

Synopsis of a Draft ECRE/USCR Report:

An agenda for enhanced European Union engagement in protracted refugee situations

**Gil Loescher
James Milner**

**Steve Edminster
Bill Frelick**

**European Council on Refugees and
Exiles
(ECRE)**

**US Committee for Refugees
(USCR)**

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Project Origins and Objectives

In June 2000, former UK Home Secretary Jack Straw proposed that the European Union (EU) improve reception conditions in the immediate regions from which refugees originate and consider the possibility of conducting asylum procedures in the region of origin; from there, refugees could be resettled in EU countries on the basis of an international quota system. According to Mr. Straw, such an approach would reduce the demand for clandestine entry into the EU by asylum seekers who, for the most part, currently need to enter the territory of the asylum state in order to submit an asylum application. This, in turn, would weaken organized smuggling and trafficking networks, which have increasingly profited by transporting asylum seekers and other migrants. In addition, Straw also suggested that the EU should place greater restrictions on asylum seekers arriving spontaneously in EU member states.

Delegates to the 2001 ATC encouraged the expansion of resettlement in the European Union, and stated that the creation of additional resettlement opportunities would be a welcome development. When addressing the possibility of an EU-wide resettlement program in a background paper for the 2001 ATC, UNHCR stated that: “The possibility of creating additional resettlement opportunities, as a particular mechanism to share responsibilities with countries of refuge, should be encouraged and further explored. Resettlement is one of the tools in the arsenal of protection within the whole governance structure for refugees. A fresh look should be taken at the useful role that fair and global resettlement quotas might play in helping to realize a world of law and in giving practical meaning to the need to offer durable solutions to refugees under the UNHCR mandate.” The caution was, however, expressed that such a system must be viewed as “a complement to other protection and assistance efforts and not as a substitute for asylum.”

In light of these policy proposals, the European Council on Refugees and Exiles (ECRE) and the US Committee for Refugees (USCR), with support from the German Marshall Fund, conducted a joint research project which examined—on the basis of pragmatism, principles, law, and international standards—the feasibility of complementing the processing of asylum applications in Europe with increased refugee processing in regions of origin as a means to facilitating the orderly and legal admission of refugees to Europe. At present, this report does not reflect an official position taken by ECRE on the issues at hand. Such policy decisions rest with ECRE’s membership, which is only now in the process of reviewing the paper.

USCR’s and ECRE’s inquiry focused on Turkey, the Middle East, and East Africa, particularly on two nationalities – Iraqis in Turkey and the Middle East, and Somalis in East Africa – chosen because Iraqis and Somalis are particularly well represented in the asylum and refugee resettlement caseloads in both Europe and the United States, and because of the protracted nature of conflict, persecution, and poverty in their home countries. The study, however, also addressed the situation of vulnerable refugees and asylum seekers of other nationalities in East Africa, Turkey, and the Middle East. ECRE-USCR researchers traveled to Kenya in December 2001 and to Turkey and Syria in January 2002. Field research included interviews with government officials, representatives of international organizations and non-governmental organizations (NGOs), diplomatic representatives of European, the US, Canadian, and Australian governments, and with refugees and asylum seekers themselves. The report also drew on USCR field research in Kenya and Somalia in May 2001 and in Australia and Indonesia in the summer of 2001.

In the full paper, ECRE and USCR researchers suggest that the EU become more comprehensively engaged in efforts to resolve protracted refugee situations. The researchers believe that this engagement is three-fold. It should include full consideration of durable solutions, including the strategic and expanded use of resettlement. It should also engage host countries in the task of improving the quality of asylum and creating a more secure environment for future processing in the regions. Finally, European countries should approach the question of asylum in the regions in a more holistic way, incorporating asylum considerations into the external dimensions of their policies.

The full report has three parts. Part one first provides an overview of asylum trends, policy debates and other relevant developments in Europe and North America. Secondly, it focuses on the conditions of reception in the regions of study and highlights factors limiting the protection environment in these regions that must be considered as part of any debate on the regionalization of asylum.

Part two summarizes the findings from the recent field visits conducted by ECRE-USCR to Turkey, the Middle East, and Kenya. The findings start by highlighting the conditions, causes of migration and levels of international engagement in Iraq and Somalia, the countries of origin of the primary refugee populations considered in this study. The study assesses the reception capacity of the host states and the quality of protection afforded to refugees and concludes by considering the prospects for achieving durable solutions in the medium to long term.

