and for supporting the adaptation of states' administrative structures through the introduction of co-ordination mechanisms between key administrative departments.

The provision of equipment, such as registration systems and the (slowly) developing electronic databases, supports the smooth operations of refugee authorities and facilitates access to country-of-origin information for asylum authorities. Workshops have been held by UNHCR and other experts for inside and outside the region, particularly EU countries, for local civil servants and refugee NGOs and play a substantive role in building these partnerships. Though progress in the field of integration of refugees is very slow, it becomes increasingly important as these countries are moving toward being host countries instead of transit countries. The establishment of subsidized social housing development projects, vocational training programs and small business loan schemes, are a few examples of such small progress made. Therefore, it is worth mentioning that Romania and Bulgaria adopted refugee integration programs in 2004 and 2005 respectively.<sup>163</sup>

The Essen European Council<sup>164</sup> decided to direct funds from the EU's PHARE Program<sup>165</sup> towards institutional capacity building in the areas of justice and home

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<sup>161</sup> UNHCR has taken the view that states should not sanction carriers, which have knowingly brought into the state a person who does not possess a valid entry document, but who has a plausible claim for refugee status or for international protection for other reasons. Thus, states should not apply sanctions unless the carrier has shown negligence in checking documents; if the asylum claim is subsequently not considered as manifestly unfounded; or the asylum-seeker is recognized as a refugee or granted stay on other humanitarian grounds.

<sup>162</sup> Where viable partners did not exist, new organisations have been created. As representatives of refugee-assisting NGOs often feel excluded from substantive dialogue with the authorities, UNHCR has also seen it as its task to enhance that dialogue. Increasingly, UNHCR offices in the region have sought to develop professional networks for each of the many groups of governmental and non-governmental actors working with refugees, who exchange experience and best practice with experts from other countries and commit to common standards.

<sup>163</sup> Refugee Protection and Integration in Bulgaria 2004-2005, published by UNHCR Sofia, 2005.

<sup>164</sup> Conclusions of the Essen European Council: extract on relations with the CEECs (9 and 10 December 1994), where the twelve EU Governments decided, in particular, to use the resources of the PHARE programme (Poland-Hungary: assistance in economic restructuring) as part of the strategy for rapprochement between the ten Central and Eastern European countries (CEECs) and the European Union with a view to their future accession. Source: "Essen European Council - Conclusions of the Presidency", in *Bulletin of the European Union*. December 1994, No 12, pp. 12-13; 20-26.

<sup>165</sup> The PHARE programme is one of the three pre-accession instruments financed by the European Union to assist the applicant countries of Central and Eastern Europe in their preparations for joining the European Union. Originally created in 1989 to assist Poland and Hungary, the PHARE programme covers 10 countries : the 8 new Member States: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia, as well as Bulgaria and Romania, assisting them in a period of massive economic restructuring and political change. Until 2000 the countries of the Western Balkans (Albania, Bosnia-Herzegovina and the former Yugoslav Republic of Macedonia) were also beneficiaries of Phare. However, as of 2001 the [CARDS programme](#) (Community Assistance for Reconstruction, Development and Stability in the Balkans) has provided financial assistance to these countries. Following the 1993 Copenhagen Council's invitation to Central and Eastern European countries to apply for membership, Phare support was reoriented to this aim, including a marked expansion of support for infrastructure investment. Phare's total 'pre-accession' focus was put in place in 1997, in response to the Luxembourg Council's launching of the present enlargement process. Phare funds focus entirely on the pre-accession priorities highlighted in the Road Maps and the Accession Partnerships which establish the overall priorities the country must address to prepare for accession and the resources available to help them do

affairs in this region. Following that decision, the EU Commission prepared a report on the assistance needs in those areas.<sup>166</sup> Gradually, elements relating to asylum have been finding their way into a number of EU PHARE National Programs (PHP). The change in the PHARE guidelines has aided this integration of asylum elements granting assistance contingent upon results rather than on demand. Hundreds of PHP events, including workshops, round tables and study visits to EU countries by officials from candidate countries, contributed to developing the national asylum regimes over the last years.<sup>167</sup>

Due to the objectives of the PHP and its role in establishing and ensuring the application of the national action plan, it became one of the most important tools for institution and capacity building in the candidate states. Particularly noteworthy is that, although on an informal basis, the PHP provides a linkage to the so-called screening process conducted by the EU Commission, with a view to assessing the level of compliance with the justice and home affairs *acquis*. Other EU programs that have contributed to the development of asylum systems in Central Europe and the Baltic states include the PHARE Democracy Program or the so called European Initiative for Democracy and Human Rights, the Odysseus Program and others.

When assessing whether the texts of the EU *acquis* on asylum are in line with international refugee law standards, it is important to recognize that the EU *acquis* consists of a number of quite distinct elements. Two of those elements in particular should be highlighted: First, are the “hard law” instruments adopted by EU Member States long before the harmonisation process, such as the 1951 Geneva Convention

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so. The National Programme for the Adoption of the Acquis is the candidate country’s timetable for preparing for accession. It estimates the timing and cost of the steps needed to prepare the country for membership and the implications for staff and financial resources. Phare’s objectives are: 1. Strengthening public administrations and institutions to function effectively inside the European Union. 2. Promoting convergence with the European Union’s extensive legislation (the *acquis communautaire*) and reduce the need for transition periods. 3. Promoting [Economic and Social Cohesion](#). These orientations were further refined in 1999 with the creation of SAPARD and ISPA, which took over rural and agricultural development ([SAPARD](#)) and infrastructural projects in the environmental and transport fields ([ISPA](#)) allowing Phare to focus on its key priorities that were not covered by these fields. Given that 8 out of the 10 countries which previously were eligible for the Phare programme, are new Member States of the European Union since May 2004 (Romania and Bulgaria remain candidate countries), substantial changes are being made to the scope of the Phare programme. 2003 was the final programming year for the new Member States, but contracting of projects continued till 2005 and payments based on these contracts can continue till 2006. However, given the phasing out of Delegations in the new Member States and their replacement by smaller Representations, from May 2004 the new Member States must take over the full responsibility for the management of the Phare programme through a process of Extended Decentralisation. <http://europa.eu.int/comm/enlargement/pas/phare/> visited on 24 March 2006.

<sup>166</sup> The report is entitled “Justice and Home Affairs Co-operation with Associated Countries” (PHARE Programme, Services contract 95-0683.01).

<sup>167</sup> As part of the Phare Horizontal Program (PHP) exercise, a Factual Working Document (FWD), describing the “gaps” in the asylum systems of those countries, as compared to the EU “acquis” on asylum, was prepared. On the basis of the FWD, a National Action Plan (NAP), setting out the commitments of the respective governments to fill the “gaps” identified by the FWD was established. For the purpose of implementing the NAP, a National Task Force, comprising the national and international actors involved in capacity building in the asylum field in a given country was created in the majority of the candidate states participating in the PHP. A part from the training component of the PHP, consisting in explaining the content of the EU “acquis” on asylum, the PHP did not aim at filling the “gaps” it identified. That was the purpose of other programs, including, in particular, the PHARE National Programs. Rather, the PHP had a co-ordinating role in pointing out which “gap” can most appropriately be filled by which programs.

relating to the status of refugees and the European Convention on Human Rights. Second, the harmonised texts (Resolutions, Joint Positions, Directives, Regulations etc.) adopted by the EC/EU countries before and after Maastricht Treaty<sup>168</sup> in the early nineties. The latter represented the first results of intergovernmental co-operation in justice and home affairs among EC/EU countries before and after 1992, also on the basis of the harmonisation process within the framework of the Maastricht Treaty, that entered into force in 1992.

Exceptions in harmonised EU texts should be seen in the context in which they were adopted. At the moment when those texts were adopted, a number of EU States were faced with considerable pressure by arrivals of asylum-seekers, many of whom were attempting to circumvent the limited legal migration for work possibilities by applying for asylum. These EU States had adopted a number of measures in order to stem manifestly unfounded or abusive applications, which had to be accommodated in the harmonised texts.<sup>169</sup>

In the case of conflict between international standards and the EU *acquis* on asylum, such as in the area of persecution by non-state actors (which could constitute a limitation to international refugee standards), jurisprudence of the European Commission and Court on Human Rights, among others, has helped to rectify matters. It established for instance, that ill treatment by non-state actors is covered by Article 3 of the European Convention on Human Rights. As a result, those refugees who are also covered by that provision would benefit from protection against *refoulement*, whether or not persecution emanates from state or non-state actors.

Financial constraints have been and continue to be the crucial element hindering the construction of adequate and sufficient refugee reception centres in Bulgaria and elsewhere in the region. These facilities are, however, necessary to establish functioning asylum procedures and reception facilities and to support the integration refugees and the return of rejected asylum-seekers. So far, efforts to integrate recognized refugees in the region and to find solutions to the problem of return of rejected cases have yielded limited results. Clearly, as long as the economies of those states continue to be much weaker than even those of the poorest EU Member States, the prospects of refugee integration, if not properly supported, will remain distant. If integration fails, and as a result people recognized as refugees attempt to leave for

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<sup>168</sup> The Maastricht Treaty (formally, the Treaty on European Union) was signed on 7 February 1992 in Maastricht between the members of the European Community and entered into force on 1 November 1993, under the Delors Commission. It led to the creation of the European Union and was the result of separate negotiations on monetary union and on political union. The treaty led to the creation of the Euro, and introduced the three-pillar structure (the Economic and Social Policy pillar, the Common Foreign and Security Policy or CFSP pillar, and the Justice and Home Affairs pillar). The CFSP pillar was built on the foundation of European Political Cooperation (EPC), but brought it under a treaty and extended it. The JHA pillar introduced cooperation in law enforcement, criminal justice, civil judicial matters, and asylum and immigration.

<sup>169</sup> UNHCR has taken the view that there is nothing in the wording of Article 1A of the 1951 Convention to indicate that only persons subject to persecution by the state, or which is instigated or tolerated by the state, may benefit from refugee status. That provision stipulates that any person who is outside of his/her country of origin owing to well-founded fear of being persecuted for Convention reasons, falls within the scope of the Convention's inclusion clauses. These conditions are met when a person is outside of his/her country of origin because his/her life, liberty or security is threatened there by non-state agents, as a result of his/her race, religion, nationality, membership of a particular social group or political opinion, and that the state authorities are unable to provide him/her with an effective level of protection.

countries with better integration prospects, serious doubt is cast on the credibility of the refugee regime.

While there is the continued momentum created by EU accession, it is premature to say that a stabilization of the asylum and refugee system is certain in this region which is still experiencing vicissitudes. However, EU accession will remain the driving force for the development of the asylum systems of the region, and thus the further alignment of those systems. Where accession has been protracted, as in Bulgaria and Romania, the driving force of EU accession might be weaker. Whether the commitment of countries in this region to actually implement international and national refugee instruments will strengthen is difficult to foresee. Among other factors, attitudes and commitment will depend on numbers of asylum applications. As these countries are considered safe third countries/countries of first asylum by practically all EU States, increasing numbers of asylum-seekers who transited through those countries are being returned there, on safe third country/country of first asylum grounds. Such returns, coupled with tighter control of illegal exits, has led to an overall increase in numbers of asylum-seekers in the region<sup>170</sup>, adding to the pressure on their fragile asylum systems.

### 3.2. *External impact of the EU harmonization on emerging refugee regimes in Bulgaria* 171

The European integration has developed from a relatively limited cooperation in very specific fields to a complex network of institutions and supranational policies that are now embraced by a larger membership. The EU integration process has been a significant impetus for EU Member- and EU candidate States alike. This "ever closer Union" has also had a significant impact on many other actors and regions that have come into contact with the ambitious European experiment. Throughout its integration process, members of the European Union continued to add new competences to the organization as they sought to increase and consolidate their cooperative efforts in a variety of common issue areas.

Compared to issue areas such as agriculture and transportation, the emergent policy field of migration and asylum is relatively new. States took a multilateral approach to it in Europe. As the system continues to evolve, it impacts other states, especially the EU candidate countries. Nonetheless, notwithstanding its still fragmented and multi-layered nature, this regime is significant not only in the European setting but also in its growing impact on the EU's international presence and its relations with the non-EU world. This emergent regime also has an impact on the broader development of European integration, raising questions about the future development of the welfare state in Europe and the shape of citizenship in the Union.

While much work has been done to analyze and explain the evolution of European integration in the area of asylum and immigration policies, its *external* effects have so

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<sup>170</sup> During the period of 1999, 2000 and 2001 there have been 110.000 asylum applications in the 11 Central European countries, of which about 5 000 applied for protection in this period in Bulgaria. (UNHCR 2004, based on sources from respective governments).

<sup>171</sup> The contribution from [Migration and the Externalities of European Integration](#)", Lanham, MD: Lexington Books, 2002 in : **Migration and the Externalities of European Integration**, Series: Program in Migration and Refugee Studies, *Edited and Introduced by Sandra Lavenex and Emek M. Uçarer, is drawn upon with the kind permission of Sandra Lavenex.*

far received much less attention. This is in line with the traditional focus of European studies, which have approached European integration from an inward-looking perspective, exploring the conditions for the creation of common institutions and policies at the European level, and their repercussions on political structures and processes in the member states. It is time that researchers move beyond the EU and look at the implications that the Europeanization of a particular policy field has for countries outside the European Union, and the consequences of Europeanization for the regulation of other related societal problems.

The impact in Bulgaria is significant and largely positive, though restrictive trends, especially in developing refugee policies are a constant matter of discussion and review. Thus, the term 'externality' of the European integration may be positive or negative, intended and unintended, and can describe diverse issues. Standard examples discussed in the literature include the externalities of economic transactions on the environment or welfare institutions.

The term 'externality' is used in a broad fashion to describe the effects of the EU asylum and refugee system on countries and institution-building outside the European Union and on policy fields other than migration policy. The emergent regime operates on two inter-related levels. The first is the articulation of norms and rules in order to apply to entry *into* the territory of the Union. This has evolved into an elaborate control mechanism involving unilateral, bilateral and increasingly multilateral rule-making including visas, readmission agreements, carrier sanctions, and the processing of asylum applications. The second evolving sphere of refugee policies (perhaps less developed than the first for the time being) is the effort to craft and harmonize rules for those who are residing *within* the Union territory. This involves thinking collectively about the residence and employment status of third country nationals, citizenship rules and access to the welfare state.

The EU refugee regime has gained an important external dimension basically through two mechanisms. The first mechanism is the intended and unintended extension of elements of this regime, including general principles shaping political action in the area of asylum and immigration, specific norms and policy instruments. This mechanism is referred to as 'policy transfer' and involves political actors in the EU and third countries, as well as specialized international organizations.

However, the external impact of creating a common EU refugee regime may also be conceived of in a more functional manner, in so far as common provisions on the entry and stay of third country nationals in the EU have an effect on other, functionally-related policy fields, such as welfare state policies and citizenship. This more functionalist dimension of externalities may be referred to as a sort of spill-over dynamics, without however necessarily implying the achievement of a higher degree of supranational integration.

Movement in Union territory is regulated by a set of rules that target the abolition of internal border controls for intra-EU migration and tighter control standards at the external borders, as foreseen by the Schengen rules<sup>172</sup>. This includes the common visa

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<sup>172</sup> Schengen Implementation Agreement for the abolition of internal border controls among signatory states and increased control of the common external borders, June 1990.

policy, carrier sanctions, measures against illegal immigration and trafficking in human beings, and measures geared to prevent the entry of asylum seekers and refugees in the EU, reflecting the theme of 'protection in the region of origin'. While there still is no common EU policy for immigration, there is such common policy on family reunification, study or vocational training, paid employment and self-employed economic activity and certain other areas.

Stay and residence rules depend on the status of the immigrants present in the Union territory: short-term visitors (such as tourists, transient students), long-term immigrants (such as EU nationals who have moved to another member state and third country nationals who have secured residence rights in the Union) and asylum seekers, recognized refugees, or temporarily protected individuals. Each of these groups is subject to different sets of rules that establish the terms of their stay and residence, and which have an impact on their entitlements regarding freedom of movement, employment, welfare benefits, citizenship status, and due process under the law.

To review the cluster of rules in reverse order, the rules regulating the access to (full) asylum procedures include the first host country principle of the Dublin Convention, the safe third country rule, the rules on safe countries of origin and manifestly unfounded asylum applications. The Amsterdam Treaty<sup>173</sup> in its Article 63<sup>174</sup> stipulates that by 2004 EU Member States should establish the definition of minimum standards for asylum procedures, adopt a common refugee definition, as well as establish other social and economic rights during and after the termination of the asylum procedure and set a guideline on minimum standards of temporary protection in situation of mass

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<sup>173</sup> Treaty of Amsterdam amended the Treaty on European Union, the Treaties establishing the European Communities and related acts, source: *Official Journal C 340, 10 November 1997, It amended the Treaty on the European Union and the Treaties establishing the European Communities. Protocol on Article J.7 of the Treaty on European Union, Protocol integrated the Schengen acquis into the framework of the European Union.*

<sup>174</sup> *Article 63 (ex Article 73k)*, stipulates that “the Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

(1) measures on asylum, in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties, within the following areas:

(a) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States,

(b) minimum standards on the reception of asylum seekers in Member States,

(c) minimum standards with respect to the qualification of nationals of third countries as refugees,

(d) minimum standards on procedures in Member States for granting or withdrawing refugee status;

(2) measures on refugees and displaced persons within the following areas:

(a) minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and for persons who otherwise need international protection,

(b) promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons;

(3) measures on immigration policy within the following areas:

(a) conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunion,

(b) illegal immigration and illegal residence, including repatriation of illegal residents;

(4) measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States.

Measures adopted by the Council pursuant to points 3 and 4 shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements.

Measures to be adopted pursuant to points 2(b), 3(a) and 4 shall not be subject to the five year period referred to above.” See: <http://europa.eu.int/eur-lex/en/treaties/selected/livre214.html> visited 24 March 2006.

influx<sup>175</sup>. The latter issues represented the very first EU Directive ever adopted in the asylum field, issued in July 2001. The rights of the existing long-term EU-national residents of the Union are specified in the founding treaties of the Union. The rules that would specify the rights of legal third country nationals are currently the focus of discussion in EU circles. Also under consideration are the rules to apply to prospective migrants from countries, which have signed Association Agreements with the Union, which consider their social rights, professional training and education. Short-term visitors to the Union are subject to the rules that are set by the visa component of the emergent regime.

A number of common instruments have been developed concerning the return of unauthorized persons from the Union territory, including common readmission agreements with countries of origin and transit. Return is facilitated by incentive programs, which target migrant workers and were particularly prevalent in the 1980s. Refugees and asylum seekers may also be removed and returned under specific circumstances enumerated under international law as well as agreements commonly reached by EU Member States, including readmission agreements. Recognized refugees may be returned pursuant to the cessation clause of the 1951 Geneva Convention. Rejected asylum seekers may likewise be removed from the common territory (though many might be tolerated).

Temporarily-protected persons (whose legal status is less secure than that of asylum seekers and recognized refugees) are also subject to being returned after their (previously determined) protected status expires. Some of the least - developed elements of the emergent regime concern new programs designed to facilitate burden-sharing and providing relief to recipient and sending countries from mounting migration pressures. These are spurred by an emphasis on comprehensive approaches that not only commit resources to migration management, but also use instruments from other policy fields (such as foreign policy and trade).

Thus, while the EU refugee regime, at its current stage, includes only specific and partial instruments relating to the entry, stay and return of third country nationals, over a period of 20 years the decision-making centre of the emerging regime has progressively shifted to the Union institutions and the process has moved beyond purely intergovernmental cooperation to a procedure within the EU framework. This has significant consequences for the decision-making rules that now guide the making of policy. The pre-Maastricht coordination efforts were ad hoc in nature and basically relied on regional and international legal instruments. Whatever common policy resulted was either a treaty or an instrument of “soft law” with limited enforcement potential.

The Maastricht Treaty designated the European Union as the appropriate decision-making level for the management of the Union’s external borders but allowed member states to retain a veto power on the content of policy instruments. While issues were now negotiated in a multilateral setting, the supranational Union institutions were marginalized, creating a curious intergovernmental/supranational mix. The intergovernmental impediments to policy-making were addressed to a degree with the

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<sup>175</sup> 2001/55/EC Council Directive 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

Amsterdam Treaty of 1997, which squarely located border management issues within the context of the First Pillar of the European Union, i.e. within EU competence. In addition, the European Court of Justice now has a say and a role to play if and when a judicial review in this field is required.

While the unanimity rule is retained for the first five years after the coming into force of the Amsterdam Treaty (from May 1999 through 2004), the door to moving to a qualified majority decision-making set-up was left open, indicating a significant change in the decision-making arrangements for collective border management. This consolidation has also impacted other decision-making settings outside the European Union. Since the regime continues to expand and to incorporate or influence other bodies and actors, principal Union decision-making institutions are thus the Council of Ministers, European Commission, European Parliament, and the European Court of Justice, not only for policy formulation but also for active engagement in its exportation.

There is a differential impact of the wider EU refugee regime. A traditional economic approach would conceive of externalities in terms of quantifiable additional costs or benefits to a third party from a specific activity. In the case of migration, such externalities, for example, would occur when the numbers of asylum seekers and voluntary migrants rise in a third country as a consequence of policy changes in the EU.

In this context, externalities with regard to third countries can involve different issues. Linking up with the theoretical literature on policy transfers, the content of what is being transferred or exported may vary with regard to its scope and specificity. In particular, one can distinguish between the transfer of general principles guiding the exercise of a policy, norms, or more specific rules, such as policy instruments, policy programs, and procedures, including the creation of specialized administrative agencies dealing with asylum and immigration. The broader the scope of the policy transfer, and the more specific its contents, the stronger the external impact of the EU migration regime on the third country concerned.

This external impact varies, however, not only with regard to its scope and specificity. Another important factor for understanding the effects of EU policies on third countries, including Bulgaria, is whether policy transfer occurs voluntarily or under pressure. While in some instances, third countries may be under pressure to adapt to the EU migration regime, adaptation need not necessarily be contrary to the interests of that country. Instead, policy transfer may take place along a continuum that runs from fully voluntary adaptation to direct imposition and coercion and include a variety of modes such as policy diffusion, policy convergence, policy learning, and lesson drawing. Studies on traditional receiving countries in the West show instances of adaptation to the EU refugee policy (e.g. in Norway, Switzerland or the US) which are perfectly voluntary and suit the policy preferences expressed by the governments of these countries. In these cases, the type of policy transfer may be best described as an instance of learning lessons. Here, the third country actively and voluntarily adopts some elements of the EU refugee regime because these are seen to be more efficient to tackle existing problems. Lesson drawing may also be motivated by uncertainty when imitation provides a means of avoiding lengthy and controversial policy debates over ambiguous situations at home.

A mix of voluntary and involuntary policy transfer exists when Bulgaria and other third countries perceive the necessity for change policies, e.g. in response to rising numbers of asylum seekers resulting from tighter border controls in the EU. At the other end of the continuum, policy transfers can also occur in a coercive fashion, either through direct imposition or conditionality. Central European adaptation to the EU refugee regime, show that it has become part of their accession negotiations with the EU and is a condition for membership. In Turkey, too, domestic reforms of asylum and immigration laws increasingly follow the guidelines of EU accession conditionality.

Depending on the activities developed by the EU, its institutional relationship with the third countries and the latter's domestic situation, the effects of the externalities produced by the EU refugee regime may vary significantly. Theoretically, the intensity of adaptation effects may take different degrees. The most complete form of adaptation may be referred to as copying and involves full transfer of policy principles, instruments, programs and institutional structures. The weakest degree of adaptation is inspiration, where elements of the EU refugee regime may inspire a policy change, but where the final outcome does not actually draw upon the original. In between lie different forms of emulation or a combination of which involves the selective adoption of specific elements of the EU refugee regime.

More research needs to be conducted on the external repercussions of the evolving EU refugee regime on the new EU countries, including Bulgaria and the degree to which EU policies are actually imported into their systems and those of other countries outside of the EU. Within the EU, the Europeanization of visa policies, border controls, or asylum regulations has implications that reach much further than the refugee policies of the individual Member States. On the one hand, the EU refugee regime has developed a sort of self-proliferating dynamic that affects not only EU neighbouring countries, but also more distant parts of the world such as the sending countries of Africa and traditional immigration countries of North America and Australia. On the other hand, the changes induced by the EU refugee regime affect more generally the balance between the politics of inclusion and exclusion in the emerging Political Union, and its relations with the outside world.

### *3.3. Case study: Refugee protection and integration policy in Bulgaria*

In cooperation with the EU, UNHCR assisted in gradually transferring its approach to refugees to the new EU countries, including to Bulgaria, for a number of reasons, some of which were merely a matter of exploiting historical opportunity. During the early period of democratisation, some Central European countries became increasingly subject to larger population flows of migrants bound for the west. This phenomenon turned Central Europe in particular into a transit zone and exposed these ex-communist countries' fragile administrative systems to greater number of temporary migrants. Due to their circumstances, their geographical location and their subsequent signing, for example of readmission agreements, they saw themselves in a need to adopt a procedure to deal with the increasing refugee applications. Consequently this has presented the European Community, since 1999 with the Amsterdam Treaty the European Union, with the possibility of proposing its own normative and institutional framework for emulation.

