



UNHCR Observations on the Communication from the European Commission to the Council and the European Parliament on Regional Protection Programmes
[COM (2005) 388 final, 1 September 2005]

Introduction: Policy Objectives

The Office of the United Nations High Commissioner for Refugees (UNHCR) welcomes the Communication on Regional Protection Programmes issued by the European Commission¹, and its stated aim to ‘enhance the capacity of areas close to regions of origin to protect refugees’, and to help ‘create the conditions for durable solutions’², including through voluntary repatriation, local integration or resettlement. These activities go to the core of UNHCR’s mandate.

The Communication responds to a call from the European Council in its Conclusions of 2-3 November 2004 for ‘an action plan for one or more pilot Regional Protection Programmes, based on the principle of solidarity and fair sharing of responsibility... (which) should be situation-specific and protection oriented.’³ The Hague Programme of November 2004⁴ subsequently defined the EU’s priorities in the area of asylum and migration for the period 2005-2010. It acknowledged the need for the EU to contribute ‘to a more accessible, equitable and effective international protection system in partnership with third countries and to provide access to durable solutions at the earliest possible stage’.

UNHCR welcomes the EU’s intention to work in partnership with third countries and its commitment to provide resources to enhance refugee protection, including through Regional Protection Programmes. However, it is important to bear in mind that durable solutions will not always be available in regions of origin or transit for all people in need of protection. Furthermore, in view of the limited resources available for these programmes at present, and the short timeframe, UNHCR encourages the setting of feasible objectives. Such objectives should be discussed and agreed with relevant counterparts at all levels.

As proposed in the Communication, RPPs are to comprise two main elements: measures to enhance the protection capacity of areas close to refugees’ regions of origin; and a joint EU resettlement programme. UNHCR appreciates the objective benefits which capacity-building and resettlement can bring, and wishes to emphasize a number of principles which it believes should guide the further development of the Regional Protection Programme concept.

¹ Hereafter ‘the Communication’.

² Communication, paragraph 5.

³ Council Conclusions on improving access to durable solutions: managed entry to the EU of persons in need of international protection and enhancement of protection capacity of the regions of origin, 2-3 November 2004 (General Affairs and External Relations Council).

⁴ OJ C 53, 3.3.2005.

Ensuring and maintaining access to fair and effective asylum systems in Europe

UNHCR has consistently underlined that any EU initiatives involving third countries on migration and asylum must be additional to, and not in substitution for, access to fair asylum procedures in Europe. Indeed, the Commission acknowledged this principle in its earlier Communication on the ‘managed entry’ of persons in need of international protection, stating that managed entry ‘should be complementary and without prejudice to the proper treatment of individual requests for asylum expressed by spontaneous arrivals in the EU’⁵.

Initiatives in or with third countries do not alter Member States’ international legal obligations. Access to Member State territory and an effective opportunity to seek asylum for persons arriving spontaneously at the EU border or in EU territory and who may be in need of protection, remain essential. The Member States’ commitment to continue to provide protection is reaffirmed in the Hague Programme’s objective of ‘improving the common capability of the Union and its Member States to guarantee fundamental rights, minimum procedural safeguards and access to justice, to provide protection in accordance with the Geneva Convention and other international treaties to persons in need’⁶. This commitment is also important in light of the EU’s role in setting standards which can influence the practices of other countries.

Consultation with countries of origin and transit

Planning for the RPPs must take place in full consultation with the countries in the priority regions identified in the Communication. Their support for and active engagement in the RPPs will be essential. The knowledge and experience of competent authorities, at national, regional and local levels, should inform and enhance the RPP design and implementation process.

Coordination with development, humanitarian and other assistance providers

UNHCR welcomes the Communication’s recognition that it is necessary to ensure ‘the coordination of EU refugee, humanitarian and development policies to address the full range of protection needs’, and its acknowledgement that RPPs should be undertaken where ‘protection gaps’ exist and where the Programmes will ‘complement and add value to activities... which are already taking place’⁷. Indeed, the EU is already funding a variety of actions in the countries identified for pilot Regional Protection Programmes. To ensure that the RPPs effectively complement ongoing activities, it will be important that they are developed and implemented in consultation with actors with well-established programmes and experience in the countries concerned, and that they are not seen as a replacement.

In its recent Communication on Migration and Development⁸, the Commission refers to the RPP proposal as a contribution to the debate on how to respond to refugee crises in the

⁵ Communication from the Commission to the Council and the European Parliament ‘On the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin’ (COM(2004)410 final); paragraph 12; see also paragraph 25.

⁶ Hague Programme, introduction.