Part three is a synthesis of the key findings of the case studies with thematic recommendations. The synthesis begins by considering the feasibility of regional processing and alternative policy responses in light of the conditions found in the regions. It assesses resettlement within the context of the other durable solutions and the relationship between resettlement and the right to seek asylum. It also evaluates current processing and resettlement programs in the regions and proposes profiles of refugee populations in need of resettlement. It compares current resettlement programs, outlining considerations for the development of an EU resettlement program and discussing the costs and benefits of resettlement, and concludes with a suggested model for EU resettlement.

Trends in the Regions

ECRE and USCR conducted field research in Kenya, Turkey, Syria, Jordan and Lebanon to examine conditions of reception, the protection environment and quality of asylum, the processing of refugee claims, and resettlement opportunities. While refugee status determination (RSD) is carried out in all these states, primarily by UNHCR, and resettlement to the West does take place, including by a selective number of European states, the conditions to carry out refugee processing and resettlement in these regions are barely permissible by international standards and are extremely undependable.

Reception Capacity and Refugee Protection in East Africa and the Middle East

The regions visited for this study are extremely unstable, immediately bordering some of the major producers of refugee flows in the world. The bulk of the refugees in these regions - Somalis, Sudanese, Iraqis and Iranians - come from countries where conflict, persecution, and other human rights abuses have persisted for years, making it unlikely that they will be able to return home anytime soon.

All these states are already overburdened with refugees and migrants and would be very reluctant to assume responsibility for more refugees, particularly at a time of escalating conflicts, human rights abuses, civil wars and international armed intervention in the regions under study. Generally, both the governments and the citizens of these countries have negative views of refugees and associate them with problems of security, violence, and crime. These negative perceptions have begun to generate a backlash against refugees and Islamic groups across these regions, especially since September 2001.

To deal with this security problem, some governments, such as Kenya, have sanctioned policies that confine refugees to remote camps; other countries have imposed other means that restrict refugees' movement, prevent their integration, and undermine their sense of security. In addition to threats to their physical safety and civil and political rights, refugees also face severe economic and social deprivations in their countries of first asylum, including lack of access to adequate food, water, health care, education, work, and housing. Host governments seek to control or manage refugees by locating them in camps or restricting their residence to designated parts of the country. Camp conditions are frequently extremely bad. Dadaab, where most of the Somalis in Kenya have been warehoused for over 10 years, is notorious for its violence. Refugee women, in particular, remain highly vulnerable. In contrast to Kenya, practically all refugees in Turkey and Syria, Jordan and Lebanon live outside camps. Assistance to refugees in these countries does not meet minimum international standards. Refugees' freedom of movement is severely restricted; they cannot integrate with local populations; they are refused permission to work; they live in limbo.

These countries have limited capacity and inadequate infrastructure either in their national economies or within their social and legal structures to absorb or to host refugees. Indeed, given the severe economic crises and

environmental degradation facing many of these countries, it is questionable whether these governments can be expected to establish legal frameworks and institutions that would permit the absorption of hundreds of thousands of refugees and migrants living within their territories and provide them with essential goods and services and a range of civil, political, social and economic rights not even available to their own citizens. Local integration for all but a few of the refugees in these countries is not a realistic possibility.

There is little government or public awareness or recognition of human rights in East Africa, Turkey, and the Middle East. Although host governments in these regions tolerate UNHCR's presence, the UN refugee agency operates in an extremely difficult protection environment. Although none of the host countries under study have adequate national mechanisms to process refugee claims, all of them tolerate the presence of refugees on a temporary basis. But this tolerance is contingent on the understanding that UNHCR will undertake interviews that will determine the refugee status of claimants and will subsequently resettle all of the refugees it recognizes.

Refugees who manage to escape their own countries, therefore, have the choice of either traveling onwards, often illegally, to other countries to apply for asylum or to remain in host countries in the region of origin and apply to UNHCR for recognition and referral for resettlement abroad. Despite its importance, refugee status determination (RSD) is not given much prominence either by UNHCR or by governments in the regions under study. This has been particularly the case during the past decade when the Office's activities and priorities became dominated in providing humanitarian relief in refugee emergencies and internal conflicts around the world. Individual refugee status determination is an expensive activity and donor governments have not provided UNHCR with sufficient resources to carry out this important function effectively. In many of the countries in the regions of origin, local employees who frequently do not have the experience or appropriate legal training conduct RSD interviews, resulting in poor decision making. The lack of resources has contributed to the increasingly frequent cases of serious corruption involving RSD by UNHCR in places like Kenya.