Bulgaria entered the international refugee regime in 1993 by ratifying the Geneva Convention and its Protocol. It was one of the 'late entrants' because by then most of the other Central European states, with the exception of Romania and the Baltics had become signatories to the Convention. It is also acknowledged that the wish to join the EU played a vital importance in the reasons leading to the country's adherence to the international refugee regime<sup>176</sup>.

In terms of the Union's decision to consider enlargement, reasons such as regional stability were considered important factors. The possible inclusion of Central European countries into the organisation gave the EU a further legitimate reason to seek the exportation of its own regime to its eastern neighbours by utilising a number of incentives both consciously and unintentionally. These include political leverage of accession and the economic incentives of aid and financial assistance through the PHARE<sup>177</sup> program which in turn are administered conditionally upon legislative adaptation and progress towards accession.

The political importance for Bulgaria in the move to 'return to Europe' (an aim which is most easily achieved through EU membership) presents the Union with an extremely powerful instrument of influence during negotiations. It is important to note that this incentive has underpinned the EU-Bulgarian relationship throughout the association and pre-accession process, if at times only in a passive or *informal* form. In the refugee field, UNHCR served, in cooperation with EU arrangements such as the PHARE Program, as an 'agenda-setter' in these areas of political life in Bulgaria, thereby promoting a specific process of institution-building and narrowing policy choices of domestic actors. In certain Bulgarian governmental circles there was a feeling that Bulgaria was 'a hostage of EU integration', which was resented.<sup>178</sup>

The more formalised period of policy transfer for Bulgaria began with the inclusion of an additional Protocol into the Amsterdam Treaty, making adoption of the entire Schengen *acquis* compulsory for candidate countries<sup>179</sup>. Correspondingly, by transferring asylum and immigration into the First Pillar, the European Union legitimised the obligation towards all candidate states to adhere to the standards prescribed within the existent *acquis*. The process of communitarization intensified the role and influence of the EU in relation to refugee and migration matters and granted a voice to candidates through the pre-accession negotiations<sup>180</sup> and the Accession Partnerships. The latter introduced the key areas of border controls, migration, asylum,

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<sup>176</sup> Lavenex, Sandra 'Safe third countries: Extending the EU asylum and immigration policies to Central and Eastern Europe' Central European University Press, Budapest 1999 (see chapter on Bulgaria)

<sup>177</sup> 'PHARE' is the EU's main aid program to central Europe. The acronym stands for 'Poland and Hungary Assistance for the Reconstruction of the Economy', but the program has been extended to cover all ten Central and Eastern European applicants for membership together with several former Yugoslav republics and Albania.

<sup>178</sup> Notes on file of the author on a meeting in January 2005 in the Ministry of Interior of the Republic of Bulgaria.

<sup>179</sup> Protocol on Article J.7 of the Treaty on European Union, Protocol integrated the Schengen *acquis* into the framework of the European Union, requiring its full adoption by applicant states.

<sup>180</sup> The beginning of this period is taken to be the EU expression of commitment to enlargement through the announcement that Central and Eastern European countries could become members of an enlarged Union as soon as they fulfilled the now termed 'Copenhagen criteria' – European Council in Copenhagen, 21-23 June 1993, Presidency Conclusions SN 180/93 at p13

visas, policing and law enforcement in 1998<sup>181</sup>. This ‘active leverage’ of deliberate political conditionality<sup>182</sup> has an important causal influence on the creation of institutions and legislation dealing with migration in Bulgaria. This influence of the European Union has been continuing to grow through the stages of enlargement and would be expected to do so until the act of accession and beyond as it does for current members. The more formalised methods of policy transfer are motivated by a range of financial incentives in the form of aid, the PHARE program, the political incentives of removing obstacles to freedom of movement, as well as the ultimate goal of membership.

Particular tasks in refugee-related areas have been defined more clearly; however generality seems to be inherent in these documents as ‘they aim for institutional isomorphism’, namely in assisting candidates develop a EU-like approach to policy creation rather than seeking to transfer specific policies’.<sup>183</sup> Accordingly, it has been up to each individual ‘*National Program for Adoption of the Acquis*’ to identify the detailed policy preferences as negotiated between the European Commission and each candidate government. The particular requirements in the reinforcement of the new eastern borders and asylum systems are identified as the implementation of the *acquis* progresses and in turn, the projects themselves are administered through the PHARE program, which distributes funding conditional upon such progress.

As mentioned earlier in the area of asylum, PHARE has been the main EU aid program to Bulgaria. It is designed to add additional incentives such as the provision of financial backup, as well as technical and expert advice for the transfer of the asylum and border-control arrangements. The JHA-specific PHARE program was not brought into place in the EU until 1997, when projects became ‘accession-driven’, as opposed to ‘demand-driven’ as had been the case prior to that<sup>184</sup>. This exemplifies the significant leverage of the Commission in influencing the institution building and agenda setting in candidates through the conscious use of the political conditionality of membership tied to significant performance-based financial incentives. One of the most important parts of PHARE has been the EU Twinning Program<sup>185</sup>, which was started by the EU in 1999

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<sup>181</sup> Grabbe, Heather ‘The Sharp Edge of Integration: EU Border Policies for Central and Eastern Europe’ Conference Paper prepared for BASEES Annual Conference 6-8 April 2002 at p3

<sup>182</sup> Apart from the Copenhagen condition each candidate state has other individually-crafted aims delivered through the reinforced pre-accession strategy and the accession partnership agreements. Conditionality is the process created as a result of these agreements, in that they extended the requirements by not only making future negotiations conditional upon Central European candidate countries ability to adopt and implement each EU goal, but also by making financial assistance under the PHARE program conditional upon such progress.

<sup>183</sup> Grabbe, Heather ‘The Sharp Edge of Integration: EU Border Policies for Central and Eastern Europe’ Conference Paper prepared for BASEES Annual Conference 6-8 April 2002 at p3

<sup>184</sup> The main difference lies in the shift of the initiative for change. At the start, areas in need of attention (only some of which had an indirect effect on JHA matters) were identified by candidate governments subject to Commission approval based on a wide range of objectives.

<sup>185</sup> EU twinning and bilateral cooperation. The European Commission offers funding to enable countries close to being ready for, or who have just gained membership of the European Union to enter into twinning partnerships with Member States. Countries seeking accession have to harmonise a number of areas of government and legislation (eg justice, health, law enforcement, competition, transport, education etc) with EC legislation. Twinning project funding is given to Member States to work with these countries on institution building (to legislation, administration and implementation) and infrastructure strengthening (systems and equipment). The projects usually last one to two years and require a Resident Twinning Adviser (project manager) to be stationed in the country for the duration. Short-term experts provide the technical input to the various components. Twinning Light projects differ from full Twinning projects in that they can be of max 10 months duration only, should have a single focus, and there is no Resident Twinning Adviser (RTA). The successful completion of these projects is

for Justice and Home Affairs (JHA) matters<sup>186</sup>. Its purpose has been the adaptation of candidate countries' administrative and democratic institutions as well as their preparation to deal with accession requirements by drawing on Member States' experience<sup>187</sup>. Thus, the Twinning program essentially formalised the previously bilateral relations, for example, based on the readmission agreements, whose aim was the burden-sharing of asylum and migration responsibilities. The program also continued to help modernise border control training and techniques, as well as the processing of asylum applications. In this way, since the formalisation of cooperation in refugee and migration matters, the EU has continuously increased its leverage with applicants<sup>188</sup>.

The asylum-related PHARE Twinning Program in Bulgaria started in 1999<sup>189</sup> and came to an end in October 2003 at the time of the closure of negotiations on Chapter 24 Justice and Home Affairs (JHA). The Twinning team from Germany completed their work having accomplished their objective in the field of training, and having set up the training centre at the State Agency for Refugees<sup>190</sup>. The UNHCR Sofia Office in cooperation with the State Agency for Refugees (SAR) in January 2001 initiated the drafting process of the new refugee law which the Council of Ministers approved and the Parliament tabled on 19 December 2001 for parliamentary review.

The Committee for European Integration and the Committee for Legal Matters who made submissions on the proposed legislation praised the efforts of all parties stating that 'the aim of the new [refugee] law is to address the necessity of harmonisation of the Bulgarian legislation with the European Union provisions'<sup>191</sup>. On 16 May 2002, following approval in the relevant Committees and the final plenary session, the Parliament adopted the bill which is known as the Law on Asylum and Refugees and

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an essential step towards acceptance as new members of the European Union. For example, there is the Bulgarian Quality Management System Twinning Project, which is a 14 month project started in January 2005. It addresses ISO 9000:2001 standards in the Bulgarian Maritime Administration, an Executive Agency much like the MCA. Source: [http://www.mcga.gov.uk/c4mca/mcga-the\\_mca/mcga\\_themca\\_mpb\\_twinning.htm?printout=1](http://www.mcga.gov.uk/c4mca/mcga-the_mca/mcga_themca_mpb_twinning.htm?printout=1) visited 24 March 2006.

<sup>186</sup> The other areas identified as needing support under Twinning are finance, agriculture and the environment. The JHA area has focused on border controls, judicial institutions, asylum and immigration, police training, fight against organised crime.

<sup>187</sup> Public servants from a current EU member are seconded to work for the duration of the program in a particular candidate country. In this way, it is ensured that not only candidates benefit from the experience of their Western colleagues, but also that experts become aware of the challenges in particular candidate states. It is hoped that this will ultimately aid the process of continuous harmonisation between future and current members.

<sup>188</sup> For these reasons, substantial funds are involved in the implementation of the PHARE programs. Between 2000 and 2006, PHARE has been expected to provide some €1 billion to twinning projects to be used in co-financing of institution-building, technical assistance and investment support in applicant countries.

<sup>189</sup> With three main tasks: Support the Bulgarian authorities, in cooperation with UNHCR, through a team led by a German-Swedish consortium in the revision of the existing refugee legislation in view of the developing acquis; to provide strategic advice as well as training and training equipment to Bulgarian institutions dealing with refugees, thus contributing to the process of capacity-building of these institutions; and conduct a Technical Feasibility study on Transit Centers.

<sup>190</sup> Meeting with Twinning team in view of the final evaluation for Twinning Project, including Ms/MM Ulbricht, Jordan of the EU Cooperation, Federal Office of the Recognition of Foreign Refugees, Zirndorf on Thursday, 30 October 2003 (Notes on File in the UNHCR Representation in Sofia).

<sup>191</sup> For the full schedule of the preparatory works and the 14 parliamentary sessions see the UNHCR Website on this subject at: [http://www.unhcr.bg/bglaw/index\\_national.htm](http://www.unhcr.bg/bglaw/index_national.htm).

which entered into force on 1 December 2002<sup>192</sup>. Having adopted this legislation, Bulgaria made significant progress to harmonize its national law with the existing EU *acquis*. In view of the outstanding EU Directive under the Amsterdam Treaty, Article 63 concerning refugees and migration Bulgaria needed to revise this law again.<sup>193</sup>

In conclusion, through the above discussion, the significance of the EU as the main motor for developing a functioning asylum system in Central Europe in general, and in Bulgaria in particular, is evident. It has been shown how the European Union, and more specifically the European Commission, has been utilising their leverage in both political and economic terms to successfully implement policy transfers to candidate countries, the case study here being Bulgaria. It must be highlighted that the EU does work hand-in-hand with many organisations other than governmental institutions in the field of asylum, including UNHCR and refugee assisting non-governmental organizations. Below follows a brief analysis of the work of UNHCR in Sofia during the past ten years since the signing of the Country Agreement between UNHCR and the Republic of Bulgaria in 1993<sup>194</sup>.

Since 1992, UNHCR<sup>195</sup> through its Sofia Office has been supporting Bulgaria in building and strengthening the national asylum system in accordance with international standards and the evolving EU *acquis* towards expanding the European asylum space, precondition for accession to the European Union. Bulgaria has made great progress, in a very short time, towards assuming its international refugee protection obligations, especially considering the often difficult economic and social conditions which the country has endured.

Bulgaria needs to continue to incorporate relevant evolving EU legislation into its national legal and institutional system. As the letter from the UN High Commissioner for Refugees to the 2003 Italian EU Presidency<sup>196</sup> observed the EU Directive on asylum procedures is at the heart of the EU asylum harmonization process and is of critical importance not only for standards set in Europe but also for the signal that it will send to other parts of the world. Measures that are perceived to lower standards or to shift burdens will have strong repercussions both on the availability of protection in Europe and, more broadly, on the international protection regime. UNHCR has been very supportive of the EU harmonization process, working with EU States and Institutions, esp. the European Commission, in order to achieve a meaningful asylum harmonization that will ensure coherence in properly managing asylum claims. This is

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<sup>192</sup> [http://www.unhcr.bg/bglaw/en/ukaz\\_162\\_en.pdf](http://www.unhcr.bg/bglaw/en/ukaz_162_en.pdf).

<sup>193</sup> Before becoming an EU Member State, it is required that States bring their national standards in line with international refugees standards. UNHCR's comments on the 2002 Law on Asylum and Refugees the 2005 law, which was also the product of a work and time intensive process are available at: [http://www.unhcr.bg/bglaw/index\\_national.htm](http://www.unhcr.bg/bglaw/index_national.htm).

<sup>194</sup> See for details in [http://www.unhcr.bg/bglaw/agreement\\_unhcr\\_government\\_bg\\_en.pdf](http://www.unhcr.bg/bglaw/agreement_unhcr_government_bg_en.pdf) in which the Office of the United Nations High Commissioner for Refugees, a subsidiary organ established by the General Assembly, pursuant to Article 22 of the UN Charter, is an integral part of the United Nations whose status, privileges and immunities are governed by the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946.

<sup>195</sup> Some parts of this section draw upon previous material 'The role of UNHCR in Bulgaria' by Kina Sabeva, Ph.D., Programme Officer UNHCR BO Sofia, published in the monthly publication, Refugees Today and Tomorrow, issue 4/2003 Year VIII.

<sup>196</sup> Letter of the UN High Commissioner for Refugees to HE Mr. Silvio Berlusconi, Prime Minister of Italy, dated 20 November 2003 see on record in [http://www.unhcr.bg/events\\_records/2003/handout\\_101203\\_en.pdf](http://www.unhcr.bg/events_records/2003/handout_101203_en.pdf), page 27.

clearly in the interest of states and the persons in need of protection alike. Furthermore, helping to counter irregular movements within the European Union is also in the interest of states.

Therefore, the UNHCR country operation in Bulgaria has been aiming to support the establishment and development of a fully-fledged asylum system by providing expertise and material support, capacity-building and achieving the goals inspired by the 2003 Agenda for Protection<sup>197</sup> of the Executive Committee of The High Commissioner's Program by the year 2007. UNHCR aims to build capacity of governmental and non-governmental actors involved in the protection of refugees and improve national and secondary refugee legislation to help Bulgaria to evolve from a transit to a refugee host country in the run up to EU accession. UNHCR's broad policy framework for ensuring quality asylum in Bulgaria focuses on the development and effective implementation of refugee policy by helping to address gaps in the refugee regime, both of legal and social nature. In coordination with the national authorities, it pursues the following objectives:

- Making sure that comprehensive refugee and migration policies from the human rights perspective are developed and implemented, including adequate safeguards against direct or indirect *refoulement*;
- Ensuring that asylum-seekers have access to procedures in which their claims are heard fairly and promptly;
- Ensuring legal refugee standards are in line with international standards and practice and implemented accordingly;
- Helping asylum institutions to develop and become effective and eventually independent of external support;
- Ensuring that the asylum system is capable of dealing with complementary systems of protection and temporary protection in situations of mass influx through emergency and contingency training and planning;
- Ensuring that asylum seeker and refugee rights are respected and they are treated in accordance with international standards in a positive environment;
- Ensuring that integration of refugees becomes a real possibility in Bulgaria;
- Ensuring that xenophobic trends diminish in favor of increased tolerance and the public understands the difference between economic migrants and refugees.

Asylum seekers from 72 countries have been registered in Bulgaria since the asylum process began there in 1992. Comparatively, Bulgaria has received only about 5% of the total number of asylum seekers in the 11 countries of Central Europe, about 111

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<sup>197</sup> Goal 1: Strengthened implementation of the 1951 Convention and 1967 Protocol

Goal 2: Protecting refugees within broader migration movements

Goal 3: Sharing of burdens and responsibilities more equitably; capacity-building for refugee reception / protection

Goal 4: Addressing security-related concerns more effectively

Goal 5: Redoubling the search for durable solutions

Goal 6: Meeting the protection needs of refugee women and refugee children, <http://www.unhcr.ch>.

000 individuals. Until conditions in their home countries allow for safe, voluntary repatriation, refugees need protection against return to a place where their life or liberty might be in danger. This is best done through access to the territory as well as a fair refugee procedure.

Access to Asylum System and Procedure has been one of the key areas of attention. Due to its geopolitical location, Bulgaria will in due course take on responsibility for control of the European Union's external borders with Turkey. This has been placing a priority focus on strengthening the country's capacities to effectively protect the common European space from undocumented arrivals. Though progress has been made by the authorities in the area of controlling irregular migration, it must not compromise Bulgaria's international treaty and other obligations, such as Article 33 of the 1951 Geneva Convention.<sup>198</sup> This will continue to be a challenge after EU Accession set for 2007. For this reason, it is important that access to the territory and the refugee status determining procedures is ensured in practice, and that compliance with the principle of non-refoulement is given the necessary attention by the authorities. UNHCR works with the Bulgarian Government, NGOs and refugees to plan together, monitor borders, visit detention centres, and provide legal advice.

UNHCR in Sofia has continuously been assisting Bulgarian institutions to find durable solutions, especially through integration and voluntary repatriation. Resettlement in third countries has been pursued for limited number of cases. As soon as refugees wish to avail themselves of the voluntary repatriation program, the relevant partners from the government and NGOs work with UNHCR in order to assist individual refugees in formulating their requests. However, local integration is still the most practical durable solution for recognized refugees in Bulgaria. In order to allow the refugees to live a decent life and eventually become self-sufficient, the government has already passed relevant secondary legislative texts concerning access to education, language learning, vocational training, labour market, state social welfare and health insurance. Following the International Conference in October 2000 on refugee integration organized by UNHCR in partnership with the Government, NGO and the Council of Europe,<sup>199</sup> the finally in May 2005 the authorities adopted National Refugee Integration Program, with state funding.<sup>200</sup>

Gender equality and the special needs of refugee women, children and the elderly have been a focus of attention in the implementation of refugee policy in Bulgaria. The Council for Refugee Women has worked with volunteers from among the refugee community through a network of people in the area of social activities for individual, family, and community support. The integration of refugee children and adolescents

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<sup>198</sup> Article 33: Prohibition of expulsion or return ("refoulement")

(1) No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

(2) The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

<sup>199</sup> Results of the International Refugee Integration Conference available at: <http://www.unhcr.bg/conference/index.htm>.

<sup>200</sup> Refugee Protection and Integration in Bulgaria 2004-2005, published by UNHCR Branch Office, June 2005, see: [http://www.unhcr.bg/pubs/2004\\_05/2004-2005.htm](http://www.unhcr.bg/pubs/2004_05/2004-2005.htm)

continues to be part of these special efforts, in particular of separated refugee children and with the elderly, disabled, chronically and mentally ill refugees, as well as with victims of torture.

This can best be demonstrated through the 70 milestones accomplished in developing Bulgaria's refugee regime from 1992 to 2005, which can be found in the Book: *Refugee Protection and Integration in Bulgaria 2004-2005*, Published by the UNHCR Representation in Bulgaria in June 2005 as follow up of the Reference Book: *REFUGEES IN BULGARIA; Building the National System for Refugee Protection, 1993-2003*: [http://www.unhcr.bg/pubs/2004\\_05/ch\\_05\\_en.pdf](http://www.unhcr.bg/pubs/2004_05/ch_05_en.pdf), (Reference: chapter 5, dissemination and practice of refugee policy and law, *Key Milestones in Developing the National Refugee Protection System (1992-2005)*, prepared by the UNHCR Representation in Bulgaria in consultation with the governmental and NGO refugee-assisting partners. These developments contribute to qualify and quantify progress made in Bulgaria in a joint and collaborative process over the past decade.

#### 4. CONCLUDING REMARKS

Considering the serious dilemmas that leaders in the new states in Eurasia are facing<sup>201</sup>, the great strides made during the course of this remarkable, more than ten-year multilateral effort through international and regional organizations, UNHCR, IOM and the OSCE, within and outside the CIS Conference Process, have been significant in Eastern Europe and Central Asia<sup>202</sup> Refugee policy in Central Europe, has made significantly more progress than in the CIS countries. This progress shows that institutions and implementation matter, as elsewhere<sup>203</sup>. With regard to Eastern Europe<sup>204</sup> and Central Asia, the Geneva Regional Conference on Refugees, Displaced Persons, Migration and Asylum Issues in the CIS (also known as the CIS Conference)

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<sup>201</sup> Suny, Ronald Grigor; *Provisional Stabilities, The Politics of Identities in Post-Soviet Eurasia*, *International Security*, Vol.24, No.3, (Winter 1999/2000), pp. 139-178.

<sup>202</sup> Overall, international organizations, namely UNHCR had greater effect at the level of policy interpretation and implementation than on policy formation. Best practices and most successful strategies in operating in a transition country, and specific features of the political, economic, and legal environment that sets a transition country apart from stable polities. See: Shevel, Oxana; *International Influences in Transition Societies: The Effect of UNHCR and other International Organizations on Citizenship, Policies in Ukraine, 2000*, Rosemarie Rogers Working Paper #7: [http://web.mit.edu/cis/www/migration/pubs/rrwp/7\\_influences.html](http://web.mit.edu/cis/www/migration/pubs/rrwp/7_influences.html).

<sup>203</sup> In general terms, regional solutions of refugee problems by states, focus on protection in the regions of origin. From a global perspective the regional solution can be adopted either as a complementary or an exclusive solution. The exclusive approach is often advocated to help reduce the burden of the refugee problem on affluent regions of the world. The efficiency and culture arguments used to justify an exclusively regional approach are being used without any serious attempt to conceptualize their meaning and implications. Moreover, the idea of refugee-resources exchange (where rich states compensate poor states for hosting refugees) that informs cruder versions of the efficiency argument is ethically problematic; it treats refugees as commodities. It also ignores the possible social, security and environmental costs to developing host countries from such an exchange. See *The State of the World's Refugees 2006 - Human displacement in the new millennium - Chapter 8: Looking to the future*: <http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=PUBL&id=4444afcf0>, visited 3 June 2006.

<sup>204</sup> Ukraine became an internationally acknowledged model in this field, which would have been unthinkable without the extraordinary political will and support that many members of parliament and government authorities invested, making good use of partnerships with the UN, the OSCE, the Council of Europe and civil society as well as with the EU, Guy Ouellet, UNHCR Regional Representative in Ukraine, Belarus and Moldova. *Beyond Borders, Strengthening Asylum in Ukraine- a project financed by the European Commissioner*, No. 5, *Bulletin of the UNHCR in Ukraine*, May 2005, pp. 2-3.

contributed to stabilize the situation following 1991 and the break up of the Soviet Union when more than 50 million people were estimated to be living outside their 'home', facing a very uncertain future.<sup>205</sup> However, as the UNHCR analysis of gaps in refugee protection of 2005 has shown, there is still work to be done in the area of implementation, in particular regarding:

- Legislative and administrative frameworks: states agreed to adopt specific legislative and administrative measures based on high standards of international protection and in particular to provide for fair and effective asylum system, access to the territory, adequate reception facilities, refugee-status determination process and integration possibilities for those found to be in need of international protection;
- Humanitarian status: states recognized that where appropriate, humanitarian status should be afforded to individuals and groups who have been externally displaced by conflict and who do not meet the criteria for recognition as refugees under the 1951 Convention relating to the Status of Refugees, but who are nevertheless in need of international protection, in order to legalize their refuge on humanitarian grounds and provide effective protection;
- Documentation: states recognized the importance of providing refugees including children with adequate documentation and agreed to cooperate among themselves and with international agencies in regard to registration and documentation of refugees and asylum seekers;
- Integration: states recognized that real opportunities for the local integration of refugees should be pursued by national governments and supported by UNHCR and other relevant development agencies. Moreover, to create a favorable climate for the integration of recognized refugees, a more positive and respectful attitude towards refugees should be fostered and public awareness programs initiated to reduce xenophobia, discrimination and intolerance.<sup>206</sup>

Ending the CIS Conference in October 2005, the UN High Commissioner underlined that :” it is up to all of us now to ensure that we build on what has been achieved and to jointly chart the way forward in a spirit of understanding and cooperation – the hallmark, as we can now say, of the exemplary CIS Conference process”<sup>207</sup>, some consensus emerged to continue work more closely with neighbouring countries and with several new initiatives and interlocutors on the scene, to include them in a broader

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<sup>205</sup> ‘Talibanization’, the destabilizing export of Afghan-style radical Islam, has become a familiar term, and the oil rich and gaz sources in Central Asia are among challenges posed also to humanitarian and refugee work in Central Asia, see “The Taliban: Exporting Extremism” by Ahmed Rashid, Foreign Affairs, November/December 1999, pp 22-23.

<sup>206</sup> Based on “Identifying Gaps in Protection Capacity CIS Countries, Bureau for Europe, CIS Conference Process”, September 2005.

<sup>207</sup> Briefing to the media of UNHCR on 11 October 2005, full text see: <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&page=home&id=434beb064>, visited 22 March 2006.

flexible framework for Euro-Asian cooperation on displacement, asylum and migration.<sup>208</sup>

In terms of Central Europe, the analysis of the effect EU integration on this region with special focus on Bulgaria has shown that EU accession was the main motor in developing asylum and refugee systems in Central Europe, particularly that which concerns standard-setting as it has been a condition for EU membership. However, with regard to implementation, the situation is in some cases less impressive. Therefore, safeguards are needed, especially on the new external borders of the EU, and soon of Bulgaria as a new EU member state with Turkey, as persons in need of protection will have ever more difficulties to reach safety there. Particularly worrying is the channelling of asylum applications into admissibility procedures on formal grounds (for example, lack of documentation, or non-respect for time limits for filing asylum applications or the flight route), hence, barring access to an examination of the substance of the claim and often leading to detention of asylum-seekers, unduly long and unjustified. This tendency is partly due to pressures by Western European target countries of asylum-seekers and economic migrants, on countries to the East to exercise more stringent controls of their Eastern as well as Western borders.<sup>209</sup>

Specifically, with regard to Bulgaria, and within the context of the Bulgaria's EU accession and the related requirements, the national system for refugee protection is functioning. Continued further strengthening and support will be required, especially keeping in mind the maintenance of the international standards as reflected in the UNHCR comments to the 2005 Law on Asylum and Refugees amendments, that were achieved so far, and the balancing of state obligations related to the EU Accession and future transposition of the relevant EU *acquis*. Though the 2002 Bulgarian Law on Asylum and Refugees as amended in 2005, thus reflecting the existing EU asylum *acquis*, Bulgaria needs, like in other EU and EU candidate countries to keep the process of further transposition of emerging EU asylum *acquis*. The National Refugee Integration Program which the Government of Bulgaria adopted on 26 May 2005 represents an important step in Bulgaria's refugee policy developments. It is aimed at contributing to systematize the existing policies, and to provide refugee specific integration support for newly recognized refugees in 2006-2007, for up to one year upon recognition, in order to mainstream refugee integration as a process, and to streamline State and UNHCR funded integration activities for recognized refugees in Bulgaria during the last decade.

EU Member State governmental and NGO refugee assisting agencies are able to benefit from EU funding for refugee related programmes, under the ARGO, DAPHNE, EQUAL, INTI Programmes and the European Refugee Fund, foreseeing more than 750

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<sup>208</sup> At the occasion of an official six-day mission to the Russian Federation in April 2006 of the UN High Commissioner Guterres, the briefing notes stated that since establishing its Office in the Russian Federation in 1992, UNHCR provided assistance and protection to refugees and internally displaced persons in the Russian Federation amounting to more than US\$ 170million, UNHCR briefing-notes, 4 April 2006.

<sup>209</sup> In order to deal with asylum-seekers as closely as possible to their countries of origin, there have been efforts directed at improving reception conditions in regions of origin, which however, should be pursued by measures aimed at improving democratic functioning of institutions, the strengthening of the rule of law and of material assistance. See Johannes **Van der Klaauw**, "Building Partnerships with Countries of Origin and Transit", in *Asylum, Immigration and Schengen Post-Amsterdam, A first Assessment*, ed. By Clotilde Marinho, European Institute of Public Administration, 2001, p. 33.

million Euros until 2010. Bulgaria, once EU Member State, will be able to benefit from the same EU funds, for which project proposals need to be prepared now in the appropriate and timely manner, not to miss deadlines and opportunities. Dissemination and training in refugee law and policy, also through academic teaching and research in the framework of the Academic Refugee Studies Initiative (ARSIB), with practitioners and academics, in cooperation with the State Agency for Refugees and partners from the refugee-assisting NGOs will continue to be a valuable means to support developing knowledge and skills. Considerable teaching and research are in progress at the B.A., M.A. and Ph.D. levels, in addition to more than 30 dissertations, papers and articles on refugee-related issues.

Further vigilance will be needed in addressing the gaps in the refugee protection, and ensuring quality of asylum. As in other European countries and elsewhere, there are areas needing strengthening with respect to the quality of asylum procedures, including access to the territory and to the refugee procedure, implementation of the readmission agreements and practice, quality of initial identification methods, quality of the accelerated procedures and the decision-making process, prevention of unjustified and prolonged detention and the effectiveness of appeals. Judicial protection through more coordinated approaches to the European Court on Human Rights may be considered, especially in light of Bulgaria's EU Integration and the competence of the European Court of Justice for referrals under Article 234 of the Treaty of Rome 1957, as amended by the Amsterdam Treaty, in order to deal with references from national courts for preliminary rulings to clarify scope and meaning of European law,<sup>210</sup> including on asylum.

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<sup>210</sup> This function is a very important one since rulings made by the European Court of Justice are then binding on courts in Member States. This ensures that the law is indeed uniform throughout the European Union. A request for a preliminary ruling is made under Article 234 of the Treaty of Rome. The European Court of Justice shall have jurisdiction to give preliminary rulings concerning the :

- (a) Interpretation of treaties;
- (b) Validity and interpretation of acts of the institutions of the Union;
- (c) Interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide. Article 234 of the Treaty of Rome creates discretionary and mandatory referrals. Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to a ruling thereon. Where any such a question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice. The Court of Appeal and below have a choice, they may refer if they wish or may decide the case without any referral. Even courts at the bottom of the hierarchy can refer questions of law under Article 234, if they feel that a preliminary ruling is necessary to enable a judgment to be given.

## 5. ANNEXES

### 5.1. Table on ratifications of selected conventions on human rights and refugees (as of 13 September 2000, and updated on 2 June 2006)<sup>211</sup>

Country	CSR51/ CSRP6 7	PPC G48	CSSP 54	CRS 61	ECHR 50	ICCPR 66	ICES 66	CAT 84	CERD 65	CRC 89
Eastern Europe and Central Asia										
Armenia	X	X	X	X	X	X	X	X	X	X
Azerbaijan	X	X	X	X	X	X	X	X	X	X
Belarus	X	X	-	-	-	X	X	X	X	X
Georgia	X	X	-	-	-	X	X	X	X	X
Kazakhstan	X	X	-	-	-			X	X	X
Kyrgyzstan	X	X	-	-	-	X	X	X	X	X
Republic of Moldavia	X	X	-	-	X	X	X	X	X	X
Russian Federation	X	X	-	-	X	X	X	X	X	X
Tajikistan	X	-	-	-	-	X	X	X	X	X
Turkmenistan	X	-	-	-	-	X	X	X	X	X
Ukraine	X	X	-	-	X	X	X	X	X	X
Uzbekistan	-	X	-	-	-	X	X	X	X	X
Central Europe										
Bulgaria	X	X	-	-	X	X	X	X	X	X
Czech Republic	X	X	-	-	X	X	X	X	X	X
Latvia	X	X	X	X	X	X	X	X	X	X
Lithuania	X	X	X	-	X	X	X	X	X	X
Estonia	X	X	-	-	X	X	X	X	X	X
Hungary	X	X	-	-	X	X	X	X	X	X
Romania	X	X	-	X	X	X	X	X	X	X
Poland	X	X	-	-	X	X	X	X	X	X
Slovak Rep.	X	X	X	X	X	X	X	X	X	X
Slovenia	X	X	X	-	X	X	X	X	X	X

CSR51/CSRP67	1951 Convention and/or 1967 Protocol relating to the Status of Refugees
PPCG48	1948 Convention on the Prevention and Punishment of the Crime of Genocide
CSSP54	1954 Convention relating to the Status of Stateless persons
CRS61	1961 Convention on the Reduction of Statelessness
ECHR50	1950 European Convention for the Protection of Human Rights and Fundamental Freedoms
ICCPR66	1966 International Covenant on Civil and Political Rights
ICES66	1966 International Covenant on Economic, Social and Cultural Rights
CAT84	1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CERD65	1965 Convention on the Elimination of All Forms of Racial Discrimination
CRC89	1989 Convention on the Rights of the Child

<sup>211</sup> Update <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterV/chapterV.asp>, visited 2 June 2006, and 13 September 2000 confirmed with the UN Treaty Section. Assistance of Hanna Dreifeldt and Bradford C. Smith, UN Treaty Section respectively, is acknowledged. Re: ECHR: <http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/Basic+Texts/Dates+of+ratification+of+the+European+Convention+on+Human+Rights+and+Additional+Protocols>. *Sources on Eastern Europe and Central Asia, in the Collection of Documents on Refugees and Persons in Refugee Like Situations in the Republic of Kazakhstan with comparative research and analyses concerning countries in Central Asia and the CIS*, eds. Druke/Rogov/Turisbekov/Argumbaev, published by UNHCR in Kazakhstan, October 1998 in English and Russian and a selection of the publication was translated and published in September 1999 in the Kazakh language.

## 5.2. Situation of implementation of refugee policy in Eurasia <sup>212</sup>

### 5.2. 1. Central Europe

#### Working Document

Situation of Refugees and Other Persons of Concern to UNHCR in Central Europe (The statistics are based on UNHCR's official statistics of July 2000) <sup>213</sup>							
1 January 2000							
		Protection				Assistance	Comments
Country	Statistics	Registration	Legal Basis	Refugee status determination/ Appeal (RSD)	Identity document for recognised refugees	Support of GOVT's and beneficiaries	Outlook
Bulgaria	- 1,610 a/s - 550 refugees from more than 59 countries or nationalities	- Agency for Refugees (AR) after under the Council of Ministers: Management of Registration and reception centres "AONSU" in Sofia & Banya	-Section 27 (2) of the Constitution provides for granting of asylum to foreigners - 1951 Convention ratified in 1992, in force since Aug. '93  - the first refugee law is in force since 1 August 1999 distinguishing between a general and an accelerated asylum procedure.	State Agency for Refugees	- For asylum seekers and recognised refugees	-BRC – Bulgarian Red Cross for material aid, - BHC – Bulgarian Helsinki Cttee for legal counselling to a/s and refugees in Sofia in all stages of the procedures and for those rejected in border procedures - Agency for Refugee for the implementation of the national refugee legislation.	- Amendment of the 1999 refugee law, and supporting RSD and other refugee law implementation mechanism - Integration of <i>acquis communautaire</i> into national policy, practice and law - Adoption of the State Migration policy
Czech Rep.	- 1,410 a/s  - 1,200 refugees mainly from Iraq, Afghan., Rumania and Sri Lanka	- Ministry of Interior	-Ratif. 1951 Convention in 1991 by Fed. Rep. Of Czechoslovakia. The succession by the Czech Rep. took effect on 1 Feb. 1993 - 1990 Refugee Act amended in 1993, 1996 and 1999 (?) - Law on the Stay of Aliens in the Territory of the Czech and	- 1990 Refugee Act, MOI is resp. for RSDP through Directorate of Aliens and Border Police Services at Police Presidium - Appeals are decided by the	Ministry of Interior (Source Bled report of June 1999, p. 141-146).	- Administration of Refugee Facilities for integration for recognised refugees and immigrants of Czech origin and a specific category of war refugees (handicapped persons).	- Work with Roma persons has taken a priority position on the agenda of the Government - Complex agency co-ordination mechanisms - Integration of EU <i>Acquis Communautaire</i> into policy, law and practice

<sup>212</sup> Internal draft synopsis of protection/legislation gap analysis (Eastern European & Central Asian CIS Countries) of 2003, discussed at the UNHCR Protection meeting in Moscow in June 2003, received from UNHCR Legal Advisor Nicole Delaney, on file with the author.

<sup>213</sup> **Refugees and Others of concern to UNHCR, 1999 Statistical Overview**, Registration and Statistical Unit, Programme Coordination Section, UNHCR Geneva, July 2000, pp. 8-9,

	- 2,300 various other persons of concern to UNHCR		Slovak Fed. Rep. (Aliens Act) of 1991	Minister of Interior and for applicants whose appeal rejected by MOI, of judicial review High Court under Civil Proce. Code			
Estonia	- 30 a/s mainly from Iraq, Pakistan, Afghanistan, Algeria, Nigeria, Armenia, etc.	- Citizenship and Migration Board	- 1997 Accession to the 1951 Convention, - Refugees Act of the Rep. Of Estonia entered into force 9 July 1997 - The Act Amending the Refugees Act entered into force on 1 September 1999. - Regulation 250 of 1999 on the "Designation of govt. agencies performing acts arising from the Refugees Act", - Regulation 26 of 1998 on financial assistance to a/s, - Regulation 238 of 1999 on various matters, incl. Form of the asylum application, minutes of initial and thorough interview, certificate of a/s, - Regulations No 47 of 1998, No. 77 of 1998, No. 63 of 1999 on reception centre for a/s in Illuka, and - Regulation 263 of 1999 on the procedure for accelerated processing of an asylum claim. - Regulation 309 of 1999 on the creation of a refugee register by 2003.	- Citizenship and Migration Board or Board of Border Guard carrying out first instance RSDP, - first appeal instance is an admin. Court and second appeal is district court. - Review by the Supreme Court possible.	- Citizenship and Migration Board: - a/s receive certificates - Gvmnt decree regulating the issue of refugee travel documents is to be drafted soon.	- Local Gvt.is providing support for the reception of recognized refugees in finding housing, employment, social, health, educational and interpretation services in addition to a one-time subsidy that can be paid to a refugee by local gvt. - Refugees are entitled to social benefits on the same basis as permanent residents of Estonia.	- Readmission agreements concluded or pending with about 10 European countries. The latter have not been applied in respect to asylum seekers yet. - Additional amendments to the Refugees Act are being planned in 2000 in order to introduce, inter alia, certain procedural guarantees to the border procedure; and effectively introduce subsidiary protection. General incorporation of EU acquis into the national legislation. - Refugee reception centre in Illuka will officially open in May 2000.
Latvia	10 a/s / refugees mainly from Afghan., Armenia, Georgia,	Refugee Affairs Centre, a separate structural unit of the Department of Citizenship and Migration Affairs of	- Ratification of the 1951 Convention on 19 July 1997 - The law "On Asylum seekers and Refugees in the Republic of Latvia" came into force on 1 January 1999	-Refugee Affairs Centre for the first instance - Refugee Appals Council and the supervision of the	- Ministry of Interior	For the first 12 months after granting refugee status the refugees are to receive material assistance as provided by the Cabinet of Ministers regulation for living and learning the Latvian language	- Readmission agreements signed or in progress with some 30 countries, - Regulations on the reception centre for asylum seekers

	Pakistan.	the Ministry of Interior	-Regulations on place of residence, identity documents, refugees' permanent residence permits and on a/s identity documents and social benefits	Ministry of Justice (consisting of a Chairman and 4 Council members acting and decide independently within their competence			- Incorporation into the national policy, law and practice of the <i>acquis communautaire</i>
Lithuania	- 50 a/s 40 refugees, mainly from Afghanistan, Somalia, Iraq, India and Pakistan	Ministry of Interior	- 1951 Geneva Conv. and 1967 Protocol ratified in 1997 and in force since 27 July 1997 - The law "Concerning the Status of Refugees in the Rep. Of Lithuania became effective on 27 July 1997 also Resolution on border crossing of 1966, on restriction of movement of a foreigners who has been granted temporary territorial asylum, on financial support, on documentation, on personal and travel documents, and on deportation 1998 Order on Social integration of Recognised Refugees"	-Migration Department at the MOI conducts interviews and carries out examination in the first instance, -Appeal to the Refugee Affairs Board consists of the Council & the Secretariat and representatives NGOs (Lithuanian Centre for Human Rights, Lithuanian Red Cross), a/s are assisted by lawyers from the Legal Assistance for Asylum seekers and Refuge Project - Judicial appeal to a court with suspensive effect	-Ministry of Interior	- Ministry of Social Security and Labour is responsible for material aid, employment, education, of recognised refugees with the assistance of NGOs	- Readmission agreements in force or pending with more than 30 countries - Strengthening of implementation of the Geneva Convention - Amendments of the refugee law, reflecting accelerated procedures for manifestly unfounded applications, safe third country concept under consideration
Hungary	- 2,640a/s - 5,000 refugees - mainly from Turkey, Yugoslavia, Armenia, Russia, Afghan., Iraq,	- Office of Refugees and Migrations Affairs (ORMA)	- Accession to the 1951 Conv. In March 1989 - Branch Office Agreement b/n Gov. of Hungary and UNHCR 4 Oct.1989 - Act on Hungarian Citizenship 1993 - Decree 24/11998 on Asylum Proceedings, Documents of Applicants, Temporary Protected Persons and stay - Decree 25/1998 on	- ORMA for in country processing - Alien policy to notify the refugee authorities ORMA, of entries of asylum seekers at border points - No admin. Appeal only judicial review. - UNHCR may take part in any stage of	- Ministry of Interior	- For integration of recognised refugees they enjoy similar right as Hungarian citizens, incl. Employment, housing, language training. - UNHCR and NGOs provide assistance (to check?)  - Source: Bled, 1999, pp.159-163	- Readmission agreements with 15 States in force and with 14 more pending - Harmonisation of the national practice, policy and law with EU countries and standards

	Algeria, Sierra Leone		- Care & Maintenance of foreigners under the 1997 Asylum Act	the RSDP.			
Romania	- 50 a/s  - 1,200 refugees - mainly from Iraq, Bangladesh, Congo, Sri Lanka, Iran, Afghan.	- Refugee Office within the General Directorate of Border Police, Aliens, Migration Problems and Passports in the Ministry of Interior	- Accession to the 1951 Geneva Conv. On 4 July 1991 - Law no. 155/1996 concerning the status and regime of refugees in Romania, in force on 3 May 1996 - Govt. decision 417/119911 set up of the Romanian Committee for Migration Problems as amended by 419/11998 incl. Also in and out migration	- Refugee Office within the General Directorate of Border Police, Aliens, Migration Problems and Passports in the Ministry of Interior - UNHCR may take part in the Commission (composed of reps. Of MOI, MFA, Min. Labour & Social Protection) - Appeal under emergency procedure by the court of first instance where the applicant resides - -Judicial review at court of second instance with possibility of in camera hearing	- Ministry of Interior	- National Program for the integration of recognised refugees being strengthened - UNHCR has been assisting with the reception of asylum seekers in co-operation with other organisations - Source: Bled, 1999, pp. 186-192	- Readmission - Admission Agreements concluded with most EU Member States and with 7 others with further 7 pending - Harmonisation of national practice, policy and laws with EU <i>acquis communautaire</i>
Poland	- 1,100 a/s - 940 refugees, - mainly from Afghan., Armenia, Bulgaria, Mogolia, Romania, Russian Fed. and Yugoslavia	- Department for Migration and Refugee Affairs in Warsaw	- Accession to the 1951 Conv. In November 1991 - The Constitution of Poland refers to refugees in Arts. 56.1 and 56.2 - Act on Aliens of 25 June 1997 and - Various ordinances related to the Aliens Act.	- Minister of Interior and Administration is responsible for first instance RSDP decisions - First appeal to the independent Refugee Board (suspensive effect granted) - Second	- Ministry of the Interior (MOI)	- Asylum seekers, may receive accommodation, food, medical care, material aid, ad-hoc emergency assistance until they are granted refugee status, or until their appeals are rejected by the Refugee Board, - Recognised refugees are given assistance for access to the labour market, educ. System, accommodation outside the reception centres, legal aid and vocational training mainly through Programs run by NGO	- Harmonisation of national practices, policies and laws with EU <i>acquis communautaire</i> - New amendments to the Aliens Law, which would make it compatible with the <i>acquis</i> , currently being drafted. - The Polish Parliament is currently amending the Act on Social Assistance, which includes provisions for assistance to recognized

				judicial appeal to the Supreme Administrative Courts (no automatic suspensive effect) to review the legality of the previous decision.		operational partners of UNHCR. NGOs such as the Helsinki Foundation, CARITAS, The Polish Humanitarian Action are assisting refugees in various forms	refugees.
Slovakia	- 330 a/s - 440 refugees - mainly from Afghan., Iraq, India, Sri Lanka, Armenia	- Ministry of Interior	- Accession to the 1951 Conv. by the Czech and Slovak Federal Rep. On 26 Nov. 1992 and the Slovak Rep. Assumed these intl. Commitments within the succession framework after separation by resolution No. 846 from 16 Nov. 1993 on with the Principles of the Migration Policy of the Slovak Rep. - 1995 the Nat. Council Act No 283/1995 of law on refugees was adopted compatible with 1951 Conv. and EU asylum <i>acquis</i>	- MOI		- The Migration Office of the Slovak Rep. is responsible for integration and assistance, it co-operates with UNHCR and NGOs in various aspects, including in the framework of Round Tables in co-operation with the Migration Policy Group, Brussels	- Readmission Agreements have been concluded or are being concluded - with all Central European States as well as others in the EU and Eastern Europe - Amendment of the refugee legislation in view of the 24-hour deadline for filling asylum applications, acceleration of the asylum procedure, status of rejected asylum seekers who cannot be expelled.
Slovenia	610 a/s 4,400 refugees 11,300 various others of concern mainly from FRY, B/H, Iran, Iraq, Liberia, Croatia -3,113 and 1,200 Bosnian and Kosovar	Ministry of Interior for a/s and Office for Immigration and refugees for temporarily protected refugees	- In 1992 Slovenia became successor to the 1951 Convention - Constitution of the Rep. (Arts 8,48) - 1999 Law on Asylum for a/s, - 1997 Law on Temporary Protection for refugees with TP - 1999 Law on Regularization of ex-Yugoslav citizens without status in Slovenia	- Ministry of Interior' Aliens Office determines refugee status in the first instance - Administrative Court deals with appeals in 2 <sup>nd</sup> instance (with suspense effect), - Further appeal possible to the Supreme Court of the Rep. Of Slovenia - Temporary asylum	- Ministry of Interior for recognized refugees under the 1999 Law of asylum, and - Office for Immigration and Refugees for refugees with TP	- Asylum-seekers Govt. grants a small monthly pocket money for those who are accommodated in the reception centre - Refugees with TP Primary healthcare and elem. Educ. Are guaranteed for the entire refugee population, and housing, board and other services covered for those in collective centres by the State. The 1999 hum. Assist. Decree provides call TP refugees from B/H and Kosovo accom with monthly allowance. Small aid also for very vulnerable cases	Implementation of the 1999 Law on Asylum with access to the RSD procedures, quality decisions, strengthening reception conditions and various assistance programmes. Implementation of the 1999 Law on Regularisation for ex-Yugoslav Citizens without status or citizenship. Durable solutions for TP refugees from B/H, in view of slowing down of repatriations to B/H, a more durable status for their local integration is pursued.

	<p>refugees with TP, Some 13,000 ex-Yugoslav citizens without status in Slovenia applied for perm. Residence</p>			<p>given to persons who fled to Slovenia owing to war or mass violence for humanitarian reasons by the Local admin. Units of Interior Ministry in first instance and to the central MOI in 2<sup>nd</sup> instance</p>		<p>through Slovene NGOs and UNHCR. - Convention refugees, through the 1999 Law on asylum they are assisted, basically in line with the 1951 Convention.</p>	
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5.2.2. Eastern Europe  
Working Document

Refugees and Others of Concern to UNHCR in Eastern Europe,  
(The statistics are based on the official UNHCR statistics of 7 June 2000) <sup>214</sup>

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1 January 2000

		Protection				Assistance	Comments
Country	Statistics	Registration	Legal Basis	Refugee status determination/App eal (RSD)	Identity document for recognised refugees issued by	Support of GOVT's and beneficiaries	Outlook and suggestion for Follow up Next steps planned
Armenia	-296,200 refugees mainly ethnic Armenians from Azerbaijan -10 a/s from Sudan, Somalia, Iran, Iraq, Yugoslavia and Russian Federation	-Office of migration and refugees within the government	-Article 27 Constitution -Ratif. Geneva Convention '92  - Law on Refugees 1999	---	-Office of migration and refugees within the government	- Three acts pending in Parliament (concerning temp. housing, interpreter service and emergency assistance) -Assistance provided by UNHCR/others	- Development of implementation mechanisms (capacity building)  - Adoption of the State Migration program
Azerbaijan	- 221,600 refugees, -569,600 internally displaced persons (IDPs) - 350 a/s mainly from Afghan., Russian Fed. Chechnya, Iran, Iraq.	State Committee for Refugees for refugees from Armenia and Meskhetian Turks and IDPs from Nagorno-Karabakh conflict,	<b>-Ratif. Geneva Convention in 1993</b> - Law on Refugees of 1992 was amended in May 1999 with legal assistance of UNHCR.	- State Committee for Refugees and IDPs recognize on a prima facia basis refugees and IDPs from the Nagorno-Karabakh conflict as well as Mesketian Turks. - Individual a/s are considered by UNHCR as there is no governmental	-State Committee for Refugees and IDPs from N-Karabakh conflict. - Individuals recognized by UNHCR are issued a UNHCR « To Whom It May Concern » Letter.	-State Committee IDP's and refugees, UNHCR in close coordination with UN agencies and NGOs provide assistance. - On a temporary basis, UNHCR provides financial and ed. Support to a/s who have no access to any domestic aid. - Medical assistance is provided to emergency (life-saving) cases.	- Work with IDPs has taken a priority position on the agenda of the Government  - Complex agency co-ordination mechanisms  - UNHCR will assist the Gvt. To adopt fair and efficient national RSDP.  - As durable solution, UNHCR is developing income generating projects and skills training.