Resettlement Opportunities from Regions of Origin

In the regions ECRE and USCR researchers visited, there is a marked need for greater resettlement opportunities for refugees, many of whom have been stranded in these host countries for many years. In Kenya, for example, there are approximately 255,000 refugees: at least 160,000 from Somalia, about 65,000 from Sudan, 20,000 from Ethiopia, about 5,000 from Uganda, and some 3,000 to 4,000 from the Great Lakes region. The majority of these refugees reside in camps and many of them have been in Kenya for almost a decade. There are also significant numbers of urban refugees, particularly Somalis.

Turkey hosts nearly 10,000 refugees and asylum seekers. The largest numbers of asylum seekers entering Turkey come from Iraq and Iran but there are also significant numbers of asylum seekers from sub-Saharan African countries who face substantial protection problems in Turkey and are under constant threat of deportation. Registered asylum seekers, however, probably represent only a fraction of the foreigners residing in Turkey who have a well-founded fear of persecution in their home countries.

Jordan, Lebanon, and Syria host huge numbers of Palestinian refugees (1.5 million in Jordan; 370,000 in Lebanon; and 375,000 in Syria). In addition, these countries are also populated with large numbers of Iraqi and other non-Palestinian asylum seekers and refugees, many of whom may be in need of resettlement. About 250,000 Iraqis live in Jordan, many of whom are refugees. Over 1,000 Iraqis are registered with UNHCR and another 4,300 asylum seekers are awaiting a UNHCR refugee status determination. In Lebanon, there are some 4,000 non-Palestinian refugees registered with UNHCR. The majority are Sudanese and the second largest group are Iraqis. Syria hosts over 3,200 UNHCR registered refugees, half of whom are Iraqis. In addition, as many as 40,000 Iraqis who are not registered with UNHCR and yet may be refugees live in the country. Long-staying Sudanese asylum-seekers are at particular risk in Syria.

In the past six months, the resettlement of refugees from these regions of origin has declined precipitously. There are several reasons for this. In Kenya, resettlement was halted initially because of a major corruption scandal involving UNHCR refugee status determination and resettlement referrals. The major resettlement countries, including the United States, suspended all resettlement processing out of Kenya pending the results of several

investigations of a highly publicized corruption scandal. However, the most important impediment to overseas resettlement that affected not only East Africa but also most other parts of the world, including Turkey and the Middle East, was the terrorist attacks in New York and Washington, DC on September 11, 2001. In particular, the suspension of refugee resettlement by the United States, and subsequent delays resulting from newly enhanced security-screening measures, have adversely affected the resettlement opportunities for tens of thousands of refugees in these regions.

The lack of resettlement opportunities, coupled with the physical and economic insecurity that most asylum seekers experience in the regions ECRE and USCR visited, has led large numbers of vulnerable people to seek alternative means of gaining access to Western countries. Relatively large numbers of people, many in need of international protection and with valid asylum claims, choose not to avail themselves of the UNHCR's refugee determination procedures. Many do not make themselves known to the authorities for fear of being detained pending RSD and being treated like criminals by local police or security officials. Would-be asylum seekers know that generally only a fraction of all asylum applications are granted, that the determination procedures are lengthy, that they are unlikely to receive adequate social and economic assistance either from the host government or the UNHCR. Many believe they may have a better chance of getting to the West if they remain outside the official system and utilize the services of trafficker and smuggling organizations.

Conclusions and Proposals for Consideration

The full report drafted by USCR/ECRE researchers has 33 recommendations. As previously mentioned, the following recommendations do not represent an official position taken by ECRE. Rather ECRE considers them to be suggestions for debate and further elaboration. This abridged synopsis includes some of the key recommendations and the reasoning behind them.

Recommendation 11: The EU should create a refugee resettlement program that remains true to the time-tested fundamental purposes for third-country resettlement: to provide rescue and durable solutions for refugees in need of protection, preserve the possibility of first asylum, and act as a means of equitable responsibility sharing. For moral, legal, and practical reasons, the EU should reject any system of exclusive or emphasized regional asylum processing.

The fundamental purpose of third-country resettlement – beyond the individual rescue of vulnerable refugees – is to maintain the very possibility of first asylum. Only very recently, in the case of Australia and as articulated by some in the Netherlands and other European countries, has resettlement been suggested as having an immigration-control function, as a substitute, rather than as a complement to asylum.

This notion, while perhaps attractive on its face to those seeking to control migration, has both legal and practical shortcomings. The Universal Declaration of Human Rights (Art. 14) holds as fundamental the right “to seek and to enjoy in other countries asylum from persecution.” Although the Universal Declaration of Human Rights is not binding on states, the EU Heads of State meeting in Tampere in 1999 collectively reaffirmed the EU’s “absolute respect of the right to seek asylum.”