<sup>214</sup> **Refugees and Others of Concern to UNHCR in Countries of the Commonwealth of Independent States (CIS) end 1999**, prepared by the Registration and Statistics Unit in consultation with the concerned offices of UNHCR and Governments in the countries under review, UNHCR Geneva, page 3/8, 7 June 2000.

				RSD yet.			
Belarus	-16,400 a/s and 260 refugees mainly from Afghan. - 2,900 a/s registered by HCR	- Territorial Migration Services (TMS) in all six regions and Minsk City	- Refugee Law of 1995, revised 1999	-Since June 1998 by the Committee on Migration under the Ministry of Labour with possibility of appeal to court, which have heard so far 60 cases who appealed against decisions made by the first instance.	-A/s receive certificate upon registration of their application by the Territorial Migration Services. Recognized refugees receive refugee certificates issued by the Committee on Migration.	- A/s upon registration receive a one time cash allowance equivalent to a minimal wage, - UNHCR also provides monthly financial assistance to the most vulnerable category of persons of concern to UNHCR	- Ratification of the Geneva Convention is still pending - Advocacy on further amendment to the Law on Refugees is planned.
Georgia	-110 a/s mainly from Chechnya – 5,200 refugees mostly Chechens except for some 20 non- CIS refugees (mostly Chechens) -278,500 IDPs from conflict zones w/in Georgia	Ministry of Refugees and Accommodation (MRA), dealing with IDPs and refugee issues	- 1951 Geneva Convention and 1967 Protocol ratified in 1999 - Refugee law adopted in March 1998	Department for RSD within the Ministry of Refugees and Accommodation. (MRA) with possibility of appeal and suspensive effect	The Ministry of Refugees and Accommodation (MRA)	MRA, UNHCR, NGOs, including NRC, DRC, IRC, local NGOs (Georgian Young Lawyers Association (GYLA), UN Association of Georgia (UNAG)	- National refugee law to be brought in accordance with 1951 Geneva Convention - Advise the Gvt. On changes and amendments to the existing refugee law as well as practical implementation of the 1951 Geneva Convention (RSD is slowly Developed).
Moldova	- 220 a/s Mostly from Afgh., Iraq, Chechnya and Sudan. - 10 refugees (from Iraq)	NGO Refugee Society registers and formulates recommendation for refugee status for UNHCR's review and approval (for the time being)	- Art. 4 of the Constitution 'right to asylum' and Statute of UNHCR of 1950 and Host Country Agreement UNHCR and Govt of Moldavia - Draft Refugee Law under consideration	- By UNHCR under its mandate	- A/s receive a protection letter by UNHCR upon registration valid 3 months -Recog. refugees receive refugee letter also for 3 months	-Emergency aid for the most vulnerable in cash through the NGO Safe the Children - For Children and single female households receive housing allowance of USD50 a months for max 4 months during the winter	- Ratification of the 1951 Convention - Adoption of the Refugee law by Parliament
Russian Federation	-16,000 a/s from Afghan., Iraq, -80,100 refugees, from CIS, and incl.	- Federal Migration Service (FMS) (1992-2000)	-1951 Geneva Convention ratified in 1993 -Refugee law of	-FMS with possibility of appeal by Commission of appeal,	-Letters for a/s while in the RSD by the FMS/ MON -Refugee cards since 2000 - Certificate on temp.	- Government, - Emergency assistance to the most vulnerable a/s in Moscow region by UNHCR through	- Legal and other problems due to influx of refugees, a/s and IDPs in the North Caucasus following the recent conflict in Chechnya

	492 Afghans, -498,400 IDPs, -64,500 Returned IDPs - 845.300 various others of concern to UNHCR	- Ministry for Nationalities (MON) since late 2000	1993 amended in 1995 and 1997	-Court also possible - Ministry of Nationalities since late 2000	Asylum on human. grounds -Referral letters UNHCR/ NGOs	Equilibrium Solidarity and other NGOs, esp. Compatriot.	- Reorganization of competent refugee authorities from Federal Migration Service to the Ministry of Nationalities
Ukraine	-300 a/s and 2,700 refugees mainly from the Russian Federation, (Chechnya) and other countries in the CIS, - 260,000 various other persons of concern to UNHCR	State Committee for Nationalities and Migration which operates through 27 branches of the State Migration Service	-Law of the Ukraine on Refugees 1993, - Ordinance on the procedure to determine refugee status of 1996, - Art. 33 Consitut on Freedom Movement, - Resolution on the creation of bodies for Migration Services 1994	-First instance migration Service Bodies (27 Branches), - Appeal to the State Committee for Nationality, and Migration, Appeal Commission	- A/s upon registration of their application receive certificates of application, - Recognised refugees receive Refugee Certificates.	UNHCR provides financial assistance for recognised refugees (USD 100 in a one time payment) to the head of family as integration grant, in addition UNHCR is providing monthly living allowance subsistence to needy a/s and refugees - State provides emergency aid to most vulnerable.	- Ratification document of the 1951 Conv is circulating in executive branch to be introduced to Parliament expected in 2000 - Draft for introducing amendments to the law on refugees has been submitted to the Parliament in July 1999.

### 5.2.3. Central Asia

**Refugees and other Persons in Refugee like Situations in Central Asia, Working Document**  
 (The statistics are based on the official UNHCR statistics of 7 June 2000) <sup>215</sup>  
 1 January 2000

Protection						Assistance	Comments
Country	Statistics	Registration	Legal Basis	Refugee status Determination/ Appeal (RSD)	Identity Document for recognised refugees issued by:	Support of GOVTs and beneficiaries	Outlook and suggestion for Follow up
Kazakhstan	-14,800 a/s and refugees mostly Afghans - 25.000 returnees from the Kazakh diaspora	- Since 15 April 1998 in Almaty by the City Department of the Agency for Migration and Demography (AMD)	- 1951 Convention ratified in Dec. 1998/accession January 1999 - Law on Population Migration in force since Dec. 1997 - Draft refugee law developed between Govt., UNHCR and NGO for legal advise for a/s and refugees (KRELS) under consideration	- First instance by AMD City Department from May 1998-Dec.1999 with UNHCR & NGO (Kazakhstan Refugee Legal Support KRELS) in advisory role - Second instance by Federal AMD w/ UNHCR & NGO in an advisory role - Appeals to the Court with suspensive effect	- Agency on Migration and Demography (AMD)	-Emergency and medical support, including income generating projects directly by UNHCR and through Govt. and NGOs.	- Access to RSDP for all asylum-seekers independent of their origin and nationality  - Draft refugee law of Kazakhstan under consideration  - UNHCR submitted the documents for the ratification of the 1954 and 1961 Conventions on statelessness to the Govt. July 1999
Kyrgyz Rep.	- 180 a/s and 10,800	-Migration Department	- Geneva Convention ratified	1. Refugee Department of the State Agency on	Migration Department	Focus on assistance	- Strengthening of treatment of a/s (through RSDP at the first

<sup>215</sup> **Refugees and Others of Concern to UNHCR in Countries of the Commonwealth of Independent States (CIS) end 1999**, prepared by the Registration and Statistics Unit in consultation with the concerned offices of UNHCR and Governments in the countries under review, UNHCR Geneva, page 3/8, 7 June 2000.

	refugees registered by the Govt. (mainly Tajikistani and Afghans.		in 1996 - Temporary Provision on Refugees, Government decree # 340 of 24.7.96 - Draft of National Refugee Law went through the first reading in the Legislative Assembly of the Kyrgyz Parliament	Migration and Demography 2. Administrative Appeal procedure to be established within the new State Agency on Migration and Demography 3. Court appeal		through income generation in co-operation with International organisations and NGOs such as ADRA (Adventist Development and Relief Agency), Mercy Corps International, Netherlands Red Cross, Kyrgyz red Crescent, UNDP, NGO Support Centres in Kara-Balta, Jala-Abad.	and second instance) - Adoption of a national refugee law and procedures for accelerated acquisition of Kyrgyz citizenship for Tajik refugees - Improvement of refugees' treatment by the law enforcement - Cooperation with refugee communities, NGOs, BMMC, local authorities and Ministries re: Tajiks acquiring Kyrgyz citizenship for Tajik refugees
Tajiki-stan	- 2,200 a/s - 4,500 refugees -8,400 returned Tajik refugees repatriated from Turkey Afghan., Kyrgyzstan & Kazakh.	State Migration Service (SMS) under the Ministry of Labour	- Constitution of 1994, Art. 16 provides for granting of asylum - Geneva Convention ratified in 1993 - Refugee Law adopted in 1994 - Pres. Decree of 25 Dec. 1997 created State Migration Service	- First instance State Migration Service (SMS) -Second instance appeal to the Court possible for rejected cases, but without procedural instructions, Court procedures governed by the Civil Procedure Code	State Migration Service	Govt. and UNHCR through national NGOs, incl. Refugee Children and Vulnerable Citizens (RCVC) provide support to the most vulnerable persons among the asylum seekers and refugees	- Local integration – Updating of registration system - Voluntary repatriation / return process possible for those who wish - Procedure for rejected cases
Turkmeni	- 820 a/s	- UNHCR	- 1951 Geneva	- UNHCR conducts all	- Registration	- UNHCR and	- Repatriation of many of the

stan	- 18,500 refugees and persons of concern to UNHCR, incl. 121 recognized by UNHCR under its Mandate, mainly Afghans	Ashgabat but working group created also to draft legislation for the creation of a refugee office	Convention and 1967 Protocol ratified in March 1998 - Refugee Law of Turkmenistan, adopted in 1997, used to protect refugee rights for cases granted refugee status under the mandate	RSD. Some appeals are sent to HQ. - Turkmen Law on Refugees will provide for RSD by the “authorised body” with appeals to the courts, when implemented. Intergovernmental Commission on Migration planned which would be the authorised body for RSD.	Letters are issued by UNHCR to asylum-seekers whose visas expire before a decision is taken - Refugee Certificates are by UNHCR to Mandate refugees, valid for one year, renewable	NGO implementing partners provide support to vulnerable persons among the asylum-seekers and refugees.	remaining 6000 Tajiks, - Integration for those Tajiks of ethnic Turkmen origin w/ acquisition of Turkmen citizenship - Capacity building and draft legislation on establishment of the national refugee office. - Resettlement as a protection tool for few cases to England and Norway
Uzbeki- stan	- 260 a/s and 1000 refugees registered by UNHCR Geneva	- Registration by UNHCR Tashkent	- 1951 Convention and 1967 Protocol not yet ratified by the Government	UNHCR conducts RSD under its mandate with a possibility of appeal for rejected cases. First appealing instance is HLO Tashkent, second instance is UNHCR Geneva.	UNHCR	UNHCR through local NGO provides material/medical and social counselling support to vulnerable refugees and asylum-seekers	- Pursue efforts for local integration , Resettlement, vol. return and temporary residence for solution of refugee problems - Family Reunion of separated refugees with their families in Germany and Sweden, - Perusal of ratification of 1951 Geneva Convention and implementation.

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- Identifying Gaps in Protection Capacity CIS Countries, Bureau for Europe, CIS Conference Process, September 2005. This report was prepared in the context of the concluding meeting of the Follow-up to the 1996 Geneva “Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighboring States” in Geneva on 10 October 2005. It examines, on a regional basis, the protection capacity of Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova, the Russian Federation and Ukraine. It is focussing solely on the European part of the CIS Conference Process. This document can also be accessed at the following [URL: http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDLEGAL&id=43722cbd4](http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDLEGAL&id=43722cbd4).

- CIS Conference Process – concluding meeting, 10 October 2005.

- CIS Conference ends, but charts way ahead for flexible framework on migration, asylum, 10 October 2005.

- SG 25 August 2005 60th General Assembly, A/60/276, 19 August 2005: Report of UNHCR, on questions relating to refugees, returnees and displaced persons and humanitarian questions. Follow-up to the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the CIS and Relevant Neighbouring States, Report of the Secretary-General, Full text, see: <http://www.unhcr.org/cgi-bin/texis/vtx/excom/opendoc.pdf?tbl=EXCOM&id=43abd9552>.

- Opening Statement by the Director of the Bureau for Europe, 10 October 2005
- Closing Statement by the UN High Commissioner for Refugees, 10 October 2005
- Final Statement and Outlook to the future, 10 October 2005.

Summary of key CIS Conference Documents:

- May 1996 Geneva conference to tackle massive displacements in CIS
- Jul 1996 UNHCR and IOM seek funds for CIS programs
- Dec 1997 UNHCR seeks \$37 million for CIS programs
- Jun 1999 Fourth CIS Conference Steering Group meeting
- Jun 1999 UNHCR urges the world not to forget CIS and other troubled regions
- Jul 2000 Two-day meeting to pursue initiatives in dealing with displacement in the Commonwealth of Independent States
- May 2004 Minsk meeting to conclude CIS Conference process
- Oct 2005 CIS Conference Process – concluding meeting
- Oct 2005 CIS Conference ends, but charts way ahead for flexible framework on migration, asylum

**2006**

Euro-Asian Technical Consultations on Forced Displacement and Migration, Organized by UNHCR and IOM, Minsk, 27-28 February 2006, Selected Documents, UNHCR and IOM, Geneva March 2006.

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- State of the World's Refugees, The Challenge of Protection 1993, UNHCR Geneva,
- State of the World's Refugees, In Search of Solutions 1995, UNHCR Geneva.
- State of the World's Refugees, A Humanitarian Agenda 1997, UNHCR Geneva
- State of the World's Refugees, Fifty Years of Humanitarian Action 2000, UNHCR Geneva
- State of the World's Refugees, Human displacement in the new millennium 2006, UNHCR Geneva

- UNHCR Global Reports
- Notes on International Protection, for the annual meetings of EXCOM, Geneva.
- General Assembly Resolutions on the CISCONF Process follow-up and respective reports of the SG on the implementation of these resolutions.

- Refugee Survey Quarterly, Prima facie, The Newsletter of UNHCR's Department of Protection

**Other sources**

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The Economist, Spiegel, New York Times, Frankfurter Allgemeine Zeitung, Intl. Herald Tribune, Le Monde.

## 5.5. Refugee population by legal status and type of recognition, end-2004

### 5.5.1. Central Europe

Country of asylum	A. Legal status					B. Type of recognition			Total by recogn.
	1951 UN Conv./ 1967 Prot.	1969 OAU Conv.	UNHCR Mandate	Other unknown	Total by legal stat.	Prima facie	Indiv. recogn.	Other/ unknown	
Bulgaria	1,352	-	-	3,332	4,684	-	4,684	-	4,684
Czech Rep.	1,623	-	-	-	1,623	-	1,623	-	1,623
Estonia	4	-	-	7	11	-	11	-	11
Hungary	2,073	-	-	5,635	7,708	-	7,708	-	7,708
Latvia	7	-	-	4	11	-	11	-	11
Lithuania	-	-	-	470	470	-	470	-	470
Poland	1,651	-	-	856	2,507	-	2,507	-	2,507
Romania	948	-	-	679	1,627	-	1,627	-	1,627
Slovakia	409	-	-	-	409	-	409	-	409
Slovenia	35	-	-	269	304	-	100	204	304
<b>Total</b>	<b>8,102</b>	-	-	<b>11,252</b>	<b>19,354</b>	-	<b>19,150</b>	<b>204</b>	<b>19,354</b>

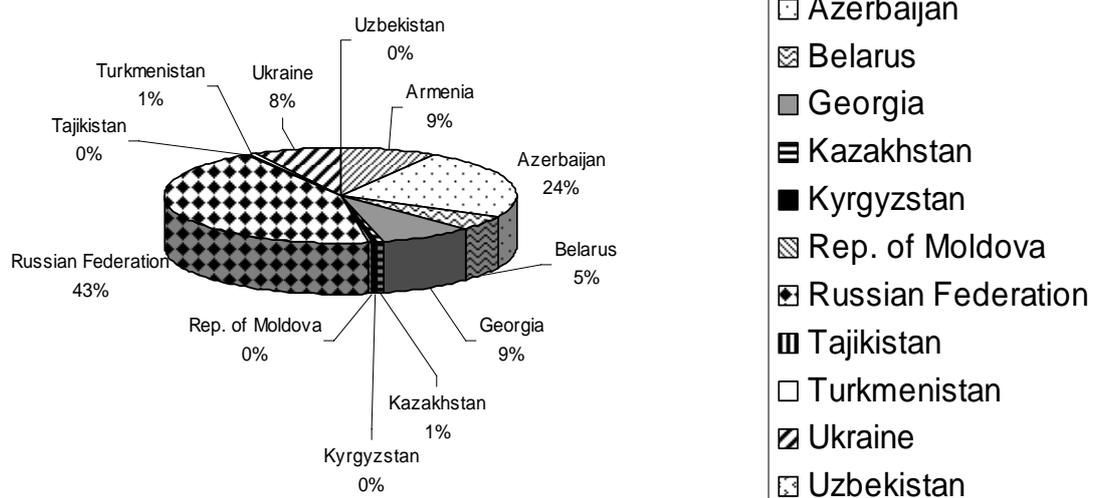
### 5.5.2. CIS Countries

Country of asylum	A. Legal status					B. Type of recognition			Total by recogn.
	1951 UN Conv./ 1967 Prot.	1969 OAU Conv.	UNHCR Mandate	Other unknown	Total by legal stat.	Prima facie	Indiv. recogn.	Other/ unknown	
Armenia	235,106	-	4	125	235,235	235,101	9	125	235,235
Azerbaijan	18	-	8,588	-	8,606	8,088	518	-	8,606
Belarus	663	-	24	38	725	-	725	-	725
Georgia	2,559	-	-	-	2,559	2,543	16	-	2,559
Kazakhstan	675	-	15,169	-	15,844	1,457	703	13,684	15,844
Kyrgyzstan	3,749	-	4	-	3,753	-	3,753	-	3,753
Rep. of Moldova	8	-	49	-	57	35	22	-	57
Russian Federation	614	-	10	1,228	1,852	-	1,852	-	1,852
Tajikistan	3,305	-	1	-	3,306	-	3,306	-	3,306
Turkmenistan	-	-	13,253	-	13,253	12,780	473	-	13,253
Ukraine	2,459	-	-	-	2,459	-	2,459	-	2,459
Uzbekistan	-	-	44,455	-	44,455	42,134	2,321	-	44,455
<b>Total</b>	<b>249,156</b>	-	<b>81,557</b>	<b>1,391</b>	<b>332,104</b>	<b>302,138</b>	<b>16,157</b>	<b>13,809</b>	<b>332,104</b>

### 5.5.3. Total Population of Concern to UNHCR in CIS Countries, end-1999

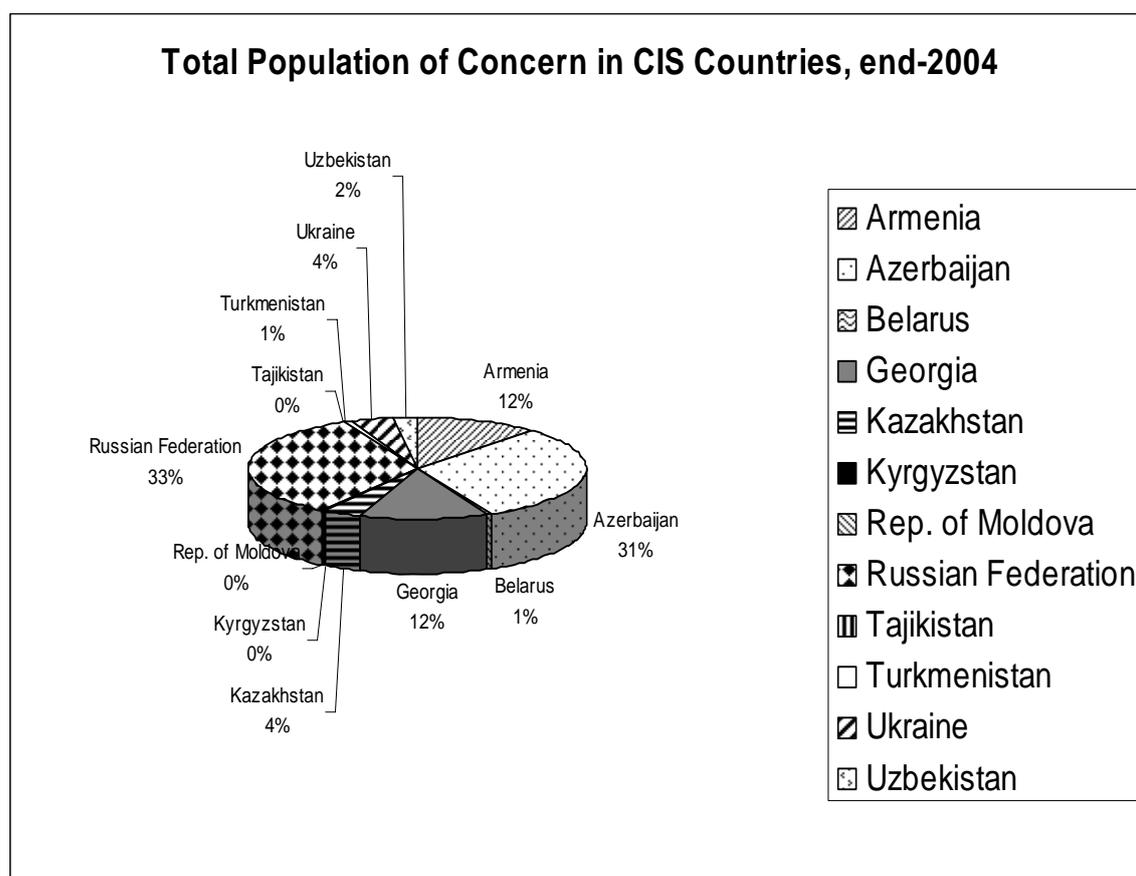
Country (1)	Refugees (2)	Asylum-seekers (3)	Returned refugees (4)	Others of concern			Total population of concern
				IDPs of concern to UNHCR (5)	Returned IDPs (6)	Various (7)	
Armenia	296,216	5	-	-	-	-	296,221
Azerbaijan	221,643	348	38	569,550	-	-	791,579
Belarus	260	541	-	-	-	160,000	160,801
Georgia	5,180	-	270	278,533	588	110	284,681
Kazakhstan	14,795	-	9,732	-	-	-	24,527
Kyrgyzstan	10,849	183	-	5,569	-	-	16,601
Rep. of Moldova	8	223	-	8,080	-	-	8,311
Russian Federation	80,060	1,119	18	498,354	29,503	845,341	1,454,395
Tajikistan	4,541	2,172	4,694	-	-	-	11,407
Turkmenistan	18,464	817	-	-	-	-	19,281
Ukraine	2,697	303	2	-	-	261,025	264,027
Uzbekistan	1,014	256	1	-	-	-	1,271
Sub-Total	655,727	5,967	14,755	1,360,086	30,091	1,266,476	3,333,102
Global Total	11,687,226	1,027,372	1,599,148	3,968,648	1,048,387	1,491,144	20,821,925

**Total Population of Concern in CIS Countries, end-1999**



#### 5.5.4. Total population of concern to UNHCR in CIS countries, end-2004

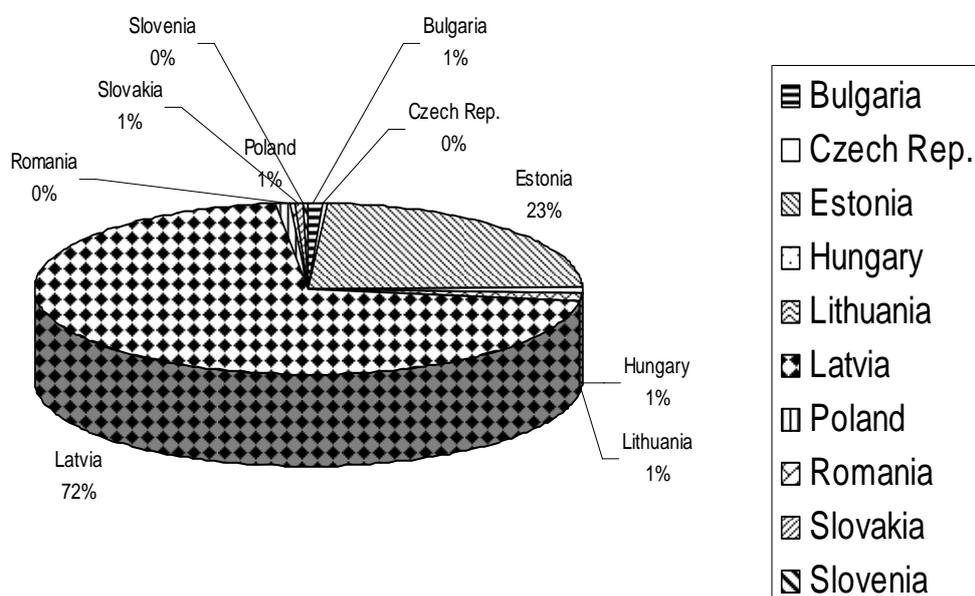
Country (1)	Refugees (2)	Asylum-seekers (3)	Returned refugees (4)	Others of concern	Returned IDPs (6)	Various (7)	Total population of concern
				IDPs of concern to UNHCR (5)			
Armenia	235,235	68	-	-	-	125	235,428
Azerbaijan	8,606	1,231	-	578,545	-	30,430	618,812
Belarus	725	68	-	-	-	12,923	13,716
Georgia	2,559	11	117	237,069	406	32	240,194
Kazakhstan	15,844	9	-	-	-	58,291	74,144
Kyrgyzstan	3,753	453	-	-	-	-	4,206
Rep. of Moldova	57	184	-	-	-	-	241
Russian Federation	1,852	315	54	334,796	19,019	308,516	664,552
Tajikistan	3,306	458	80	-	-	-	3,844
Turkmenistan	13,253	3	-	-	-	-	13,256
Ukraine	2,459	1,838	-	-	-	80,569	84,866
Uzbekistan	44,455	477	-	-	-	-	44,932
Sub-Total	332,104	5,115	251	1,150,410	19,425	490,886	1,998,191
Global Total	9,236,763	837,926	1,494,610	5,427,029	146,026	2,053,029	19,195,383