If asylum has a soft grounding in international law, resettlement has an even weaker legal claim: no suggestion, declarative or otherwise exists to suggest a right of refugees to be resettled. What is mandatory for state parties to the 1951 Convention and its 1967 Protocol is the principle of *non-refoulement*, which prohibits the forcible return of a refugee in any manner whatsoever to a place where his or her life or freedom would be threatened. As a corollary to protection from *refoulement*, most states that recognize a person as a refugee under the 1951 Convention also grant asylum, a status from which, generally, refugees are able at a later date to adjust to permanent residency.

Herein lies the crux of the difference between asylum and resettlement: Under customary international law, states are barred from returning refugees on their territories to places of potential persecution. Asylum adjudications occur on the territory – or places of jurisdiction and control – of the receiving state. At the root of the procedural

guarantees of fairness, rights of appeal, and other safeguards built into asylum systems is the underlying requirement on receiving states not to commit *refoulement*.

Resettlement, however, occurs outside the territory of the receiving state. Denial of a resettlement request does not entail direct return to a potential place of persecution. At worst, the applicant is already in a place of persecution – either in the case of in-country processing of persecuted persons directly from their countries of origin or when the refugee in the country of first asylum is also at risk of persecution in that country. While rescue in such cases might well constitute a moral imperative, it would not be a legal one, since denial would not involve removal, expulsion, or return.

In the absence of mandatory bars on return, refugee adjudications in the overseas resettlement context normally have far more limited due-process guarantees. For example, formal appeals procedures are quite rare. Furthermore, the choice of candidates for resettlement is sometimes influenced by factors not directly relevant to the validity of refugee claims or to assessing degrees of vulnerability among refugees. For example, political considerations or immigration preferences sometimes intrude. The empirical evidence does not support the suggestion by former UK Home Secretary Jack Straw that a resettlement approach is more likely to identify genuine refugees than asylum systems.

Although asylum adjudications have, at times, also been unduly influenced by political bias, asylum proceedings are usually subject to judicial review, and because of their stronger legal grounding – ultimately based on the prohibition of *refoulement* – they are less susceptible to political or immigration biases than resettlement. The more discretionary the proceeding, the more likely other factors will intrude.

The framework would change, however, under a system in which asylum applicants, in the absence of a hearing on the merits of their claims, would be returned to regional holding centers. On the territory of a third state, responsibility not to commit *refoulement* would shift to that state, and ultimate responsibility for adjudicating the refugee claim would lie with that state. Even a prior agreement to adjudicate a refugee claim from the states that rejected the asylum claim on the basis of a regional alternative would shift the foundation of that adjudication from a mandatory to a discretionary basis. No matter what procedural safeguards might be built into such an overseas adjudication, it would necessarily remove the legal foundation against *refoulement* and risk placing the proceeding into a more political context.

It would be unreasonable to expect a state in the region of conflict – a Turkey, a Jordan, a Syria, or a Kenya – to agree to the return of asylum seekers from European countries to their territories and to expect them not to repatriate the residual Somalis, Iraqis, or other foreign nationals left on their territory after being rejected in the RSD that the European states would conduct on their territory. The onus would shift after the discretionary denial of asylum by a European adjudicator on their territory. The European, not bound by the obligation of *non-refoulement*, leaves the ‘dirty work’ of removal to the country of the origin to the regional state. However, at the point of removal, the question shifts from a positive and discretionary grant of asylum, via resettlement, to the mandatory bar on *refoulement*. To abide by the 1951 Convention, such states in the region of conflict would need to conduct a *de novo* examination of the refugee claim before sending a person back to a country from which he or she claims a fear of persecution. In all likelihood, given their lack of resources and legal infrastructure, they would regard the rejected resettlement applicant as presumptively ineligible for asylum on their territory as well, and remove him or her to the country of origin.

Aside from the legal shortcomings of such a system, regionalization also turns the notion of international burden sharing on its head – shifting the responsibility away from the richer, more distant states, and doubling the burden on poorer states in the region of conflict who are already hosting large numbers of refugees, and are usually faced with their own domestic threats to political stability and economic well-being. Therefore, such an approach subverts not only legal principles, but practical considerations of an orderly world based on equitable burden sharing between rich and poor countries, countries fortunate enough to be located far away from conflict and those with the misfortune of having unruly neighbors. For all these reasons, it is also highly unlikely that the Kenya, Turkey, Jordan, and Syria would ever agree to become sites for an EU system of exclusive regional asylum/refugee processing.

Recommendation 3: European governments, independently or collectively through the EU, should increase their resettlement quotas from regions of refugee origin. These programs should focus on the most vulnerable persons and those most in need of protection and durable solutions.