### 5.5.5. Total Population of Concern to UNHCR in Central Europe, end-2004

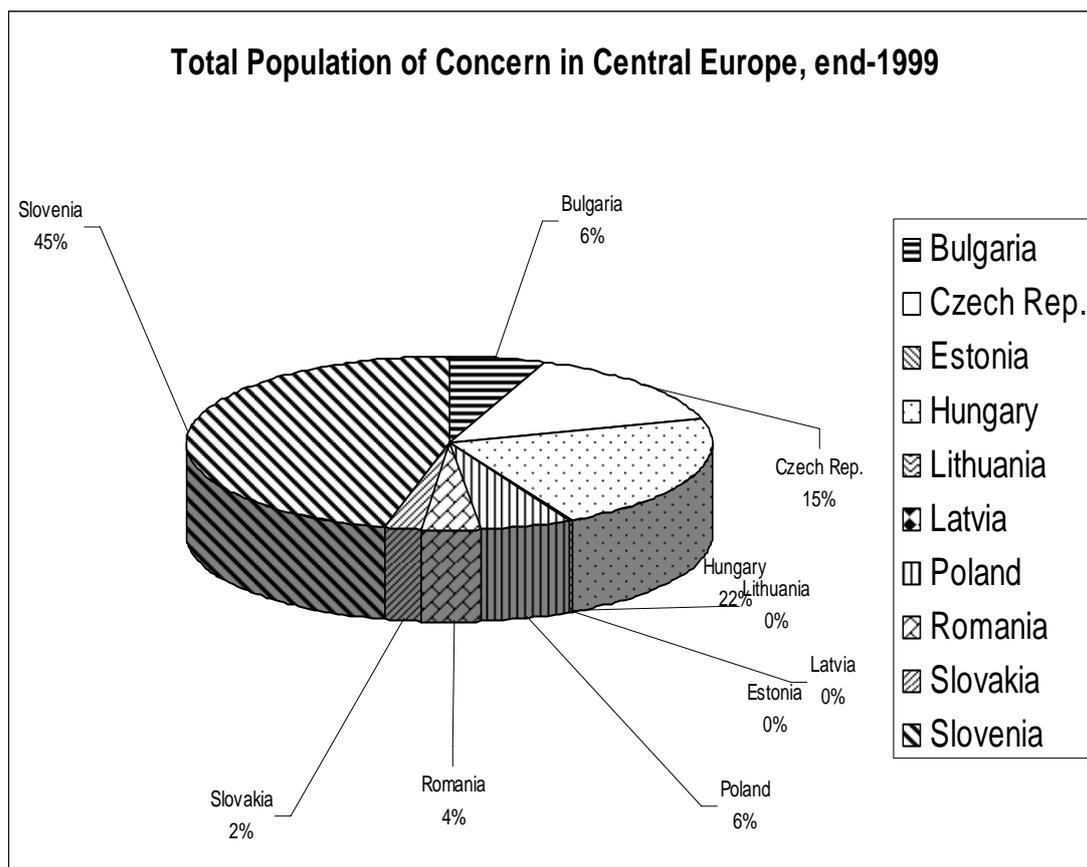
Country (1)	Refugees (2)	Asylum-seekers (3)	Returned refugees (4)	Others of concern			Total population of concern
				IDPs of concern to UNHCR (5)	Returned IDPs (6)	Various (7)	
Bulgaria	4,684	920	-	-	-	-	5,604
Czech Rep.	1,144	1,119	-	-	-	-	2,263
Estonia	11	6	-	-	-	150,536	150,553
Hungary	7,708	354	-	-	-	-	8,062
Lithuania	470	28	-	-	-	9,028	9,526
Latvia	11	1	-	-	-	452,176	452,188
Poland	2,507	3,743	-	-	-	-	6,250
Romania	1,627	210	-	-	-	400	2,237
Slovakia	409	2,916	-	-	-	7	3,332
Slovenia	304	323	-	-	-	584	1,211
Sub-Total	18,875	9,620	-	-	-	612,731	641,226
Global Total	9,236,763	837,926	1,494,610	5,427,029	146,026	2,053,029	19,195,383

### Total Population of Concern in Central Europe, end-2004



### 5.5.6. Total population of concern to UNHCR in Central Europe, end-1999

Country (1)	Refugees (2)	Asylum-seekers (3)	Returned refugees (4)	Others of concern	Returned IDPs (6)	Various (7)	Total population of concern
				IDPs of concern to UNHCR (5)			
Bulgaria	547	1,542	-	-	-	-	2,089
Czech Rep.	1,232	1,671	-	-	-	2,287	5,190
Estonia	-	22	-	-	-	-	22
Hungary	4,990	2,644	-	-	-	-	7,634
Lithuania	44	57	-	-	-	-	101
Latvia	6	3	-	-	-	3	12
Poland	942	1,095	-	-	-	-	2,037
Romania	1,242	45	-	-	-	-	1,287
Slovakia	443	328	-	-	-	-	771
Slovenia	4,382	607	-	-	-	11,334	16,323
Sub-Total	13,828	8,014	-	-	-	13,624	35,466
Global Total	11,687,226	1,027,372	1,599,148	3,968,648	1,048,387	1,491,144	20,821,925



### 5.5.7. Difference in Population of Concern to UNHCR in CIS countries, 1999-2004

Country (1)	Refugees (2)	Asylum-seekers (3)	Returned refugees (4)	Others of concern	Returned IDPs (6)	Various (7)	Total population of concern
				IDPs of concern to UNHCR (5)			
Armenia	(60,981)	63	-	-	-	125	(60,793)
Azerbaijan	(213,037)	883	(38)	8,995	-	30,430	(172,767)
Belarus	465	(473)	-	-	-	(147,077)	(147,085)
Georgia	(2,621)	11	(153)	(41,464)	(182)	(78)	(44,487)
Kazakhstan	1,049	9	(9,732)	-	-	58,291	49,617
Kyrgyzstan	(7,096)	270	-	(5,569)	-	-	(12,395)
Rep. of Moldova	49	(39)	-	(8,080)	-	-	(8,070)
Russian Federation	(78,208)	(804)	36	(163,558)	(10,484)	(536,825)	(789,843)
Tajikistan	(1,235)	(1,714)	(4,614)	-	-	-	(7,563)
Total Change	(361,615)	(1,794)	(14,501)	(209,676)	(10,666)	(595,134)	(1,193,386)
Turkmenistan	(5,211)	(814)	-	-	-	-	(6,025)
Ukraine	(238)	1,535	(2)	-	-	(180,456)	(179,161)
Uzbekistan	43,441	221	(1)	-	-	-	43,661

#### Notes

The data are generally provided by Governments, based on their own definitions and methods of data collection. A dash (-) indicates that the value is zero, not available or not applicable.

1 Country or territory of asylum or residence. In the absence of Government estimates, UNHCR has estimated the refugee population in most industrialized countries,

based on recent refugee arrivals and recognition of asylum-seekers.

2 Persons recognized as refugees under the 1951 UN Convention/1967 Protocol, the 1969 OAU Convention, in accordance with the UNHCR Statute, persons granted a humanitarian status and those granted temporary protection.

3 Persons whose application for asylum or refugee status is pending at any stage in the procedure or who are otherwise registered as asylum-seekers.

4 Refugees who have returned to their place of origin during the year. Source: Country of origin and asylum.

5 Persons who are displaced within their country and to whom UNHCR extends protection and/or assistance, generally pursuant to a special request by a competent organ of the United Nations.

6 IDPs of concern to UNHCR who have returned to their place of origin during the year.

7 Persons of concern to UNHCR not included in the previous columns including a.o. stateless persons, forced migrants (Russian Federation) and stateless persons.

Source: UNHCR/Governments. Compiled by: UNHCR, PGDS.

### 5.5.8. Difference in Population of Concern to UNHCR in Central Europe, 1999-2004

Country (1)	Refugees (2)	Asylum-seekers (3)	Returned refugees (4)	Others of concern	Returned IDPs (6)	Various (7)	Total population of concern
				IDPs of concern to UNHCR (5)			
Bulgaria	4,137	(622)	-	-	-	-	3,515
Czech Rep.	(88)	(552)	-	-	-	(2,287)	(2,927)
Hungary	2,718	(2,290)	-	-	-	-	428
Poland	1,565	2,648	-	-	-	-	4,213
Romania	385	165	-	-	-	400	950
Slovakia	(34)	2,588	-	-	-	7	2,561
Slovenia	(4,078)	(284)	-	-	-	(10,750)	(15,112)
Estonia	11	(16)	-	-	-	150,536	150,531
Lithuania	426	(29)	-	-	-	9,028	9,425
Latvia	5	(2)	-	-	-	452,173	452,176
Sub-Total	5,047	1,606	-	-	-	599,107	605,760

#### Notes

The data are generally provided by Governments, based on their own definitions and methods of data collection. A dash (-) indicates that the value is zero, not available or not applicable.

1 Country or territory of asylum or residence. In the absence of Government estimates, UNHCR has estimated the refugee population in most industrialized countries, based on recent refugee arrivals and recognition of asylum-seekers.

2 Persons recognized as refugees under the 1951 UN Convention/1967 Protocol, the 1969 OAU Convention, in accordance with the UNHCR Statute, persons granted a humanitarian status and those granted temporary protection.

3 Persons whose application for asylum or refugee status is pending at any stage in the procedure or who are otherwise registered as asylum-seekers.

4 Refugees who have returned to their place of origin during the year. Source: Country of origin and asylum.

5 Persons who are displaced within their country and to whom UNHCR extends protection and/or assistance, generally pursuant to a special request by a competent organ of the United Nations.

6 IDPs of concern to UNHCR who have returned to their place of origin during the year.

7 Persons of concern to UNHCR not included in the previous columns including a.o. stateless persons, forced migrants (Russian Federation) and stateless persons.

Source: UNHCR/Governments. Compiled by: UNHCR's Statistical Unit, March 2006.

## 6. Documents of the Concluding Session of the CIS Conference Process, October 2005

### 6.1. Selected Key documents of the 1996-2005 CIS Conference Process

May 1996 [Geneva conference to tackle massive displacements in CIS](#)  
Jul 1996 [UNHCR and IOM seek funds for CIS programs](#)  
Dec 1997 [UNHCR seeks \\$37 million for CIS programs](#)  
Jun 1999 [Fourth CIS Conference Steering Group meeting](#)  
Jun 1999 [UNHCR urges the world not to forget CIS and other troubled regions](#)  
Jul 2000 [Two-day meeting to pursue initiatives in dealing with displacement in the Commonwealth of Independent States](#)  
May 2004 [Minsk meeting to conclude CIS Conference process](#)  
Oct 2005 [CIS Conference Process – concluding meeting](#)  
Oct 2005 [CIS Conference ends, but charts way ahead for flexible framework on migration, asylum](#)

**6.2. Excerpts: Report to the UN SG on the CIS Conference, A/60/276, 25 August 2005<sup>216</sup>** Sixtieth session, General Assembly, A/60/276, 19 August 2005: Report of the United Nations High Commissioner for Refugees, on questions relating to refugees, returnees and displaced persons and humanitarian questions, Follow-up to the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States, Report of the Secretary-General

#### *Summary*

The present report is submitted pursuant to General Assembly resolution 58/154 of 22 December 2003 in which the Assembly noted with satisfaction the efforts of the Office of the United Nations High Commissioner for Refugees

(UNHCR), the International Organization for Migration (IOM) and the Organization for Security and Cooperation in Europe (OSCE) in developing strategies and practical tools for more effective capacity-building in countries of origin and enhancing programmes to address the needs of various categories of concern to the countries members of the Commonwealth of Independent States (CIS). In resolution 58/154, the Assembly, inter alia, (a) reaffirmed the importance and continuing validity of the Programme of Action, adopted in Geneva in May 1996 by the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States;

(b) recognized the ongoing acuteness of the migration and displacement problems in CIS member countries and the necessity, as affirmed by the Steering Group of the Conference at its fifth meeting in July 2000, to continue the follow-up process for a further period of five years; (c) called upon the Governments of CIS member countries, in cooperation with UNHCR, IOM and OSCE, to strengthen their efforts and mutual cooperation relating to the follow-up to the 1996 Geneva Conference; (d) noted with concern the decision to postpone the high-level review meeting concerning the implementation of the decisions of the Conference; (e) welcomed subregional

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<sup>216</sup> Full text, see: <http://www.unhcr.org/cgi-bin/texis/vtx/excom/opendoc.pdf?tbl=EXCOM&id=43abd9552>.

initiatives within the framework of the new Söderköping Process; and (f) recalled that the protection and promotion of human rights and the strengthening of democratic institutions are essential to prevent mass population displacement.

#### Conclusion

During its 10-year duration, the process has been successful in fulfilling many of the original goals of this historic multilateral effort by developing strategies and practical tools for more effective capacity-building and enhancing programmes; promoting adherence to international standards and practices; and facilitating cooperation through partnership at the regional and international levels. A second generation of intervention is now being witnessed, informed by the full range of interests in the European Union neighbourhood and by an overhauled global security agenda. UNHCR remains committed to continuing to work in partnership within a new, revamped post-1996 Geneva Conference framework tailored to the needs of the evolving environment within which the 12 CIS member countries coexist and which affects their relationships both within and beyond their geographical borders. States participating in the Conference process have recommended building on the foundations already laid and maintaining a framework of cooperation and consultation after its formal conclusion.

### **6.3. Opening Statement on Behalf of UNHCR by Ms Pirkko Kourula, Director, Regional Bureau for Europe at the Concluding Meeting of the CIS Conference Process, 10 October 2005**

Excellencies, Ladies and Gentlemen,

Today we are concluding a remarkable ten-year multilateral process. It is the occasion for a balanced assessment of what was achieved, where we stand and the challenges and opportunities that lie ahead.

Much has changed since the idea of what became known as the CIS Conference process developed in the early 1990s. The dissolution of the Soviet Union in 1991 led to population movements in the newly independent countries. The complex interconnections between forced displacement and migration involving millions of people fuelled concern within and outside the area and highlighted the need to build the capacity of the newly independent post-Soviet states to deal with these formidable challenges.

UNHCR and its partners were invited to assist the states that had emerged on this vast space, and some of which were facing humanitarian emergencies.

The challenges were indeed daunting. But the opportunities for laying solid new foundations and helping to integrate the countries concerned into the mainstream of international norms and practices related to refugees and displaced populations were also unique. Thus, UNHCR and its partners IOM, OSCE and subsequently the Council of Europe, responded by developing a comprehensive and forward-looking regional approach which had remedial, preventive and normative elements. The main aim was to help the states concerned to build national capacities to address complex issues of displacement and protection.

The intense preparatory work, involving bilateral and sub-regional consultations, clarifying and standardizing terminology, identifying categories of displaced populations needing protection and assistance, agreeing on the ground rules and modalities of cooperation, lasted almost two years. Finally, the CIS Conference held in Geneva in May 1996 produced a coherent and comprehensive strategy embodied in a Programme of Action. It enabled UNHCR and its partners to identify more effectively the challenges and needs in the area, and on the basis of the cooperation achieved with the respective Governments, to refine and step up their capacity building programmes, as well as to energize the NGO sector.

The follow-up process was initially expected to last for five years. Despite the significant progress which was made during this first phase to achieve its objectives, more work remained to be done to implement the Programme of Action. In July 2000, the fifth meeting of the Steering Group of the CIS Conference Process decided to extend the follow-up by a further five years and a Thematic Work Plan was developed for this purpose.

In its second stage, the follow-up process framework was flexible enough to provide opportunities not only for regular consultations and reviews among all the parties involved, but also for sub-regional initiatives, such as the Soderkoping Process involving the countries on both sides of the European Union's new eastern border. There were also thematically focused activities, e.g. consideration of issues connected with asylum system development, the propiska system, citizenship, the prevention of statelessness, and the role of NGOs.

At last year's High-Level Review Meeting in Minsk it was decided to conclude the current process in 2005 and to continue building on its achievements to move towards a flexible new framework of cooperation adapted to changing conditions. The key questions now are: what remains to be done, and how should we ensure cooperation and coordination in addressing the gaps and challenges that lie ahead?

Undoubtedly, the countries concerned have made impressive headway in establishing legislative and administrative frameworks addressing issues of involuntary migration and protection. Nevertheless, the latest gaps analysis prepared by UNHCR highlights the continuing central problem of ensuring the effective and efficient implementation and development of asylum systems. In some cases, new laws are incompatible with existing ones. Access to asylum sometimes is not even possible or restrictive. There remain problems with the admission, reception and registration of asylum-seekers and in the processing of their applications. Efforts towards capacity building are often frustrated by administrative reforms and a high turn-over of staff.

Some countries do not provide subsidiary forms of protection to those who may not qualify as refugees but who are nevertheless in need of international protection. Not all of the CIS countries have ratified the 1954 and 1961 Conventions concerning statelessness and, while substantial progress has been achieved, certain outstanding problems remain

IDPs, often the long-standing and sometimes overlooked victims of unresolved conflicts, also need proper attention. The most vulnerable of them require assistance, but all of them are also entitled to the protection of their rights, as human beings and

as citizens. National poverty reduction and economic growth programmes agreed with the international community are increasingly important here, as are the UN's Guiding Principles on Internal Displacement. Accurate, up to date, information on the numbers of IDPs and their needs is essential.

In some countries, the apparent growth of xenophobia and ethnically related violence is raising concern, and there appears to be a general lack of public programmes to address the problem. Although the CIS Conference process promoted the involvement of NGOs in activities related to refugees and forcibly displaced, for various reasons, their role seems to have become more, not less, problematic in these spheres.

I have mentioned these examples to show that much more needs to be done to implement the objectives of the 1996 Geneva Conference. And clearly, the remaining work, as before, is beyond the scope and capacity of any one organization and some new form of framework for facilitating cooperation is desirable.

The CIS Conference process has been the only forum which included the CIS countries from Eastern Europe, the South Caucasus and Central Asia, and UNHCR and its partners, interested neighbours, friends and observers in a multilateral "non-political" framework where a balanced approach to asylum and migration issues could be pursued. Moreover, its broad scope has covered other aspects of forced migration in the post-Soviet era, such as IDPs, statelessness and formerly deported peoples.

But there have been many developments during the last decade which have made the entire environment more politically complex and added new factors that have to be taken into account. These include changes in the international landscape and the appearance of new initiatives and actors, the threats posed to asylum by the intensification of security concerns, and the increase of migration transiting the area, and issues connected with labour migration and migrants' rights.

On behalf of UNHCR I would like to thank all those who have been involved in the CIS Conference process and who made it a success. First of all I would like to express our appreciation to the CIS countries themselves for the trust and goodwill which they have demonstrated and their cooperation. Secondly, I thank IOM for working so closely with UNHCR as a virtual co-chair of the process with us, and OSCE and the Council of Europe for their support as the other lead agencies, as well as to the NGO lead agencies. Our thanks also to other inter-governmental organizations, financial institutions and developmental agencies for their interest and support. A special thank you also to those interested countries which over the years acted as donors, and to the European Union for co-funding last year's High Level Review meeting in Minsk.

UNHCR looks forward to continuing its cooperation with all of you in whatever form we decide on.

#### 6.4. Closing Statement by the UN High Commissioner for Refugees - 10 October 2005, Geneva

Excellencies,

Ladies and Gentlemen,

I regret that I was not able to be with you this morning at the opening of this important meeting, but I am very happy to be here for its concluding session. I know that today's deliberations were preceded by intensive consultations which have led to the adoption of a Concluding Statement. Like the Programme of Action adopted in 1996, the Concluding Statement is not just a fine-sounding declaration. It affirms principles, assesses needs and embodies a common understanding. It expresses the willingness to continue working together on the complex issues of involuntary displacement and protection in the post-Soviet space.

Allow me to share with you some reflections on the significance of the process we are concluding and on the challenges and opportunities that lie ahead.

We are dealing with a vast and complex region of the world. The area encompassed by the CIS countries is enormous, stretching from the borders of the EU in the west to China and Japan in the far east, from Turkey, Iran, Afghanistan and Mongolia in the south, to Finland, Norway, and even the USA.

After the dissolution of the Soviet Union, the newly-independent countries were simply not prepared or equipped to respond to the myriad patterns of involuntary displacement and migration. Millions of people had been uprooted. Some moved involuntarily while others were trapped in limbo by so-called frozen conflicts. This incredible mix of population displacement included refugees, internally displaced persons, deported groups, stateless persons, involuntary resettlers, and ecological and irregular migrants. The fledgling post-Soviet states turned to the international community for help and the United Nations General Assembly backed the requests through a number of Resolutions.

In the mid 1990s, the organizers of the CIS Conference recognized that the nature of displacement and forced migration problems in the region were such that they affected the stability of the broader neighbourhood. UNHCR, IOM and OSCE initiated and supported a multilateral dialogue among a number of actors, including Governments and NGOs, to identify problems and solutions. This resulted in the development of a comprehensive and forward-looking regional approach to assist the newly independent countries. The Council of Europe subsequently became a fourth lead agency, and NGO lead agencies also came forward to help guide the process. My thanks to all these partners for their valuable contributions.

For UNHCR, the CIS Conference was a pioneering event for other reasons, too. In 1996, my predecessor Sadako Ogata noted that the distinction between refugee movements and migration was becoming blurred and that protection and migration issues in general were increasingly interrelated. She announced that UNHCR would be taking a new approach in the CIS region by working with IOM to coordinate and support activities on the asylum-migration nexus. The close partnership with the OSCE was born of the need she saw to provide protection and assistance to IDPs and

other involuntarily displaced populations, and to focus attention on the human dimension of conflicts.

Much has been achieved as a result of this remarkable ten-year multilateral effort. States are certainly much more capable of managing displacement and migration problems in a humane, effective manner that is consistent with international standards.

Gaps still remain, however, especially when it comes to implementation. Asylum and protection procedures are in some cases fragile or absent. And new challenges have emerged in the form of heightened concerns for security, terrorism, border management, and a rise in regional migration, human trafficking, and xenophobia.

These issues require continuing cooperation and consultation among countries in the region, in the neighbourhood, and with the international community at large. In other words, what we need is an updated comprehensive regional approach to the challenges, both old and new, of displacement, migration and protection.

I would like to clarify what we mean by this. From the outset, the organizers of the CIS Conference made it clear that they did not view the CIS area as a monolithic region. Looking ahead today we are aware too of the need to distinguish between issues that are common to all countries involved and those that require differentiated approaches. The latter category includes the obligation to work more closely with neighbouring countries and to include them in a broader flexible framework for Euro-Asian cooperation on displacement, asylum and migration.

But this presupposes that the interest, will and commitment are there on the part of the countries themselves. They must be prepared to assume ownership of a new process. Interested international organizations – such as my Office – and other countries can assist you, but we need to know that our partnership corresponds to your needs and priorities. We are thus encouraged by the strong interest which the CIS countries have shown in this Concluding Meeting and the next chapter. The fact that the Russian Federation has contributed financially to ensure the momentum of the last decade is not lost is also very welcome.

The range and complexity of issues that need to be addressed in the displacement, asylum and migration spheres in the broader Euro-Asian neighbourhood are beyond the scope of any single actor. What is needed is a partnership of international actors with the relevant interests and expertise, including developmental agencies and financial institutions. This will require strong political and financial support.

Ladies and gentlemen,

In the time since the CIS Conference process got underway, several new initiatives and interlocutors have joined the scene. These include the Soderkoping Cross Border Cooperation Process, involving the countries on the EU's new eastern border; the European Neighbourhood Policy; the Issyk-Kul Dialogue; IOM's technical and consultative Joint Consultations on Migration; and the recent redirection of the Budapest Group's Activities toward the CIS region. The additional fora bring opportunities for new partnerships. We should ensure that next steps are characterized by productive collaboration based on a realistic assessment of gaps, a rational division

of labour, and the lessons provided by the CIS Conference process. UNHCR looks forward to playing a proactive and constructive role in this endeavour.

Today, we close a remarkable chapter. Countries of Eastern Europe and Central Asia have built the capacity to manage involuntary and regular migration flows, establish asylum systems and improve the situation of other displaced populations. Important laws and structures have been put in place through concentrated capacity building efforts. A tradition of inter-governmental cooperation has been established, and countries have been brought into the mainstream of international norms and practices relating to refugees, migration and displacement.

Most importantly, these efforts have benefited millions of people. For a significant number of them, they have made a life-changing difference. It is up to all of us now to build on what has been achieved and to chart the way forward together, in the spirit of understanding and cooperation that was the hallmark of the exemplary CIS Conference process.

Thank you.

## **6.5. Final Statement**

### **Introduction**

1. The CIS Conference process was initiated through General Assembly Resolutions adopted in 1993 and 1994 in regard to extraordinary humanitarian challenges in the spheres of displacement, migration and asylum that resulted after the dissolution of the Soviet Union in the CIS countries and in response to requests from these countries to provide assistance in these sectors. UNHCR was mandated the lead to organize the implementation of the Resolutions in full partnership with key other agencies and the involved States through the promotion of a preparatory process to consider comprehensive regional approaches. It resulted in the “Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States” (also known as the CIS Conference), which was convened in Geneva in 1996 jointly by UNHCR, the International Organization for Migration (IOM) and the Organization for Security and Cooperation in Europe (OSCE), represented by its Office for Democratic Institutions and Human Rights (ODHIR). The Regional Conference produced a coherent and comprehensive Programme of Action upon which a follow-up process, involving all of the original partner States, other interested countries and international organizations, as well as NGOs, has been based. UNHCR, IOM, OSCE, and subsequently also the Council of Europe, acted as the lead agencies facilitating its development.
2. The CIS Conference Process was initially expected to last for five years. Despite the significant progress made toward its objectives during this first phase, more work remained to be done to implement

the Programme of Action. In July 2000, the fifth meeting of the Steering Group of the CIS Conference Process therefore decided to extend the follow-up by a further five years. A Thematic Work Plan was developed for this purpose.

3. In May 2004 a High-Level Review Meeting (HLRM) within the follow-up framework was held in Minsk to assess developments and remaining gaps and concerns. There it was agreed, as foreseen and, as noted in the Chair's Conclusions, to conclude the current process in 2005 and, in order to build on its achievements, "to evolve towards a flexible new framework of cooperation, including working consultations on the important issues".
4. After consultations during the first half of 2005, organized by UNHCR on behalf of the lead agencies with the CIS countries and Friends of the CIS Conference Process, it was decided to hold the Concluding Meeting in Geneva on 10 October 2005. It was also agreed that the Chair's Conclusions from the Minsk High-Level Review Meeting, which reflect the principles underlying the 1996 Geneva Conference and which set important benchmarks for assessing achievements and remaining priorities, should serve as the basis for the meeting's Concluding Statement.
5. The Concluding Meeting was preceded by further consultations in 2005 among the stakeholders concerning the format for the meeting and the possible structure and goals of further follow-up actions. Participants in these discussions affirmed the desirability of replacing the Process with new arrangements which, when taken together, would provide a flexible, action-oriented and States-owned framework for structured dialogue and coherent cooperation on a comprehensive range of issues related to migration, asylum and displacement.
6. The Concluding Meeting took place in Geneva on 10 October 2005 with the full involvement of the participating States and agencies. UNHCR and IOM served as co-chairs. The participants included delegations from the CIS States, neighbouring and interested countries, international organizations and NGO representatives.
7. The Meeting was opened with statements by the meeting's co-chairs, UNHCR and IOM, followed by opening statements from senior officials from the lead agencies and representatives of the participating countries and organizations. Discussion on a range of relevant issues followed.

## **Conclusions**

The Participating States and their partners have summarized the proceedings at the Concluding Meeting and their outcome in the following Conclusions:

8. Welcoming the significant achievements in the participating CIS countries in relation to the "Follow-up to the 1996 Geneva Conference on the Problems of Refugees, Displaced Persons, Migration and Asylum Issues", the Representatives of the participating CIS countries (subsequently referred to as Participating States) and the lead agencies, supported by neighbours, friends, observers and NGOs, conclude the current process.
9. They agree to build on the achievements of the CIS Conference Process by establishing various appropriate arrangements that together would form a flexible broader framework for working consultations and cooperation, the structure and modalities of which they will work out after the Concluding Meeting.
10. The Participating States express their appreciation to UNHCR, IOM, OSCE and the Council of Europe, for acting as lead agencies and facilitating the development of the CIS Conference Process and the implementation of its objectives.
11. Recognizing the changes in the participating CIS countries, both as regards the dynamics and evolving national priorities and capacities related to the issues of migration, asylum and displaced persons, and noting the new or remaining challenges in these spheres, the Governments of the Participating States invite the lead agencies and other international actors to continue to provide facilitation of, and support to, the co-operation among the Participating States, and between these States and other interested States, on initiatives related to these issues.
12. Likewise, the Participating States recognize the growing complexity and inter-connectedness of migration and asylum challenges in their region and the broader neighbourhood and the need to include other relevant States in a new, more comprehensive, framework of cooperative activities. They call upon UNHCR to strengthen its efforts, as initially requested through General Assembly Resolutions, to promote comprehensive regional approaches to the problems of refugees and displaced persons.
13. Participating States recognize the comprehensive nature of the migration agenda encompassing issues related to security, socio-economic stabilization of populations, promotion of human rights, reduction of irregular movements, combating trans-national organized crime including smuggling of migrants and trafficking in human beings, encouraging and developing regular channels for migration, and the relationship between migration and development, and call upon the IOM to continue to play an active role in all relevant areas.
14. Participating States, recognizing the vital importance to economic development of the role played by refugees and migrant populations

undertake to consider how best to support and engage these populations by consulting them and giving them appropriate prominence in their national development and poverty reduction strategies.

15. Participating States welcome the increasing involvement of more development-oriented actors, such as UNDP, in migration and displacement sphere.
16. Participating States recognize the importance of including development priorities in the identification and implementation of solutions to and preventive measures against population displacement and in this respect recognize the role of ENVSEC, UNDP, international financial institutions, and other actors in supporting and implementing such responses. They invite UNDP and other development actors, as well as international financial institutions, to extend their support and expertise in this regard through the new framework which could follow the closure of the CIS Conference process.
17. Participating States note the OSCE's increased attention to migration issues in the context of stability and security, political, economic and environmental, demography, and migrant worker protection, and invite it to play an active role in these areas in a possible new post-CIS Conference framework.
18. Participating States invite the Council of Europe to pursue its regional co-operation in the fields of migration, integration of populations of migrant origin, and protection of refugees and displaced persons.
19. Participating States invite the International Labour Organization to include the issues related to labour migration and rights of those migrants in its programme of action and support future activities with its expertise.
20. Participating States invite civil society and NGOs to continue contributing to the implementation of principles and activities identified under the CIS Conference process; in this respect, participants of the Concluding Meeting recognize the necessity of continuing the support of activities of NGOs in these areas beyond the formal ending of the CIS Conference process;
21. Participating States fully recognize and appreciate the important contributions of donors and partners and invite them to continue supporting the implementation of principles and priorities identified during the CIS Conference process and for new arrangement which could replace it.

22. Participating States welcome the European Union's growing engagement in the participating CIS countries through its New Neighbourhood and partnership policies and invite it to support a new framework for dialogue and cooperation on issues of migration, asylum and forced displacement to follow the CIS Conference process.
23. Participating States reaffirm the need to maintain a necessary balance between civil liberty issues and state security in the pursuit of the objectives of the CIS Conference process and the arrangement which could replace it.
24. Participating States, neighbours, observers, and friends recognize the need to cooperate with the various processes and initiatives dealing with migration and asylum issues in their countries with a view to avoiding duplication and ensuring complementarities.
25. Neighbours, observers, and friends welcome the efforts and achievements of the Participating States and the lead agencies during the Process and encourage further cooperation within a new framework for this purpose which should also allow for the greater engagement of neighbours to the south and east.

#### **Concerning refugee and asylum issues**

26. Participating States welcome the fact that all but one country in the region have ratified the 1951 Convention Relating to the Status of Refugees and/or its 1967 Protocol and that in several states specific legislative and administrative measures have been taken guaranteeing the personal safety and rights of those in need of international protection. The Participating States invite the remaining country to accede to the 1951 Convention and/or its 1967 Protocol. Participating States furthermore invite all CIS states to adopt such significant national measures based on high standards for international protection.
27. Participating States recognize that important issues remain to be addressed as regards the implementation of a fair and effective asylum system involving access to the territory, adequate reception facilities, the implementation of a refugee status determination process and the creation of integration possibilities for those found to be in need of international protection. Participating States, recognizing the specific protection and legal mandate of the High Commissioner for Refugees' Office, invite UNHCR to strengthen support for, and facilitation of, initiatives to respond to these remaining challenges.
28. In particular, Participating States invite UNHCR, together with other international organizations, to continue providing technical assistance for the capacity building of relevant administrative bodies and

national court systems and training of border guards, national refugee status determination agencies and law enforcement staff for the management of an adequate asylum procedure assuring more active cooperation with Participating States, including, in particular, periodical reporting on UNHCR/IOM activities in a specific country.

29. In this respect, Participating States recognize the importance of having information concerning the situation of asylum-seekers' areas of origin available and invite the relevant partner agencies to facilitate exchanges of such information.
30. The Participating States, emphasizing the need for and importance of reliable and complete data on asylum-seekers and refugees, and agree to strengthen co-operation among the concerned States and with international agencies in relation to the registration and documentation of such groups. States and international agencies are particularly invited to share with Participating States existing experience in this respect, in close cooperation and with the support of UNHCR.
31. In particular, Participating States recognize the importance of providing refugees including children with adequate documentation. Reaffirming the principles of the 1951 Convention Relating to the Status of Refugees and the 1989 Convention on the Rights of the Child, participating states are invited to adopt specific legislative and administrative measures in accordance with these instruments.
32. Participating States recognize that real opportunities for the local integration of refugees should be pursued by national governments and supported by UNHCR in cooperation with other relevant agencies. In this regard, the Participating States call on UNDP, international financial institutions, and other international organizations working on development, to support national initiatives on local integration where appropriate.
33. Participating States reaffirm their commitments in accordance with the relevant provisions of international law to ensure the rights of refugees and other displaced persons to voluntarily return to their previous place of residence in safety and in dignity and to work towards creating conditions for that.
34. Participating States recognize that in order to create a favourable climate for the integration of recognized refugees, a more positive and respectful attitude towards refugees should be fostered and public awareness programmes initiated to reduce xenophobia, discrimination and intolerance.
35. In many countries, possibilities for integration of refugees remain very fragile and difficult, often within a situation of significant national unemployment and limited integration capacity. In order to

allow participating states to better develop adequate capacities for integration, the Participating States invite international actors such as UNHCR, UNDP and other relevant agencies and international financial institutions, to support initiatives to improve such capacity.

36. Participating States welcome the important contributions by civil society and NGOs under the CIS Conference process and wish to further strengthen the cooperation with them in developing and implementing responses to asylum issues.

### **Concerning migration issues**

#### Participating States:

37. Affirm their recognition of the underlying principle of freedom of movement.
38. Recognize significant progress made since 1996, with an interim review in 2000, on national, regional and international levels in addressing issues of migration.
39. Acknowledge that migration is by its nature a dynamic phenomenon which requires continuing development and adaptation of legislation, policies and procedures consistent with international principles and practices, including provision for, among other areas: the management of labour migration, providing adequate security in the migration sector, facilitation of trade and travel, reduction of irregular migration, combating of trafficking in human beings and smuggling of migrants, management of returns, and directing migration more strategically toward development goals.
40. Are prepared to strengthen institutions and actively implement policy and legislation based on good practice and a comprehensive approach to the migration sector.
41. Invite Participating States which have not yet already done so, to sign and ratify the Convention on the Rights of All Migrant Workers and Members of their Families.
42. Recognize the benefits of developing and harmonizing national and regional mechanisms for collection and analysis of migration statistical data.
43. Favourably consider developing or improving regulated migration channels for employment and self-employment purposes between CIS countries, as appropriate, and with neighbouring countries.

44. Strive to increase attention to the treatment of migrants and to ensure protection of their rights according to international standards and national legislation.
45. Endeavour to enhance the capacity to ensure minimum standards of dignity and safety for reception, detention if appropriate, and return of irregular migrants.
46. Are prepared to facilitate voluntary return of irregular migrants and their sustainable reintegration, including training with a view to facilitating re-entry into local labour markets. Participating States invite international organizations and relevant agencies to assist in the reintegration of returned migrants in their societies
47. Concur on the benefits accruing from enhanced border management in the interest of both national security and freedom of movement of people.
48. Commit to combat trafficking in human beings and urge countries both of origin as well as destination to do so through prevention, criminalization of this, prosecution of traffickers and international cooperation, and to protect and render comprehensive assistance to victims of trafficking.
49. Invite Participating States which have not yet already done so, to sign and ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol Against Smuggling of Migrants by Land, Sea and Air, as well as, where appropriate, the 2005 Council of Europe Convention on Action against Trafficking in Human Beings, which is largely devoted to the protection of victims and which is open for accession by non-European states.
50. Agree to curtail irregular migration and smuggling of migrants and trafficking of human beings through information dissemination and enhanced cooperation among border, migration and police authorities, and between neighbouring countries and countries along the entire migration chain, in compliance with their responsibilities for the protection of the rights of asylum seekers, refugees, trafficked persons and migrants.
51. Recognize the need for measures to facilitate the integration of lawful migrants and to curtail xenophobia and discrimination.
52. Strive to ensure access to proper travel documentation and to enhance capacity to issue secure travel documents and visas, and harmonise travel document requirements within the region, as well as to detect false documentation in the interest of national and international security.

53. Recognize the value of linking the remittances of labour migrants and the financial and qualified human resources of overseas communities to their home countries in the interest of social and economic development.
54. Recognize the importance of undertaking effective measures to curtail the brain drain phenomenon.
55. Recognize the special role of IOM in providing policy and operational guidance and technical assistance to Governments and the NGO sector in combating trafficking in persons.
56. Appreciate contributions of the non-governmental sector and the value of further strengthening this sector with a view to participation in shaping migration policy and to assist and protect migrants and victims of trafficking.
57. Recognize the importance of, and undertake to sustain and enhance dialogue and cooperation on migration issues in existing and evolving bilateral, regional and international frameworks.
58. Recognize the special role of IOM in supporting the provision of strategic policy and operational guidance and technical assistance in the migration sector to Governments and NGOs.
59. Building on achievements to date, invite IOM and other agencies concerned to promote and continue to engage in the technical cooperation, capacity building, facilitation of dialogue and joint planning, and other assistance necessary to strengthen migration management on national, regional and international levels and to comprehensively address the evolving agenda for migration.

**Concerning the avoidance and reduction of statelessness and the protection of stateless persons**

60. Participating States undertake to adopt or revise citizenship legislation on avoiding and reducing statelessness as a consequence of state succession and to set up mechanisms enabling persons to establish their nationality; they will do so in accordance with provisions contained in the 1961 Convention on the Reduction of Statelessness and, where applicable, the 1997 European Convention on Nationality.
61. Participating States support the on-going work of the Council of Europe in respect of the preparation of an additional Protocol to the European Convention on Nationality on the avoidance of statelessness in relation to State succession.

62. Participating States recognize the useful character of bilateral or multilateral mechanisms to facilitate the renunciation and acquisition of nationality in states not accepting dual citizenship and welcome the technical assistance provided by international organizations such as UNHCR, the Council of Europe and the OSCE in this regard. Participating States will consider acceding to the 1961 Convention on the Reduction of Statelessness and, where applicable, the 1997 European Convention on Nationality.
63. Participating States recognize that despite efforts made by them to ensure the realization of the right to a nationality to all persons living on their territory, there are still cases of statelessness which can be addressed by providing a legal regime to persons identified as stateless notably in accordance with the definition contained in the 1954 Convention on the Status of Stateless Persons. Participating States are therefore considering acceding to the 1954 Convention and welcome technical advice to be provided by UNHCR on the accession and practical implementation of the said Convention.

#### **Concerning formerly deported peoples (FDPs)**

64. Participating States emphasize the need to speed up progress towards a comprehensive and durable solution of the problems still faced by remaining vulnerable groups of the Formerly Deported Peoples (FDPs). Such a solution should be based on: the protection of human rights, including the right to personal safety, by the country of residence; the elimination of statelessness and the early removal of obstacles to the acquisition of citizenship by those already entitled to it; the facilitation of return/repatriation to the country of origin or integration in the country of residence on the basis of a voluntary choice; the facilitation of resettlement to a third country, while ensuring respect for the rights of persons who remain in the country of residence; and the support for integration on the basis of equality, respect for human dignity and non-discrimination.

#### **Concerning human security and forced displacement**

65. Participating States reaffirm their commitment to respect international human rights and humanitarian law standards when undertaking measures to deal with situations of an increased security threat.
66. Participating States recognize their primary responsibility for the security, safety, welfare and dignity of displaced persons, especially of those who find themselves in situations of protracted displacement. They stress the need to intensify the search for solutions for these persons, including through international

cooperation and in accordance with the principles of solidarity and burden sharing.

67. Participating States recognize the importance of long-term stability for the protection of human security and reaffirm the importance of the United Nations Guiding Principles on Internal Displacement and call upon the international community to strengthen their efforts to assist in the peaceful settlement of conflicts on the basis of international law. They recognize the important contributions which can be made by civil society in this regard. The Participating States emphasize the importance of the international community's promotion of and support to the identification of solutions that CIS states are faced with.
68. Participating States recognize that where appropriate, States should consider granting a humanitarian status for individuals and groups who have been externally displaced by conflict, and who do not meet the criteria for recognition as refugees under the 1951 Convention relating to the Status of Refugees but who are nevertheless in need of international protection, in order to legalize their refuge on humanitarian grounds and provide effective protection.
69. Participating States believe that active interaction between governments, international institutions and NGOs in the Participating States in the work on crisis management and prevention is necessary.
70. Participating States emphasize the importance of undertaking relevant measures to contribute to the elimination of root-causes that could lead to movements including of involuntary relocating persons. Such measures should be based in particular on the full compliance with international Human Rights standards.
71. Participating States recognize that ensuring equal access for all categories of the population to economic opportunities is essential for eliminating the root causes of conflicts, violence and instability.
72. Participating States recognize that environmental factors are intricately linked with human security, and that increased attention should be paid to the prevention of migration caused by such factors.
73. Activities, focused on the prevention of crisis and forced migration, remain an essential objective for the region as well as the related need to adequately respond to new threats.
74. Participating States acknowledge the role of civil society in the prevention, reduction and reconciliation of conflict, and elimination of xenophobia and discrimination.

## **6.6. The way ahead for a flexible framework on migration and asylum (Public Press Brief)**

GENEVA, October 11 (UNHCR) – The concluding meeting on Monday of the decade-long CIS Conference created to deal with population upheavals after the break-up of the Soviet Union, ended by charting the way forward for a new flexible framework for Euro-Asian cooperation on migration, asylum and displacement issues.

"Much has been achieved as a result of this remarkable ten-year multilateral effort", UN High Commissioner for Refugees, António Guterres, said in his closing speech. "Compared to the situation that existed in the mid-1990s, all the States involved are certainly much better placed to manage displacement and migration problems in a humane and effective manner consistent with international norms."

However, while certain situations have been resolved, challenges continue to confront the region.

"Gaps still remain, especially when it comes to implementation, and asylum and protection are in some cases fragile or absent. New challenges have appeared, especially those related to the increased international concern with security and combating terrorism, border management, the growth of movements including migrants and asylum-seekers into and across the region, trafficking in persons and xenophobia", said the High Commissioner.

In 1991, when the Soviet Union broke up, the total number of people estimated living outside their 'home' republics or autonomous regions was somewhere between 54 and 65 million, or one-fifth of the total population. Many of these people were faced with a very uncertain future.

Faced with the huge task of protecting and assisting millions of refugees, internally displaced persons, formerly deported people, stateless persons, involuntary resettlers and ecological and irregular migrants, the fledgling post-Soviet states turned to the international community for advice and help.

In 1996, the Geneva Regional Conference on Refugees, Displaced Persons, Migration and Asylum Issues in the CIS (also known as the CIS Conference) was set up by UNHCR, the International Organization for Migration (IOM) and the OSCE to address the unique and highly complex mix of problems facing refugees, and various other types of displaced people in the CIS.

In a final statement, participants at the Conference – including CIS states, neighbouring and interested countries, international organisations and NGOs – agreed to establish arrangements to form a flexible framework for cooperation.

They recognized that important issues, such as the implementation of a fair and effective asylum system involving access to the territory, adequate reception facilities, the implementation of a refugee status determination process and the creation of integration possibilities, still needed to be addressed.

UNHCR and other international organizations were asked to continue providing technical assistance for capacity building of relevant administrative bodies and national court systems, as well as training border guards, national refugee status determination agencies and law enforcement staff on asylum procedure.

It was also agreed to strengthen co-operation among the concerned states and with international agencies in relation to the registration and documentation of refugees and asylum seekers. The importance of providing refugees including children with adequate documentation was also recognised.

States also pledged to adopt or revise citizenship legislation on avoiding and reducing statelessness as a consequence of state succession and to set up mechanisms enabling persons to establish their nationality.

The concluding statement emphasized the need to speed up progress towards a comprehensive and durable solution to the problems still faced by remaining vulnerable groups of formerly deported peoples.

"It is up to all of us now to ensure that we build on what has been achieved and to jointly chart the way forward in a spirit of understanding and cooperation – the hallmark, as we can now say, of the exemplary CIS Conference process," Guterres said.

6.7 Participants of the concluding Session of the CIS Conference in Geneva  
10 October 2005

CIS COUNTRIES

◆ Armenia

Mr Zohrab Mnatsakanian	Permanent Representative of Armenia in Geneva, Head of Delegation
Mr Khachatur Vardanyan	Head of Department of Territorial Administration and Local Self- governance of the Government, Office of the Prime Minister
Mr Artak Apitonian	Counsellor, Permanent Mission of Armenia in Geneva
Mr Tigran Samvelian	Head of Human Rights Division, Ministry of Foreign Affairs

◆ Azerbaijan

Mr Elchin Amirbayov	Ambassador, Permanent Representative of the Republic of Azerbaijan in Geneva, Head of Delegation
Mr Telman Mammadov	Head of Apparatus of the State Committee of the Republic of Azerbaijan on the Affairs of Refugees and IDPs
Mr Seymur Mardaliyev	Third Secretary, Permanent Mission of the Republic of Azerbaijan in Geneva
Mr Habib Mikayilli	Attache, Department of Human Rights, Democratization and Humanitarian Affairs, Ministry of Foreign Affairs

◆ Belarus

Mr Sergei Aleinik	Ambassador, Permanent Representative of the Republic of Belarus, Geneva
Ms Elena N. Kupchyna	Head, Department for Humanitarian Cooperation and Human Rights, Ministry of Foreign Affairs
Mr Evgeny Lazarev	First Secretary, Permanent Mission of the Republic of Belarus, Geneva

◆ Georgia

Ms Eter Astemirova	Minister for Refugees and Accommodation
Ms Nino Darchiashvili	Assistant to Minister for Refugees and Accommodation

◆ Kazakhstan

Mr Alik Shpekabayev	Vice Minister of the Interior
Mr Kayrat Abusseitov	Ambassador, Permanent Representative of the Republic of Kazakhstan, Geneva, Head of Delegation
Mr Sarsen Kokebayev	Deputy Head of Migration Police, Almata City Department of Internal Affairs

Mr Arman Baisuanov	Counsellor, Permanent Mission of the Republic of Kazakhstan, Geneva
◆ <u>Kyrgyzstan</u>	
Mr Zafar Hakimov	Head of Migration Department
◆ <u>Republic of Moldova</u>	
Ms Olga Poalelungi	General Director, National Bureau of Migration (NBM)
Ms Ecaterina Silvestru	Director, Main Directorate for Refugees under NBM
◆ <u>Russian Federation</u>	
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Mr Nikolay Smorodin	Head of Department, Federal Migration Service
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## 6.8. Identifying Gaps in Protection Capacity CIS Countries <sup>217</sup>

Bureau for Europe  
CIS Conference Process  
September 2005

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<sup>217</sup> This report was prepared in the context of the concluding meeting of the Follow-up to the 1996 Geneva "Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighboring States" in Geneva on 10 October 2005. It examines, on a regional basis, the protection capacity of Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova, the Russian Federation and Ukraine. It is focussing solely on the European part of the CIS Conference Process. This document can also be accessed at the following URL: <http://www.unhcr.org/cgi-bib/texis/vtx/home/openssl.pdf?tbl=RSDLEGAL&id=43722cbd4>.

Immediate Shelter and Long Term Housing  
Access to Primary and Curative Health Care  
Primary and Secondary Education

**Equal Benefit and Protection of the Law**

Access to Effective Remedies  
Fair and Public Hearings without Discrimination

**Self-reliance**

Educational and Vocational Programmes  
Access to Wage-earning Employment  
Self-employment Opportunities  
Recognition of Foreign Diplomas  
Social Security and Just and Favourable Conditions of Work  
Right to Own Property

**Durable Solutions**

Voluntary Repatriation  
Local Integration  
Resettlement

## **Introduction**

This report was prepared in the context of the concluding meeting of the Follow-up to the 1996 Geneva “Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States” in Geneva on 10 October 2005.