ECRE and USCR researchers encourage EU governments to increase international refugee processing in regions of origin as a complement to asylum procedures for spontaneous arrivals in the West. The regions visited by ECRE and USCR are characterized by protracted refugee situations with long-staying asylum seeker and refugee populations in camps or in and around urban areas. A marked need exists in these regions for greater resettlement opportunities for refugees, many of whom have been stranded in these host countries for several years and in some cases for more than a decade.

While European countries currently accept a comparatively limited number of refugees for resettlement, their resettlement programs serve a significantly complementary role to the larger resettlement countries as part of global resettlement efforts. Whereas the United States, Canada, and Australia resettle the overwhelming number of refugees in a given year, the European programs accept those vulnerable refugees who would not otherwise be resettled. This is the ‘value-added’ of the European approach to resettlement: the willingness to concentrate on the resettlement needs of the most vulnerable.

Another difference between two types of programs lies in the politics of numbers. Given the difference in scale, the US, Canadian and, to a lesser extent, the Australian resettlement programs are often accused of being ‘quota-driven’. There tends to be significant domestic political pressures on the resettlement programs not only to fill the quota in a given year, but also to give priority to groups that have domestic political support. This tends to shift the focus of resettlement on domestic political considerations rather than on the protection needs of refugees.

There is also a significant difference in processing times of the European programs when compared to the ‘big three’. Given the requirement of adjudication by an official pursuant to a direct interview, the United States, Canada, and Australia must conduct resettlement selection missions to countries of asylum. This creates two difficulties. First, resettlement missions are not responsive to urgent resettlement need as they occur infrequently. Second, for security reasons, selection missions often cannot travel to remote and insecure regions. As a result, refugees in accessible and secure locations are typically favored. Finally, the larger resettlement programs have more stringent post-adjudication requirements, which add to the delay in departure. In comparison, and on the basis of dossier considerations and relaxed pre-departure formalities, European countries can accept a refugee for resettlement and issue the necessary travel documents within six weeks of submission.

This comparison is not intended to diminish the significance or value of the US, Canadian, or Australian programs. They offer resettlement opportunities to tens of thousands of refugees every year, play a leading role in formulating global resettlement policy, and show significant leadership in developing resettlement as a tool of international protection, as a demonstration of international solidarity with host countries, and as a durable solution for refugees. This comparison is, however, intended to highlight the significant value-added of the European approach to resettlement and to emphasize the particular aspects of European resettlement that should be highlighted in the development of a possible EU resettlement program.

Recommendation 29: EU member states should meet annually in consultations with UNHCR and NGOs to assess global resettlement needs and to set annual EU quotas for refugee admissions and an EU budget for overseas refugee assistance. The EU should act in coordinated fashion through EU structures to improve its response to refugee situations in regions of origin.

Both economies of scale and the commitment to harmonize asylum policies suggest that EU member states should act in coordinated fashion through EU structures to improve their response to refugee situations in regions of origin. They should jointly assess refugee needs and set refugee resettlement quotas and budgets for overseas assistance (to support UNHCR and other entities) based on the principle of fair and equitable responsibility sharing.

The resettlement quota system could be based either on voluntary pledging or a formula based on factors such as each member state's GNP and population density.

Each member state operating independently and in uncoordinated fashion would be less likely to expend resources on behalf of refugees in ways that would maximize their impact in terms of promoting policies of protection. Unilateral or bilateral initiatives also risk causing confusion, multiple standards, and duplication of efforts in ways that often unwittingly contribute to fraud, corruption, and wasted resources. In contrast, a joint, coordinated EU resettlement/assistance contribution would not only likely increase available resources on behalf of refugees but would also likely have a greater impact because it could be used strategically to leverage other support or solutions for refugees from local host governments or other donor and resettlement governments outside the EU.

Recommendation 4: Holistic engagement in the regions of refugee origin, including through increased use of resettlement, is the most principled and pragmatic way that the EU and Member States can engage the problem of protracted refugee situations and meet the requirements of refugee protection and migration control. In the long term, such a holistic approach would provide the EU and Member States with the most effective means of reconciling the asylum and access challenge.

It is becoming increasingly evident that Western governments will be in a better position to address the problems of irregular migration, abuse of the asylum system, and the financial and social burdens of refugee protection and migration control if they equip themselves with a broad range of policies to tackle the causes of flight at their source. Future responses to forced migration cannot be separated from other areas of international concern such as human rights, good governance, sustainable development, trade, and peace and security issues. International initiatives must be comprehensive enough to address the interplay of political, economic, environmental, and security factors that drive most migration movements today. Effective international management of the refugee problem also requires cooperation between sending, receiving, and transit countries as well as the refugees and migrants themselves.