The report examines, on a regional basis, the protection capacity of Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova, the Russian Federation and Ukraine. It is thus focusing solely on the European part of the CIS Conference participants.

The report is based on an analytical framework that was first developed in the course of the Strengthening Protection Capacity (SPC) Project. Funded by the European Commission and the governments of Denmark, Germany, the Netherlands and the United Kingdom, the SPC project is aimed at devising tools and approaches to strengthen the capacity of States to receive and protect refugees, including enhancing their means of self-reliance and expanding opportunities for durable solutions.

The countries covered by this report currently host some 263,762 asylum-seekers and refugees, most of them living in urban areas.

Over the last fifteen years the region has undergone dramatic political, economical and social changes. All countries in the region now have functioning asylum systems, all of which have been in place for less than a decade. Initially these systems handled mostly claims of asylum-seekers within the region, however, in recent years they have also received claims of persons from Central Asia and Africa. Moreover, the region is also witnessing an increase in the number of person transiting.

At the 2004 High-Level Review Meeting at Minsk, the Participating States assessed the progress made and identified remaining gaps and concerns.

The following issues were highlighted in the Chair’s conclusions:

Cooperation and Consultation

- States recognized the need to cooperate and consult on important issues.

Contribution of International, National and Civil Society Partners

- States invited international agencies to facilitate and support cooperation among the Participating States on initiatives related to the problems of refugees, displaced persons, migration and asylum issues. States also recognized the specific protection and legal mandate of the High Commissioner for Refugees' Office, and the need for UNHCR to continue facilitate and provide for initiatives to respond to these remaining challenges.
- States welcomed the important contributions by civil society and NGOs under the CISCONF and welcomed opportunities to cooperate in developing and implementing responses to asylum issues.

#### Legislative and Administrative Frameworks

- States agreed to adopt specific legislative and administrative measures based on high standards of international protection and in particular to provide for:

- ⌚ fair and effective asylum system,
- ⌚ access to the territory,
- ⌚ adequate reception facilities,
- ⌚ refugee status determination process and
- ⌚ integration possibilities for those found to be in need of international protection.

#### Humanitarian Status

- States recognized that where appropriate humanitarian status should be afforded to individuals and groups who have been externally displaced by conflict and who do not meet the criteria for recognition as refugees under the 1951 Convention relating to the Status of Refugees, but who are nevertheless in need of international protection, in order to legalize their refuge on humanitarian grounds and provide effective protection.

#### Documentation

- States recognized the importance of providing refugees including children with adequate documentation.
- States agreed to cooperate among themselves and with international agencies in regard to registration and documentation of refugees and asylum seekers.

#### Integration

- States recognized that real opportunities for the local integration of refugees should be pursued by national governments and support by UNHCR and other relevant development agencies. Moreover, to create a favourable climate for the integration of recognized refugees, a more positive and respectful attitude towards refugees should be fostered and public awareness programmes initiated to reduce xenophobia, discrimination and intolerance.

## **Legal, Political and Social Environment**

### **Demographic Profile**

1) The total population of concern to UNHCR in the seven countries under review was some 263,762 by the end of 2004. Armenia hosts the vast majority: comprised principally of 235,101 ethnic Armenian refugees from Azerbaijan. There are reports however, that many of these refugees have move onwards since their

registration.<sup>2</sup> Other numbers of asylum-seekers and refugees located in the region are: Azerbaijan (9,837), the Russian Federation (8,138), Ukraine (4,297), Belarus (3,251), Georgia (2,570) and the Republic of Moldova (241).

2) Overall, the number of asylum-seekers in the region is low. The relatively improved stability in the region and neighbouring countries has led to a moderate inflow of persons seeking international protection with no major movements occurring over the past years.

3) Since the break-up of the Soviet Union, the process of receiving and integrating refugees has mainly seen displacement movements originating within region of CIS countries. The prevention and developing of responses to these movements were key issues in the initiation of the original CIS Conference Process. However, gradually the dynamics of displacement movements have radically changed over more recent years. The region has now become a significant transit and destination area for movements from a number of other countries. This development has led to a need for a different understanding among countries in the region as those arriving today do no longer have the same cultural and national affiliations with the host countries.

4) The two major categories of refugees and asylum-seekers in the region therefore are:

i) Persons who fled countries that were formerly part of the Soviet Union. This group forms the majority of the refugees and asylum-seekers hosted within the region, e.g. Armenians who fled Azerbaijan, Russians of Chechen origin, persons from Abkhazia and South Ossetia. Many refugees from CIS countries seek asylum in neighbouring countries where they have ethnic, linguistic or personal ties.

ii) Persons from other parts of the world. The seven countries occupy a wide belt in the middle of the world's largest landmass, linking the European Union with Central Asia and the Middle East. Thus, the region is both a destination and a transit area for persons fleeing countries outside the region. Asylum-seekers and refugees from Iraq and Afghanistan amount to roughly 85% of the non-CIS caseload. Of the remaining 15%, many persons seeking international protection do have other ties to the region, usually because of study in the region or history of cooperation among communist movements, and only a small number is clearly without any link to the region.

5) Over the years, UNHCR has managed to establish a network of offices in the region, both in national capitals and other areas with a significant concentration of refugees. These offices have allowed to form partnerships with the competent local and national authorities in order to address the needs of those seeking international protection in one of the countries.

<sup>1</sup> For the purpose of this report, this figure includes asylum-seekers (registered with national authorities and/or with UNHCR), refugees and persons recognized under a temporary protection regime. It does not include internally displaced persons, stateless persons or others in a refugee-like situation.

<sup>2</sup> In March 2005 UNHCR agreed with the Armenian Department for Migration and Refugees to start a pilot census in one of the local provinces of Armenia.

## **National and Administrative Framework**

6) All countries in the region have acceded to the 1951 Convention and adopted national laws on refugees and asylum-seekers. Belarus, the Republic of Moldova and Ukraine have the most recent legal frameworks introduced less than 5 years ago. The Russian Federation and Ukraine are currently considering revisions to its laws. Overall, the countries are still adapting to the new legal frameworks and further developing regulations for implementation of these laws.

7) All states in the region have established administrative bodies responsible for the determination of refugee status and protection of refugees which is an important step forward in fulfilling the responsibilities under the 1951 Convention. These new administrative bodies have received significant support from UNHCR in terms of capacity-building and training but, as described below, there are still significant steps needed to improve their efficiency and effectiveness. As highlighted in the Conclusions from last year's High-Level Review Meeting in Minsk, the effective implementation of asylum systems is recognized as a key concern for all Participating States. The high turn-over of well-trained decisions makers in some countries has had a negative impact on efficiency and quality of decision-making.

### **Recommendations:**

*States, which have not already done so, to ensure that the fundamental principles of the 1951 Convention are incorporated into domestic legislation*

## **International Instruments that Have Been Ratified**

8) States in region have acceded to all major international human rights treaties and domestic legal frameworks provide for the direct application of international law, i.e. international law overrules contradicting domestic laws. However, courts in the region do, with some exceptions, not have much practice in the direct implementation of international law and tend to apply domestic laws even when they fall short of international standards.

### **Recommendation:**

*States and UNHCR to support the development of judicial practice in the direct application of international law through dissemination of best practices (court decisions from region involving direct application of international law, especially related to refugees) and training of judges in international refugee law.*

## **Partnerships to Strengthen Protection Capacity**

9) The support of non-governmental organisations (NGOs) is crucial in facilitating the reception and integration of asylum-seekers and refugees. So far the region has only seen a limited number of instances of close cooperation between the governments and local NGOs. Positive examples are the tri-lateral cooperation between the Moscow Department of Education, Ethnosphera and UNHCR to facilitate integration of asylum-seeker children in local schools and a number of cooperation agreements between the Government of the Republic of Moldova and UNHCR implementing partners as well as other NGOs. In Belarus, the Ministry of Health, the Belarusian Red Cross and UNHCR concluded an agreement on tri-lateral cooperation with regard to the provision of medical help to asylum-seekers and refugees. Furthermore a MoU on border monitoring was signed between the

Belarusian State Committee of Border Troops, two national NGOs and UNHCR. Many of these agreements could serve as effective models for similar cooperative arrangements elsewhere.

10) For its part UNHCR has been working closely with NGOs to address the protection needs, including assistance needs of persons of concern. However, there is concern that national NGO's have often less visibility and limited access to funds beyond UNHCR. UNHCR together with certain international NGOs are promoting training to widen fundraising activities.

11) UNHCR is also engaged with other international agencies in close partnerships. This includes the European Union and other lead agencies of the CIS Conference process, the OSCE, the Council of Europe and IOM. These partnerships, formed in the context of the CIS Conference and the Soderkoping process focus primarily on asylum and migration issues in the Western CIS region. An important result of this cooperation between the EU, UNHCR and the Western CIS countries is the establishment of Temporary Accommodation Centres (TACs) in the Republic of Moldova and Ukraine.

12) There is considerable variation in national legal basis for UNHCR's supervisory role under Art. 35 of the 1951 Geneva Convention on the Status of Refugees. Only Azerbaijan and the Republic of Moldova's legal systems mention Art. 35. Nevertheless the region has a number of good practices in UNHCR/State cooperation, including joint RSD (Armenia), UNHCR's unimpeded access to persons of concern in detention (Armenia, Azerbaijan, Belarus), joint working groups on draft legislation (Azerbaijan), access to individual case files (Republic of Moldova) and the possibility of UNHCR assisting in the examination of the asylum request throughout the procedure (Republic of Moldova).

### **Recommendations:**

*States to examine how to further engage NGOs in providing protection to refugees and asylum-seekers.*

*UNHCR to continue to strengthen partnerships for protection and awareness-raising with NGOs, other actors of civil society, as well as refugees.*

*States, UNHCR and NGOs to identify and work on practical modalities to ensure better cooperation between UNHCR and States Parties in strengthening implementation of the 1951 Convention and 1967 Protocol, and in facilitating UNHCR's duty to supervise international refugee instruments.*

### **Host Environment**

13) Host populations are generally more receptive to the integration of refugees of similar ethnic origin. However, with the changing nature of refugee and migration movements involving very different origins, a major issue in a number of countries relates to the increase in ethnically related violence and xenophobia. There are little or no government sponsored public awareness programmes on tolerance and combating xenophobia in the countries in the region.

14) Such acts of ethnically based violence has been rising significantly and will need to be addresses by States in close cooperation with NGOs, the press as well as other civil society organizations to support and promote increased tolerance.

UNHCR has worked with States and NGOs to develop various projects for encouraging tolerance in the region, including a course on multicultural education in Belarus, a toolkit for teachers in the Republic of Moldova and radio programming in the Russian Federation.

**Recommendations:**

*States, UNHCR and other relevant actors to foster a positive and respectful attitude towards refugees, including through*

- *Encouraging political leaders to uphold the basic values underpinning the 1951 Convention*
- *Making better use of and more broadly distributing public awareness materials which can sensitize civil society to the situation of refugees, as well as educational material.*

*States to develop public awareness programmes, with the participation of refugees, which focus on the positive social and cultural contributions that refugees can make. States to take measures to combat racism, racial discrimination and xenophobia directed against asylum-seekers and refugees.*

**Refugee Issues and National Regional Development Agendas**

15) Refugee and asylum issues do get some attention in development frameworks of countries with large numbers of refugees, IDPs, or returnees concentrated in a geographic area, for example in Azerbaijan, Georgia, Armenia and the North Caucasus region of the Russian Federation.

16) In countries and regions with relatively small numbers of refugees and asylum-seekers, or where they live scattered across urban areas, development initiatives have generally not yet started to include them in their planning.

**Recommendations:**

*States to continue allocating development funds to programmes simultaneously benefiting refugees and the local population in host countries, giving special attention to areas where, due to inter alia a low refugee population, this has not been done in the past.*

*States to consider including refugee-hosting areas in their national development plans, and UNHCR to encourage multilateral and bilateral development partners to extend support for such initiatives.*

**Admission**

**Admission Policy and Practice**

17) Most countries have regulations to ensure cooperation between border guards and migration authorities. These are designed to ensure that asylum-seekers arriving at the border – with or without documents providing for legal entry – are referred to the migration authorities for consideration of their asylum claim. Unfortunately these regulations are often not followed in practice, leading to poor coordination and cooperation between border guards and migration authorities.

18) Other problems include:

- National laws relating to border crossings do not reflect international refugee law principles
- Lack of training for border guards in refugee law
- Absence of migration authorities at borders (lack of points of immigration control (PIC))
- Inadequate communication facilities between border guards at land/sea border entry points and migration authorities.

19) As a result, border guards do not systematically report all asylum applications to the relevant migration authorities in a timely fashion. When admission to the territory is denied, there may be a serious risk of refoulement.

**Recommendations:**

*States to review its reception arrangements and to equip border officials with clear guidance on the appropriate standards of treatment of asylum-seekers and ensure that there are adequate legal and administrative procedures in place for the referral of asylum-seekers to competent asylum and migration authorities.*

*UNHCR to continue to monitor the admission and reception of asylum-seekers in the host countries and to work with States on addressing any difficulties asylum-seekers may currently encounter.*

**Non-Refoulement**

20) Notwithstanding the existing legal provisions against refoulement in the region, there are concerns that administrative procedures do not ensure that this principle is adhered to in practice. In particular, the lack of assured access to asylum systems by asylum-seekers, as well as the absence of adequate documentation of those who do get access, increases the risk of arrest and removal (see also the relevant chapters on Admission above and Registration below). One country (Russian Federation) does not systematically document persons appealing denial of their asylum claim on admissibility grounds, while another (Ukraine) experiences delays in issuing asylum-seeker certificates to persons in the appeal procedure. Belarus has only recently established a practice of registering rejected asylum-seekers during the appeal

11 Identifying Gaps in Protection Capacity Bureau for Europe – CIS Countries procedures. The unclear legal provisions on the subject that previously hindered such registration are, however, still in place.

**Recommendations:**

*States to ensure that the principle of non-refoulement is properly embedded in the general legal framework, including in the laws on state borders and border control and other related laws such as regulations on extradition.*

*States to ensure that the principle of non-refoulement is respected in practice, including by putting in place necessary safeguards, such as adequate documentation against arbitrary detention and risk of expulsion.*

**UNHCR Access**

21) UNHCR has only in some countries unimpeded access to asylum-seekers, including new arrivals. The refugee law of the Republic of Moldova and an agreement with the Governments of Ukraine and Georgia provide the legal basis for UNHCR’s access.

22) In practice, however, UNHCR encounters numerous difficulties with regard to access to new arrivals in most countries. These include: cumbersome procedures for arranging access, causing undue delay (airport in the Republic of Moldova, the Russian Federation, Ukraine); the problem of extremely large borders (Russian Federation); lack of regular UNHCR or NGO access to border areas (throughout the region).

**Recommendations:**

*States to ensure that UNHCR has unimpeded access to all asylum-seekers at all entry points, including through appropriate legal provisions and efficient and effective practices.*

**Identification, Assessment and Treatment of Urgent Protection Needs**

23) Migration authorities in the region lack the means for identifying and responding to urgent protection needs. Migration authorities are, by themselves, not in a position to address the various needs of vulnerable asylum-seekers, such as unaccompanied minors, victims of violence, including Sexual and Gender-Based Violence (SGBV), single parents, and the destitute. Data on specific protection needs is not gathered and report mechanisms are not in place to refer any such cases to the competent bodies. In light of this it is very difficult to assess the scale of the problem and there is a strong concern that many refugees and asylum-seekers may have serious needs that are not being adequately addressed.

24) In the absence of effective channels for reporting urgent protection needs to the state authorities, only few response mechanisms have been put in place - for example in the Republic of Moldova where a needs assessment is done at the stage of registration by the authorities. In general, there is a concern that the lack of cooperation between the migration authorities and other government and non-governmental agencies on refugee issues further exacerbates the problem.

25) A positive example of cooperation would be the conclusion of a Memorandum of Understanding between the Armenian Migration Service and the Armenian Red Cross Society to carry out needs assessments of newcomers, identify vulnerable persons, and refer them to appropriate government or NGO service-providers.

26) Unaccompanied minors (UAMs) in the region face particular difficulties, not only with accessing appropriate care arrangements, but also with gaining access to the asylum system. In the region, only Belarus and the Republic of Moldova have established special procedures including provisions for appointing guardians for UAMs. In the other countries, legal guardians are not appointed for UAMs because of lack of administrative procedures and experience in appointing a guardian for foreign, sometimes undocumented, minors. Without a guardian, UAMs are not allowed to apply for asylum. This gap constitutes a serious infringement of the rights of one of the most vulnerable categories of asylum-seekers.

27) Azerbaijan is the sole country engaging in family tracing for unaccompanied or separated children.

**Recommendations:**

*States to introduce or, as necessary, enhance safeguards addressing special needs based on gender or age, as well as those of victims of torture or persons with disabilities.*

*States and UNHCR to undertake consultations on ways to better manage the challenge of claims to refugee status from unaccompanied and separated child asylum-seekers, in particular to set in place mechanism to guarantee UAM effective access to the asylum procedures.*

*States and UNHCR to work to ensure that claims lodged by female and child asylum-seekers take properly and sensitively into account gender and age specificities, including forms of persecution which have specific gender or age-related aspects.*

*States, UNHCR and other partners to ensure that unaccompanied and separated child asylum-seekers and refugees are assisted in being reunited with their families*

**Support to Meet Basic Necessities of Life**

28) The laws in most countries guarantee a measure of social protection for asylum-seekers. Usually these laws stipulate that shelter, food and emergency medical care will be provided for. It is, however, rarely the case that the countries are able to implement these laws fully. Shelter is a particular problem. The region's reception facilities for asylum-seekers are developing slowly. So far five countries have temporary accommodation centres (Armenia, Belarus, Republic of Moldova, Russian Federation and Ukraine). The Russian Federation's temporary accommodations centres (TACs) are only intended to host recognized refugees put are underutilized because of their remote locations. Furthermore, there are no procedures in place that would facilitate the transport of asylum-seekers to these regions. Azerbaijan has so far only established one short-term asylum-seeker accommodation facility at the border. As a result, only a small fraction of the region's asylum-seekers can be accommodated in TACs.

29) In the Western CIS countries, actual access to social support is linked to TACs. In the Republic of Moldova and Ukraine TAC residents have access to shelter, food and basic medical care, but asylum-seekers living outside these centres are often left without any assistance. Many new arrivals are therefore left to rely on themselves, with only a small number being supported by UNHCR and other humanitarian organizations, to meet their basic needs.

**Recommendations:**

*States to increase efforts to provide the operational and financial resources to cover the basic necessities of life of newly arrived asylum-seekers and make more effective use of the existing accommodation facilities*

<sup>3</sup> Even those asylum-seekers who manage to registered with the State Committee for Nationalities and Migration (SCNM) may still face difficulties in registering their stay with the Ministry of Interior, thereby continuing to be under threat of *refoulement*.

## Registration

### Individual Registration

30) Throughout the region, there is a general practice of registering only asylum-seekers who meet various admissibility criteria (Azerbaijan, Georgia, Russian Federation, Ukraine). Some countries, for example, specify that an application for asylum must be made within a certain time period (ranging from 1-5 days) after crossing the border. Persons who apply after expiration of this time limit can be denied registration, which would put them at serious risk of refoulement. Some countries apply very strict interpretation of safe-third country rules and deny registration to any person who transited a country that is signatory to the 1951 Convention. Some countries deny registration on other, not clearly articulated grounds. In Ukraine, 70% of the asylum claims are rejected on admissibility grounds and the asylum-seekers remain unregistered.<sup>3</sup> Denying registration on admissibility grounds constitutes a serious protection gap as unregistered asylum-seekers are not documented and left at risk of refoulement and/or exploitation. Exceptions to this pattern are Armenia and the Republic of Moldova, both of which have a good practice of registration of all applicants.

31) Once an asylum-seeker is accepted into the procedure, however, the authorities in the region have a good record of carrying out individual registration for men and women.

#### **Recommendations:**

*States to review the current practice of the use of very restrictive admissibility grounds in order to ensure that asylum-seekers have access to the asylum procedures and a material assessment of their asylum claim.*

### Registration and International Standards

32) Several countries in region lack clear registration procedures (Armenia, Russian Federation, Ukraine). Furthermore, the high turnover of registration staff means lack of experience and an ongoing need for training. Most countries have a sufficient number of female registration staff available, and only in one country (Ukraine) do female asylum-seekers have problems requesting registration by female staff.

33) Some countries use UNHCR's database system (RICS) at least in part (Republic of Moldova, Ukraine), but most lack sophisticated database systems for storing and sorting information about asylum-seekers. This raises several problems. It makes it impossible to fully address the needs of different groups of refugees, such as women, children and the elderly. The absence of regularly updated data also means that it is impossible to account for asylum-seekers and refugees who are no longer in the country. It also makes it difficult to target integration strategies effectively.

#### **Recommendations:**

*States to ensure that clear registration procedures are in place and that those carrying out registration are adequately trained, including in gender and age-sensitive interviewing techniques, benefiting from the expertise and support of UNHCR, where appropriate.*

*States to ensure that questions of confidentiality, safe location, sufficient number of female personnel, separated children and others are efficiently addressed by the registration process in the countries.*

*States and UNHCR to consider developing operational standards and guidelines with regard to registration and population data management.*

## **Legislative Framework for Determining Protected Status**

### **Group Determination**

34) The Russian Federation and Belarus have laws and ministerial resolutions respectively, that allow for the determination of the place and conditions for a temporary accommodation of refugees in a case of mass influx. The legal status of these persons, however, is not spelled out in this provisions. The law of the Republic of Moldova foresees the possibility to grant temporary protection to asylum-seekers in mass influx situations.

35) Prima facie refugee status is only recognized in Armenia, Azerbaijan and Georgia.

### **Recommendations:**

*States to review the current legal or administrative framework with the aim of ensuring adequate protection mechanisms in case of large scale and group influxes.*

### **Individual and Fair Asylum Procedures**

36) There are several problems associated with the Refugee Status Determination (RSD) procedures in the region, ranging from denial of access to restrictive interpretations of the refugee definition.

37) In many countries asylum-seekers of a certain ethnicity are denied access to RSD procedure. In other cases the absence of documents confirming identity and/or prior residence bar (Georgia, Russian Federation, Ukraine) or seriously hamper (Belarus) admissibility to the asylum process.

38) Generally, asylum-seekers are often not provided with information on the process in a language they understand. UNHCR, in many countries through cooperation with the authorities, bears the responsibility of providing interpretation services for asylum-claimants during the refugee status interview.

39) Long delays also plague many asylum systems. In the Russian Federation and Ukraine, for example, there is a large backlog of asylum cases, resulting in cases to take many months and in some instances even years to be considered. Delays can also be based on the person's ethnicity with claimants of some ethnic groups facing longer processing times than others.

40) Some countries do not apply a full and inclusive interpretation of the refugee definition and thus have an unduly high level of rejection on the merits (Russian Federation, Ukraine). Georgia's Law on Refugees does not contain the 1951 Convention definition of a refugee. Instead of using the concept of *fear of persecution* reference is made to a past persecution experience, which narrows the scope of the

definition considerably. In a number of cases rejections were also based on an overly broad interpretation of the safe third country rule.

41) Belarus and the Republic of Moldova are the only countries in the region that are providing rejected asylum-seeker with written reasons for the decision, in the case of the latter also containing information on the right and terms of appeal. Though Georgia is also issuing a notification to rejected asylum-seekers, the same generalized reason for rejection is given to every individual without distinction.

42) Unaccompanied minors are in an especially precarious situation, as they do not have the means to access the asylum procedures without a legal guardian and countries in the region, with the exception of Armenia, Belarus and the Republic of Moldova, do not have mechanisms in place to appoint a guardian for unaccompanied minors seeking asylum (see also chapter on Urgent Protection Needs above).

43) Only Armenia, Azerbaijan and the Republic of Moldova allow for the presence of UNHCR during the government's RSD interviews. In addition, UNHCR was recently given a monitoring role in the government refugee status procedures in Azerbaijan.

#### **Recommendations:**

*States to ensure that the merits of each refugee claim is examined by a competent organ, applicants are not excluded on formal grounds and that decisions are taken in a timely manner, based on a full and inclusive interpretation of the refugee definition contained in the 1951 Convention and the 1967 Protocol.*

*States to ensure that asylum-seekers and refugees have access to relevant information in a language they understand and that the services of an impartial and qualified interpreter are provided.*

*States to provide asylum-seekers and refugees with the possibility of having access to free legal advice and unhindered access to UNHCR.*

*States to ensure that the special needs of female and minor applicants, including separated children are met during the status determination process.*

*States to issue written reasoned decisions if a claim is rejected or declared inadmissible as well as information on where and within what time frame to lodge an appeal.*

*States to ensure the possibility of an appeal to an independent body and the first instance decision to be suspended until the final appeal is determined.*

*States to consider providing UNHCR with an advisory role during the decision-making process, including by taking into consideration its advice on the interpretation of the refugee definition.*

<sup>4</sup> For the legal status granted by the different forms of protection, see also below, chapter on Recognition in Law.