A more holistic engagement in the regions of origin is the best way to address both the obligations states have to protecting refugees and ensuring access to asylum and the concerns states have regarding migration control, illegal entries, and people smuggling. If the EU is to achieve the objectives of reducing the number of illegal departures and at the same time finding extra-regional durable solutions for forced migrants, particularly from regions where there are protracted refugee situations, European governments need to fully support the development of well-established minimum standards, management and oversight for the status determination and resettlement process in regions of origin through the provision of resources, staffing, and political support in various contexts.

In particular, the EU needs to be more engaged in the general question of asylum in the regions, not only through increased resources, but also by programs aimed at capacity building of local NGOs and civil society to improve protection, asylum, and integration prospects. Finally, there is a need for greater EU diplomatic, economic, and security involvement in the quest for other possible durable solutions in regions with protracted refugee situations.

Recommendation 24: UNHCR should coordinate European resettlement through the tripartite global resettlement agreements.

Within the context of its tripartite cooperation with NGOs and resettlement governments, UNHCR should continue to play a central facilitating and coordinating role in the planning and implementation of resettlement programs. This is for both reasons of principle and pragmatism. According to its mandate, UNHCR is charged with the international responsibility for seeking durable solutions for refugees. To ensure that this principle is realized, UNHCR should play a coordinating role in global resettlement efforts. Moreover, the pragmatic concerns related to resettlement activities outside of tripartite mechanisms point to the importance of retaining UNHCR's role as the coordinating body of the resettlement process. Given the tremendous demand for resettlement in the field, parallel systems would be highly problematic, would result in parallel applications, security concerns, and violations of the rights of refugees. If multiple opportunities were created for submitting resettlement applications and if there were a

lack of management and coordination of resettlement activities through UNHCR, additional pressures and confusions would emerge and frustrations would increase, not diminish.

Recommendation 30: Either through the European Community Humanitarian Office (ECHO) or another structure, the EU should designate a refugee focal point in countries of origin with sufficient resources (both financial and in terms of resettlement quotas) to act strategically and effectively to coordinate EU member states' engagement on behalf of refugees with host country governments, intergovernmental organizations, and NGOs.

The EU should designate a regional Refugee Coordinator to coordinate the EU response in where there is a large refugee presence. Because such an official would be engaged both in coordinating EU resettlement and assistance, he or she would develop a broad understanding of refugee needs and have sufficient funds at his or her disposal to identify problems effectively and comprehensively. The EU Refugee Coordinator's authority and resources to commit money or resettlement would strengthen his or her ability to promote initiatives with local government authorities, intergovernmental humanitarian organizations working on behalf of refugees, and with NGOs, both international and local.

Recommendations 17, 18, and 19: European countries, independently and collectively through the EU, should encourage and support UNHCR to develop and implement universal minimum standards, management and oversight mechanisms for the status determination and resettlement process in the region, consistent with the due process of law. European countries should support NGO capacity-building in the region to monitor UNHCR's status determination and resettlement activities.

While resettlement is a discretionary activity and consequently not bound by strict applications of the due process of law, the credibility of UNHCR's resettlement processing in the regions visited is undermined by a lack of transparency and consistency. NGOs, resettlement countries and refugees repeatedly complain about consistent shortcomings of UNHCR processing, including: a lack of clarity about the burdens of proof and thresholds applied by UNHCR; the lack of access by refugees to their personal files held by UNHCR; the lack of legal counsel and basic information provided to refugees; the lack of justification given by UNHCR pursuant to the rejection of an application for asylum or resettlement; and the lack of an effective appeals mechanism.

The lack of accountability and transparency in UNHCR's current processing systems fosters considerable suspicion, resentment, and anger towards UNHCR by asylum seekers and refugees. As the case studies in this report make clear, this lack of due process significantly undermines the credibility of UNHCR processing in the regions, and, if found not to be in accordance with universal and regional human rights standards, undermines its legitimacy.

The apparent absence of the due process of law is coupled with an apparent absence of objective universal minimum standards for the processing of asylum and resettlement applications. A lack of standards results in dramatically different procedures being carried-out in various field locations, and leads to pull factors as refugees are drawn to the office where procedures are perceived to be more in-line with their profile.

Finally, these procedural constraints are magnified by a lack of involvement by NGOs and other competent impartial observers in the field. NGOs consistently play an important role in European and North American asylum procedures, monitoring decisions, providing counsel to asylum seekers on their rights, and ensuring that minimum standards and the due process of law are consistently applied. The NGO role, in turn, results in more effective, transparent and credible systems.

Recommendation 31: European NGOs engaged in refugee integration work or overseas assistance should designate a coordinating agency in each significant region of refugee need to act as liaison and implementing partner with other entities working on behalf of refugees. The European NGO partners should have primary responsibility, in coordination with UNHCR and the EU, for identifying individuals and groups in need of resettlement and for outprocessing refugees for their travel, reception, and placement in Europe.

As EU governments should coordinate their engagement through a Refugee Coordinator in the regions of refugee flows, so ought European NGOs coordinate their response in an expanded refugee assistance and resettlement operation. As suggested by the term “joint voluntary agency” (JVA) in the US resettlement program, European NGOs working on behalf of refugees and involved in refugee integration in their own countries could designate one NGO to act on behalf of them all as the focal point in a site of significant refugee need, such as Kenya or Turkey, to coordinate European-wide NGO response and to act as local liaison and implementing partner with host governments, European diplomatic missions, UNHCR, IOM, and other humanitarian agencies, as well as local NGOs and other actors in local civil society.

A European JVA would be engaged as an implementing partner to identify groups and individuals in need of resettlement. The JVA would work in close cooperation with both the EU Refugee Coordinator and UNHCR in this activity. UNHCR would train the JVA in resettlement criteria and the Refugee Coordinator would make the JVA aware of admission eligibility and priorities for the EU and among EU member states. Once UNHCR decided the person in question was a refugee in need of resettlement, and the EU agreed to take the refugee, the JVA would be primarily responsible for the “outprocessing” of the refugee, arranging for medical exams, travel arrangements (in coordination with IOM), and reception and placement (in coordination with European NGOs) in the EU member state of destination.

Recommendation 32: UNHCR’s specific operational engagement in EU refugee resettlement should be limited to refugee status determination and to recommending for or against resettlement.

UNHCR’s resettlement role should be much more focused and specifically dedicated than it is at present. UNHCR’s specific operational engagement in resettlement should be limited to refugee status determination and to recommending for or against resettlement as a tool of protection or durable solution. UNHCR should not be excluded from identifying refugees for resettlement, but should essentially be identifying the refugees to the JVA to prepare their cases for RSD. Such a system would conserve UNHCR’s limited resources and enable UNHCR to remain focused on its core mandate.

Under this proposal, neither the EU nor EU member states would conduct a separate (and duplicative) RSD (as often happens now in other resettlement programs). The EU would recognize UNHCR’s special competence to conduct RSD. This undoubtedly would also be a cost-saving measure, as EU member states would not be paying the costs of sending their own adjudicators into the field to conduct RSDs.

Recommendations 20 and 21: In coordination with UNHCR and other resettlement partners, the EU or its member states should not only accept UNHCR-referred resettlement cases, but could also identify groups of vulnerable refugees in need of resettlement. In cases of group identification, resettlement countries should ensure that all necessary human and material resources are made available for the verification and processing of that group, thereby ensuring that the on-going identification of vulnerable individual cases is not jeopardized.

If resettlement is to play a role in achieving comprehensive and durable solutions for protracted refugee situations, a group approach could play an important complementary role to on-going resettlement activities with individual cases. Members of a group identified as having both a prima facie refugee claim and need for resettlement would still need to meet security, health, and other basic admissibility requirements, but could establish their refugee claim by demonstrating membership in that persecuted and vulnerable group.

Meeting the needs of identified vulnerable groups must not, however, be undertaken at the expense of individual case identification. Although requiring fewer human resources than individual RSDs, group identification also requires significant human resources to ensure the credibility of individuals claiming to be members of that group. In situations where group resettlement is deemed to be a positive contribution to refugee protection and durable solutions, UNHCR resettlement staff must not be diverted from their work on the identification and processing of individual cases to assist with the verification and processing of groups in need of resettlement. The identification of groups in need of resettlement should therefore be coupled with the additional human resources required for the processing of that group.

Recommendation 15: Members of the European Union should explore ways of increasing their contribution to the human resources required for resettlement processing, through increased contributions to UNHCR, secondments and other mechanisms.

The increasing limitation of the essential resources required to identify and process refugees in need of resettlement places a significant constraint on the system as a whole. The identification of refugees in need of resettlement and the preparation of a dossier for submission to a resettlement country is a remarkably time-consuming task and there are too few officers with exclusive resettlement responsibilities posted in complex situations facing overwhelming resettlement need.