#### **Country of Origin and Legal Information and Analysis**

44) The vast majority of country of origin information (COI) is available in English only. While most eligibility officers in the region can read Russian, they do not read other foreign languages, especially English. The system for translating and distributing COI in Russian is ad hoc and decentralized. As a result, many migration authorities lack COI to assist them in correctly assessing refugee claims.

45) Migration authorities have not established focal points for the collection and management of COI and eligibility officers lack training in COI research.

**Recommendations:**

*States and UNHCR to improve and, where appropriate, establish systems of research, translation and distribution of COI, including in languages that are commonly used throughout the region, especially Russian.*

*States and UNHCR to engage in the training of eligibility officers in the research and use of up-to-date COI.*

**Complementary Forms of Protection**

46) Only Armenia, Belarus, the Republic of Moldova and the Russian Federation have established complementary forms of protection. Armenia grants temporary protection on prima facie basis which was recently granted to persons fleeing the instability in Iraq. The Russian Federation grants temporary asylum after review of an individual's case, usually on the basis of a person's medical condition rather than events in the person's country of origin. The Republic of Moldova has recently adopted a law that provides protection to persons whose life and freedoms are at risk but who would not fall within the criteria of the 1951 Convention.

47) In 2001 Azerbaijan und UNHCR concluded an official agreement, granting temporary protection to Afghan nationals in Azerbaijan. A similar ad-hoc solution was found in 2002 for asylum-seekers from Iraq. Ukraine cancelled pervious resolutions by the Government regarding temporary protection for asylum-seekers from Chechnya and Abkazia, leaving those two groups in an unclear legal status. Currently neither Azerbaijan nor Ukraine has a law that would institutionalize a complementary form of protection in the country.

48) In a number of cases refugees who would fall within the 1951 Convention criteria are granted a complementary form of protection only, thereby depriving them of some of their basic rights, including the possibility of local integration.

49) Where they exist, complementary forms of protection follow different procedures than those in place for Convention refugee status, sometimes leading to confusion on the side of the authorities.<sup>4</sup> Belarusian law, for example, contains contradictory provisions on complementary protection. Georgia lacks any forms of complementary protection regimes.

**Recommendations:**

*States to consider the merits of establishing a single procedure in which there is first an examination of the 1951 Convention grounds for refugee status, to be followed, as necessary and appropriate, by the examination of the possible grounds for the grant of complementary forms of protection.*

## **Protection from Violence, Coercion or Deliberate Deprivation**

### **Mechanisms to Prevent and Respond to Sexual and Gender-Based Violence (SGBV)**

50) There is a relatively high incidence of domestic violence and early/forced marriage in the region. Most countries do not have specific legislation to combat domestic violence and do not use criminal law to prosecute such cases. Domestic violence is generally seen as a matter for families to resolve and enforcement agencies do not regard the matter as within their responsibilities.

51) Local NGOs have often a very important role in providing counselling and support in these situations. In cooperation with UNHCR, a number of them have gained some capacity to prevent and respond to SGBV in the form of counselling services and shelters for victims. However, the lack of local resources for assisting women (such as counselling and women's shelters) and punishing perpetrators hampers effective responses.

#### **Recommendations:**

*States, UNHCR and other actors to adopt measures to ensure that gender and age-sensitive prevention and response mechanism, including remedial actions, to sexual and gender-based violence and exploitation are an integral part of all programmes in all refugee contexts, and include relevant educational and awareness-building programmes targeting men, women and children.*

*States to take particular measures to raise awareness within law-enforcement agencies on the issue of SGBV.*

### **Programmes to Protect Children from Abuse and Exploitation**

52) Early child marriage and child labour are among the chief concerns regarding the welfare of child refugees.

53) All countries have strong child protection systems, partially as a legacy of the Soviet legal and administrative system. However, these systems do not always extend sufficient protection to refugee children, partially due to the lack of awareness and registration of their particular concerns.

54) Together with local implementing partners, UNHCR has worked within the region to develop a capacity to monitor and respond to the needs of refugee children. The dispersed refugee population makes adequate monitoring difficult though.

#### **Recommendations:**

*States, UNHCR and partners to set in place measures to ensure that the specific protection needs of child asylum-seekers and refugees are incorporated in national child protection programme development, implementation, monitoring and evaluation.*

*States, UNHCR and humanitarian partners to continue or set in place training programmes on the rights of refugee children, drawing as appropriate on the Convention on the Rights of the Child, other relevant standards of human rights and*

*international humanitarian law and UNHCR's guidelines on the protection and care of refugee children.*

*UNHCR to ensure continuous dissemination and to oversee implementation of the guidelines on the protection and care of refugee children.*

## **Legal Recognition of Protected Status**

### **Recognition in Law**

55) Generally, refugees and asylum-seekers (including those under temporary asylum status in Armenia and the Russian Federation) are given a clear legal status under the law. Their rights and obligations are usually spelled out in the relevant regulations. In Armenia there is a lack, however, on provisions regarding the granting of derivative status to family members as well as some confusion on the practical application of the temporary asylum regime. In Georgia, the legal status of prima facie refugees remains unclear as well as the legal mechanism that would give effect to the right of acquisition of citizenship. Certain categories of asylum-seekers, for example those being arrested for crossing the border without proper documentations or for staying in the country without registration, do not have any specific rights under the law on refugees in Ukraine, leaving them in an especially vulnerable situation.

56) Refugees in Belarus have to undergo an annual re-registration process, however maintaining their legal status as such. In Georgia and the Russian Federation, refugee status is granted for one and three years respectively, extendable for each consecutive year. Other countries have not set in place any time limitations on the legal status of refugees.

### **Recommendations:**

*States to ensure that all asylum-seekers, refugees and persons under other forms of protection are accorded a clear legal status by the law.*

*States to consider reviewing the current time frames for which refugee status is granted, bearing in mind that persons residing in a host country should not unduly be kept in a status of uncertainty which could have a negative impact on their ability to integrate into the host society.*

### **Provision of Documents Confirming Legal Status**

57) Documentation of recognized refugees is generally adequate in the region. An exception is Georgia where the Ministry of Justice has not confirmed that the refugee card, currently issued by the Ministry of Refugees and Accommodation to Chechen refugees only, is an official identity document.

58) Documentation of asylum-seekers is more problematic. Some asylum-seeker documents in the region have insufficient information about the identity of the asylum-seeker (Georgia) or his/her rights in the country (Armenia). There are delays in issuing asylum-seeker documents in both Ukraine and the Russian Federation. In the Russian Federation it is also difficult to ensure confirmation of residence registration on an asylum-seeker document. Consequently, asylum-seekers are subjected to administrative fines and detention for violating the registration regime.

59) As mentioned above, refugees and asylum-seekers from Chechnya face special difficulties in Azerbaijan as they are not officially recognized and are thus not eligible for any documentation by the authorities.

**Recommendations:**

*States to provide asylum-seekers and, where this has not been done yet, refugees with documentation that allow for a clear identification of the bearer and ensure that these documents are recognized by other state authorities.*

**Documents Confirming Civil Status**

60) In Azerbaijan and the Republic of Moldova all children born on the territory of the State are eligible for the respective citizenship upon legal birth registration (but see below regarding the difficulties with regard to effective registration).

61) In some countries,, refugees and asylum seekers encounter difficulties in registering births as parents often lack the required documentation and/or residence registration, leaving children without a clear legal status (Azerbaijan, Russian Federation, Ukraine). Belarus has a good history of registering children born within its territories, irrespectively of the legal status of the parents.

62) In regard to marriages, a foreigner must show proof from his/her country of origin that s/he is single before a marriage will be registered. Refugees however are generally not required to obtain this proof of single status from their home countries since marital status is stated in the person's refugee document. An exception is Georgia, where (in contravention of Art. 25 of the 1951 Convention) recognized refugees are required to approach their embassy (if available) for such proof.

63) Asylum-seekers, on the other hand, are required by some countries to obtain proof of single status in order to marry. This requirement, as well as their lack of documentation in some countries, hinders the full enjoyment of the right to marry by asylum-seekers.

64) Common law marriages are not recognized by law in the region. Children born of single mothers, however, do acquire the same rights as children born of married parents.

**Recommendations:**

*States to revise the laws and regulations governing the recognition and documentation of civil status and to provide necessary documents relating to civil status (e.g. birth, marriage, divorce, death), benefiting from the support and cooperation of UNHCR, where appropriate.*

**Information Dissemination on Rights and Responsibilities**

65) UNHCR, partially in cooperation with local authorities, is providing information on the asylum system, as well as refugee rights and responsibilities in the respective countries to asylum-seekers and refugees in a variety of languages.

**Recommendations:**

*States to strengthen their information policies for asylum-seekers and refugees, providing them, in a language they understand, with a clear understanding on their rights and responsibilities, including the quantity, type or method of services and assistance affecting them.*

<sup>5</sup> This is happening on a systematic basis for *prima facie* refugees of Chechen origin.

## **Free Movement**

### **Restrictions on Freedom of Movement**

66) Refugees, and in most cases asylum-seekers, are accorded the same rights of movement as apply to local populations.

67) Armenian, the Republic of Moldova and Ukrainian laws foresee the possibility of placing restrictions on the movement of asylum seekers, however no such restrictions are currently in place. In Belarus, asylum-seekers can visit regions other than the one where they filed their asylum claim upon official permission only.

### **Travel Documents**

68) Several countries issue Convention Travel Documents (CTDs) although refugees do encounter administrative problems in receiving them in accordance with Article 28 of the 1951 Convention. In Ukraine, for example, refugees must travel to Kyiv to obtain a CTD. Similarly, only the Federal Migration Service in Moscow can issue CTDs to refugees in the Russian Federation, thereby making it extremely difficult for refugees living outside this area to obtain such documentation.

69) Other countries like Georgia do not issue CTDs. Moreover, in Georgia refugees, who travel abroad temporarily, have their refugee cards confiscated<sup>5</sup> at border crossings and, according to law, risk losing their refugee status.

70) In Belarus, refugees can obtain travel documents especially designed for refugees and stateless persons. The law of the Republic of Moldova provides for the provision of CTDs, but these regulations are still awaiting implementation on the ground. Azerbaijan has recently announced that it would start issuing CTD to recognized refugees soon.

### **Recommendations:**

*States to put in place policies to ensure that that right of recognized refugees to international travel documents is respected and effectively.*

### **Arbitrary Arrest and Detention**

71) In several countries asylum-seekers who have attempted to enter the territory without proper documentation are detained at the border. Conditions in these facilities are generally poor. Asylum-seekers rarely enjoy minimum standards of treatment (information on reason of arrest, access to free, impartial legal assistance and interpreters, detention not unduly prolonged and subject to individual review).

72) Once in the country, asylum-seekers and refugees are also at risk of arbitrary arrest and detention in a number of countries. In the Russian Federation, difficulties in obtaining documents and residence registration expose asylum-seekers to administrative fines, detention and deportation. Moreover, those of non-Slavic appearance are often singled out for document checks.

73) UNHCR has also expressed concerns about arrests of prima facie refugees in Georgia during security sweeps in the Pankisi Valley.

74) UNHCR intervenes with local authorities in the different countries to secure release of arrested asylum-seekers and refugees, sometimes requiring the assistance of a private lawyer to challenge detention in the courts.

**Recommendations:**

*States to ensure that asylum-seekers and refugees are properly documented, that the rights of these persons are respected by the law-enforcement agencies and that arrests and detention are carried out in accordance with the law and relevant international and European human rights standards.*

## **Assistance in Meeting Protection Needs**

### **Provision of Food, Water and Clothing**

75) Due to the overall economic situation in the countries concerned, national welfare systems are generally under-financed, resulting in some instances in difficulties for even the local population to have sufficient access to adequate food, water and clothing. This creates a challenge in establishing a system of social protection that is sufficient to help asylum-seekers and refugees live in dignity, while not treating them more favourably than the local population.

76) Two States (Armenia and Ukraine) provide modest assistance (food and non-food items) to the relatively small number of asylum-seekers living in TACs and a third State (Republic of Moldova) is currently engaged in ensuring additional assistance to asylum-seekers through partner NGOs. Asylum-seekers in Belarus receive a small monetary assistance upon arrival, in general, however, asylum-seekers in the region who live outside these centres do not receive any assistance from the State for food and/or clothing. UNHCR has been trying to fill this gap in assistance to asylum-seekers for the past ten years.

77) In Armenia, the Republic of Moldova and the Russian Federation recognised refugees are entitled to support from the national welfare schemes on the same terms as citizens. In practice, however, many refugees encounter difficulties in accessing this support as social services agencies are not always aware of the legal status and special needs of recognized refugees. Application procedures to receive support are complex and interpretation services are not available. The lack of intra-governmental cooperation in some countries exacerbates these problems.

**Recommendations:**

*States to enhance efforts to provide asylum-seekers with support to cover the basic necessities of life and to ensure that refugees have effective access to national welfare institutions.*

### **Immediate Shelter and Long Term Housing**

78) With the exception of Moldova, there is a lack of temporary accommodation and longer term residences for asylum-seekers. In regard to temporary accommodation, Armenia, Belarus and Ukraine have TACs, but most of them do not have sufficient space to accommodate new arrivals. According to the law,

the current TACs in the Russian Federation are for recognized refugees only and are located in areas which would be too remote for asylum-seekers to access.

79) As a result, the majority of asylum-seekers must rent apartments on the private market. The need to acquire the necessary financial means for these apartments, while at the same time facing restriction in terms of access to the labour market, forces many asylum-seekers and refugees into informal economic activities. Many asylum-seekers and refugees live in overcrowded urban apartments and in the Ukraine and the Russian Federation homelessness amongst them is a concern.

80) Some refugees in Armenia, Georgia (Pankisi) and the Russian Federation (North Ossetia) are housed in collective centres, partially subsidized by the Governments. However, refugees hosted in Pankisi have recently come under threat of eviction following the privatisation of some of these centres. Although some of the buildings in the different countries are former hotels or dormitories, others were never intended for human habitation. Most of the region's collective centres have been inhabited by refugees for more than a decade without significant investment in their upkeep and repair. Conditions are therefore extremely poor.

81) It should be mentioned, that housing is a serious problem for the local population. In light of this, it has been difficult to ensure that recognized refugees receive equal treatment in access to housing. There are, however, positive developments worthy of note. In Belarus, for example, UNHCR has assisted in the renovation of apartments in the Minsk region to house recognized refugees. The Armenian government has been providing buildings for renovation during an ongoing UNHCR housing project and in 2005 has started to allocate funds to provide shelter to refugees in need in 9 of the 11 provinces. The Ukrainian government has recently begun giving vulnerable refugees access to temporary housing on the same basis as nationals.

82) Because registration at a place of residence is a pre-condition for the exercise of other benefits in several countries, access to housing has for certain refugees a much wider impact on the enjoyment of their rights in the host countries (see also chapter on Civil Status above). A situation that would secure stable housing, including resident registration where necessary, would thus also solve the question of access to social rights, including medical care.

**Recommendations:**

*States in cooperation with UNHCR and other partners to ensure that immediate housing needs of asylum-seekers and refugees are met.*

*States to examine how the promotion of secure legal status and residence rights would help refugees to obtain a higher degree of economic self-reliance, which would also have a positive impact on their housing situation.*

*States and UNHCR to encourage international development partners to extend support to development plans designed to address the precarious housing situations in refugee-hosting areas.*

**Access to Primary and Curative Health Care**

83) Recognized refugees in the region generally have access to the state's health care facilities on the same basis as nationals (Armenia, Georgia, Republic of

Moldova, Russian Federation, Ukraine). According to the law, these health-care systems should provide services free of charge. However in practice, persons often have to pay fees for using state health care facilities. Such practice can create a considerable burden for refugees and asylum seekers. Belarus distinguishes between refugees from CIS countries and refugees from elsewhere. The former are provided free of charge emergency services only. Refugees from other countries benefit also from free ambulatory medical services.

84) In the Russian Federation and Belarus, access to public health systems depends on being registered as a resident in a community. Homeless refugees or refugees whose landlord refuses to assist in the registration cannot gain access to these systems.

85) With the exception of Armenia, asylum-seekers have very limited access to medical services. Belarus, the Republic of Moldova and the Russian Federation give asylum-seekers only emergency medical care and Georgia has no provisions on medical care for asylum-seekers at all. Azerbaijan has put regulations in place that would grant asylum-seekers access to health care, however these regulations are still awaiting implementation. UNHCR has made efforts to fill these gaps by providing primary and preventative medical services to asylum-seekers in several countries in the region (Belarus, Russian Federation and Ukraine).

### **Recommendations:**

*States to review the current regulations with the view of providing asylum-seekers access to primary curative and preventative health care services.*

*States to take steps to provide all recognised refugees, irrespective of their country of origin, access to health services on the same terms as nationals.*

### **Primary and Secondary Education**

86) The region has strong education systems, reflecting the high value that is attributed to education in the national societies. Refugee and asylum-seeker children have access to free primary education, respecting the countries' obligations under the CRC and the 1951 Convention. In addition, refugee children have also free access to secondary education throughout the region.

87) Problems with regard to education are mainly related to high drop-out rates among adolescents. Boys are often in a situation where they are required to contribute to their family's income and girls in some communities are exposed to the traditions of early marriage.

## **Equal Benefit and Protection of the Law**

### **Access to Effective Remedies**

88) Refugees and asylum-seekers are equal before the law and entitled to equal protection without discrimination. While all individuals do, in principle, enjoy free access to the courts, practical obstacles such as the absence of free legal aid or interpretation in court hearings can limit access in practice. Local NGOs have developed capacity to fill some of these gaps but many of these organizations have to rely almost exclusively on financial assistance from UNHCR for these activities.

**Recommendations:**

*States, UNHCR and other partner to ensure that free access to courts and legal remedies is not impeded by the lack of free legal aid or competent interpreters.*

**Fair and Public Hearings without Discrimination**

89) There are concerns that law enforcement agencies in at least one country have an unduly high influence on access to and the administration of justice. Some reports suggest that this might lead to a widespread practice of penalisation of bona-fide asylum-seekers.

**Recommendations:**

*States to ensure that all national authorities, the judiciary as well as the executive, fully respect the principles of impartiality and non-discrimination.*

**Self-reliance****Educational and Vocational Programmes**

90) The refugee laws of Armenia, Azerbaijan and the Russian Federation give recognized refugees the right to vocational training. In practice however, no State in the region provides vocational training or language training. UNHCR provides some vocational and language training. In cooperation with UNHCR, NGOs were also able to developed capacities to engage is such training activities.

91) The absence of State sponsored vocational and language training reflects the lack of an overall strategy for facilitating the integration of refugees. Training refugees in the local language as well as in vocational skills are essential to help refugees to integrate and become productive members of the local society. Migration authorities and other governmental and non-governmental organizations should intensify their cooperation to promote activities to help refugees integrate in the local society (see also the chapter on Local Integration below).

**Recommendations:**

*States to consider developing possibilities for education, vocational and language training for refugee men and women.*

*States and UNHCR to look at integration strategies, facilitating local integration and self-reliance of refugees.*

**Access to Wage-earning Employment**

92) Recognized refugees have the right to work, however, often they must have identification documents and/or proof of residency registration to do so. The problems in obtaining these documents outlined earlier, mean that many refugees are tend to work in the informal sector. Even for those who have the necessary documents, employment in the formal sector can be difficult to find and States do not have job placement programmes or employer incentive programmes to assist refugees.

93) The right of asylum-seeker to work varies throughout the region. Some countries grant the right to work (Belarus and, for asylum-seekers that have been admitted into the asylum procedure, Russian Federation), in practice however the right may be difficult to exercise because of the difficulty for asylum-seekers in obtaining residence registrations.

94) The Republic of Moldova offers asylum-seekers the right to work if they can establish that they would otherwise not have sufficient means to secure their living. Ukraine limits the right to work to temporary employment. Overall, there is a need for greater clarity on the rights of asylum-seekers to employment, as well as procedures to ensure that asylum-seekers are able to utilize this right to provide an adequate standard of living for themselves and their families.

**Recommendations:**

*States to establish clear legal and administrative frameworks to ensure that refugees and, as appropriate, asylum-seekers have effective access to wage earning employment.*

**Self-employment Opportunities**

95) Recognized refugees in the region have the right to self-employment and in practice many refugees are independent traders on local markets. There are also a few activities in the region to encourage entrepreneurship by refugees, thereby setting a standard for the region. In Armenia, refugees may benefit from a micro-credit program supported by UNHCR. In Ukraine, UNHCR works with the ProCredit Bank Ukraine to enable refugees to obtain loans on the same conditions as Ukrainians and in Belarus, UNHCR has helped to launch two social enterprises through cooperation with community organisations.

**Recognition of Foreign Diplomas**

96) Foreign diplomas are generally recognized. Many States are party to the 1997 European Convention on the Equivalence of Diplomas and the European Convention on the Recognition of Qualification concerning Higher Education in the European Region.

**Social Security and Just and Favourable Conditions of Work**

97) Refugees who are legally working in the formal sector enjoy the same protection as nationals. For the many who work in the informal sector, however, abuse in the form of lack of social security benefits, job security and minimum wages and discrimination are a concern.

**Right to Own Property**

98) Refugees have generally the right to own property on the same basis as nationals, or, as is the case of Armenia, Belarus, Republic of Moldova and Azerbaijan, under the same conditions as foreigners in the same circumstances, thereby meeting the standards set out by Art. 13 of the 1951 Convention.

<sup>6</sup> In Belarus the authorities request, contrary to international standards, the explicit renunciation of the previous citizenship with the competent authorities of the country of origin.

<sup>7</sup> Significant numbers of refugees from both Armenia and Azerbaijan have been naturalized in the past by the respective other country.

## **Durable Solutions**

### **Voluntary Repatriation**

99) There are currently no major voluntary repatriation movements in the region. UNHCR is not promoting return to Afghanistan, Chechnya or Iraq, the countries of origin of most refugees. UNHCR does, however, coordinate some returns to Afghanistan from Azerbaijan, Belarus, the Russian Federation and Ukraine. Returns to Iraq, whenever possible and strictly on a voluntary basis, are also facilitated by UNHCR and IOM, however such efforts frequently encountered problems in obtaining documents and transit permissions for the persons concerned. Each year there are a few returns to Africa.

100) States are not involved in organizing or providing travel assistance for these voluntary return movements, which represents a major impediment for a more widespread use of the repatriation schemes.

#### **Recommendations:**

*States to facilitate repatriation projects by providing refugees with the necessary documentation and consider the provision of financial support to return movements. Countries of origin and asylum, working in cooperation with UNHCR, to promote voluntary repatriation, where appropriate, inter alia through the conclusion of tripartite agreements and confidence-building measures facilitating decisions on return, as well as, resources permitting, enhanced UNHCR field presence to allow continuous monitoring and to contribute to the creation of normal and peaceful conditions to facilitate repatriation.*

### **Local Integration**

101) Naturalization procedures for refugees vary widely. The Russian Federation allows naturalization after one year of legal residence, while other countries require between three to eight years of residence (Azerbaijan, Belarus<sup>6</sup>, Republic of Moldova, Ukraine). Georgia lacks any form of regularized naturalization procedures for refugees.

102) Ukraine is the only country in the region to have an integration strategy for refugees. Refugees of an ethnicity similar to that of the local population generally find it much easier to integrate and naturalize<sup>7</sup>. The region has not yet developed best practices in integrating refugees from different ethnic groups. Refugees of an ethnicity that has only a small presence in the host population are especially affected. They have less support from their compatriots and therefore are more dependent on the institutions set up in the host countries.

#### **Recommendations:**

*States to examine, where appropriate, to grant recognized refugees the opportunity to become naturalized citizens of the country of asylum. States, working in partnerships with international and regional development actors, to develop strategies for the integration of refugees and to contribute to the realization of local integration through burden-sharing, which ensures that the necessary resources are available to underpin self-reliance and local integration, in a manner that sustains the viability of local communities affected by their presence.*

## **Resettlement**

103) Resettlement as a durable solution and a tool of protection remains important in the region. Currently, UNHCR and resettlement countries focus on resettling especially vulnerable cases and others in need of special social and medical services. Special protection needs and the lack of local integration prospects for certain groups or ethnicities amongst the refugee population originate the by far highest number of potential resettlement cases, only a small part of which can effectively be addressed through the limited resettlement places available each year.

### **Recommendations:**

*UNHCR to work to enhance protection through an expansion of the number of countries engaged in resettlement, as well as through more strategic use of resettlement for the benefit of as many refugees as possible, taking, however, into account the resource implication thereof.*

Map: Central and Eastern Europe and Central Asia, see Global Appeal, 2006, page 293 at: <http://www.unhcr.org/cgi-bin/texis/vtx/publ/opedoc.pdf?tbl=PUBL&id=4371d19511>

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8. Map: UNHCR 2006 Global Appeal, p. 293, source: <http://www.unhcr.org/cgi-bin/texis/vtx/home/opedoc.pdf?tbl=PUBL&id=43706eee0>

**EURASIA**, defined in this study as the countries comprising the Commonwealth of Independent States (CIS): Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russia and Ukraine/Kazakhstan, Kyrgystan, Tajikistan, Turkmenistan and Uzbekistan; and the Central European countries of Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Hungary, Romania, Poland and Slovak Republic.