The direct consequence of these human and material resource constraints required to conduct processing in the regions is a significant backlog of unexamined cases and long waiting periods for the results of interviews. In many cases, asylum seekers may wait up to nine months for the results of their status determination interview with UNHCR. Resettlement procedures may take even longer, and have left vulnerable refugees stranded in desperate conditions for months on end, often with little or no assistance from UNHCR. Recent funding cut-backs have directly impeded not only UNHCR's ability to exercise its protection mandate in many regions, but have also resulted in a reduction of the levels of assistance provided to asylum seekers and refugees as they await decisions on their asylum or resettlement applications. While secondees and deployees cannot replace UNHCR resettlement officers, such creative means of addressing the human resources constraint must be explored, while also examining how donor countries could more effectively and predictably support the on-going resettlement activities of UNHCR.

Recommendation 33: A coordinated EU refugee resettlement must maintain sovereign rights of EU member states to decide on admissibility and need not exclude member states from providing protection to additional refugees through family reunification, private sponsorship, or other programs.

Each EU member state will exercise ultimate responsibility for deciding on the admissibility of a refugee proposed for resettlement in its country. Although the standard refugee definition should remain the same across the EU, as should the criteria of vulnerability for assessing resettlement need, EU member states might have differing admissibility eligibility. Member states should also have discretion to provide additional admissions places for non-Convention refugees, for privately sponsored refugee admissions, and for refugee family reunification.

Recommendation 27: While funding for refugee resettlement should not come at the expense of overseas assistance funding for refugees, EU members and other prospective resettlement countries should recognize that the benefits of resettlement go beyond providing protection and durable solutions to individual refugees. As an act of responsibility sharing, resettlement helps to alleviate the burden on poorer first-asylum countries and encourages yet other countries to do their part. Resettlement also helps to create public and political support for refugee- and other humanitarian programs.

Even if the EU adopted an annual refugee resettlement quota on par with that of the United States, resettlement would provide a durable solution for only about 1.4 percent of the world's refugees. The price of resettlement also raises the question whether this the best use of the limited funds available for humanitarian programs. The query is similar to the one posed by former UK Home Secretary Jack Straw who estimated that developed countries spend \$10 billion annually on their asylum procedures to process the claims of about half a million asylum seekers, and contrasted that with UNHCR's annual budget of about \$1 billion to assist millions of refugees. While seductive in its simplicity, the argument that governments could reprogram all or substantial amounts of funding from asylum to overseas assistance is a false choice.

The EU and others in the international community should do far more to support UNHCR's protection and assistance programs in the countries USCR and ECRE visited for this study and in many other locations where UNHCR's ability to effectively operate has been decimated by recent budget cuts. ECHO, currently not serving refugee populations in the countries visited for this report, could also do considerably more in the way of providing overseas assistance to refugees.

While overseas assistance needs for refugees are a real and pressing priority, it would be wrong to conclude that resettlement has no place in providing solutions for refugees. This is abundantly clear once the three solutions for refugees - repatriation, local integration, and resettlement - are viewed out of the abstract and in a real-world context. For example, the case studies in this report show that most Iraqi refugees in Turkey and Middle Eastern countries cannot safely repatriate or locally integrate, and often face serious protection concerns in their countries of first asylum, including the threat of *refoulement*. These conditions leave resettlement or onward spontaneous travel to seek asylum as the only solutions open to these individuals. Thus, while more costly than providing care and maintenance to refugees in most countries of first asylum, resettlement serves the important function of providing protection to a limited number of individuals without other options. Unlike care and maintenance assistance, resettlement also provides a durable solution for refugees at risk in insecure countries of first asylum as well as for long-stayer refugees who have little hope of repatriation and limited rights in countries of first asylum.

Done well, refugee resettlement has other benefits that are impossible to measure in monetary terms. As an act of responsibility sharing, resettlement can play a role in accomplishing the broader goal of enhancing protection for thousands, if not millions, of other refugees for whom admission to western countries will never be a possibility. Ideally, resettlement should be used to create additional leverage with other countries—so that countries of first asylum will keep their doors open to provide at least temporary asylum in the immediate vicinity of conflict and so that other more distant countries will also be encouraged to share in the responsibility for resolving the plight of refugees. While this report has highlighted the many protection problems for refugee in the countries visited for this study, USCR's and ECRE's fieldwork also strongly suggests that far greater numbers of refugees would be treated substantially worse were it not for the "asylum space" that resettlement helps to create.

Finally, there are political and educational benefits to resettling refugees, as shown by the outpouring of public generosity in Europe and the United States toward Kosovar refugees evacuated from Kosovo from Macedonia during the Kosovo crisis in the spring of 1999. The resettlement of these refugees (on a temporary basis in Europe and permanent basis in the United States) helped to educate the public about the plight of refugees and generated considerable public support, not just for refugee resettlement but for other humanitarian programs as well.