⁷ Communication, paragraph 5.

⁸ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on ‘Migration and Development: some Concrete Orientations’, COM(2005)390 final.

developing world⁹. It is clear that the pilot RPPs, which are of limited scope, cannot address all the challenges facing refugees and their host countries. In order to encourage strategies to bridge the gap between emergency response and long term solutions to displacement crises, UNHCR encourages the EU to recognize forced displacement as a cross-cutting concern in development policies, and to incorporate the needs of refugees and displaced people into development planning.

Resources and expectations

The Communication confirms that there will be no new financing framework at present for Regional Protection Programmes. Instead, the RPPs will draw on the existing AENEAS and TACIS programmes,¹⁰ which are also intended for asylum-related projects in regions beyond those targeted for the RPPs.

Given the limited funding available, it will be important to set reasonable expectations for the pilot RPPs, and to allow realistic timeframes for the bidding and contracting process, as well as for implementation of the selected projects. This will help to ensure that the RPP process will ultimately yield practical outcomes.

UNHCR hopes that any future RPPs, which would fall under the next Financial Perspective and its budget for assistance to third countries in the asylum area, would be supported by a larger financial envelope. The scope for coordinating available financial resources with budget lines and programmes in other areas of EU assistance could be explored further. However, this should not be at the expense of ongoing and new development and humanitarian activities in key areas of need.

Content of RPPs: Specific activities foreseen under the pilot projects

The Communication lists seven core categories of activities for a Regional Protection Programme, which could contribute to the effectiveness of refugee protection. In this context, it refers to helping host countries to 'manage the migration implications of refugee situations, thereby allowing them to better focus resources on the core refugee population'. UNHCR wishes to underline its expectation that the central focus of the RPPs will remain on improving protection and access to durable solutions. To this end, specific activities will need to be elaborated, in light of the context, needs and capacity of the countries concerned. UNHCR agrees that the following measures, among others, could be particularly helpful:

- **Registration:** The Communication emphasizes the use of the registration component of the Regional Protection Programmes as a tool for measuring the Programmes' impact. However, as stressed in Conclusion No. 91 (LII) of UNHCR's Executive Committee¹¹, registration is first and foremost a tool of protection, and a means to enable the quantification and assessment of needs and to implement appropriate durable solutions. As such, any programme which aims to improve deficient registration practices and standards is to be welcomed. For its part, UNHCR will continue its global efforts to improve registration practices and standards, including through Project PROFILE as appropriate.

⁹ COM(2005)390 final, Conclusion, paragraph 1 (page 10).

¹⁰ Communication, paragraph 4.

¹¹ Conclusion on Registration of Refugees and Asylum-Seekers, Number 91 (LII) 2001.

- Projects to support the establishment of effective refugee status determination procedures, as appropriate, taking into account the differing stages of development of the asylum systems in the countries concerned, the varied size and nature of the groups of people seeking protection, and the distinct legal and political frameworks;
- Training in refugee protection issues for persons dealing with asylum-seekers, refugees and migrants is an important area of activity. This recommendation could be extended beyond persons directly involved in reception, casework or asylum decision-making. Other institution-building activities, including awareness-raising for policy-makers, and the development of administrative and other relevant structures could be considered.
- Projects to benefit the local community, to mitigate environmental impacts as well as strains on local services and facilities caused by the presence of refugees, are vital to creating a receptive environment. Such activities could extend to projects aimed at strengthening governmental counterparts as well as civil society, including non-governmental organizations and educational institutions which often play a valuable role in the support, care and advocacy for refugees.
- Projects to promote self-reliance in the countries of asylum as well as sustainable, voluntary repatriation. Refugee protection and durable solutions go hand in hand. While the RPPs are to have a resettlement component, it may also be helpful to explore the extent to which they can support other durable solutions, including voluntary repatriation and local settlement.

Resettlement

The Communication's list of activities confirms the interest of the Commission and the Council in resettlement to the EU. UNHCR welcomes the commitment to a joint EU resettlement programme, as expressed in the Council Conclusions of November 2004¹² and the Hague Programme¹³. The Communication foreshadows a proposal to amend the European Refugee Fund, so that 'resettlement under Regional Protection Programmes can be substantially financed by the Community'.¹⁴ UNHCR supports the provision of resources for this purpose, and hopes Member States will see this as an additional reason to undertake new or expanded resettlement activities.

UNHCR further welcomes the Communication's expectation that resettlement under Regional Protection Programmes should be in addition to national programmes, 'adding substantially to the existing resettlement effort rather than simply re-packaging current schemes in the context of RPPs'¹⁵. The proposed EU resettlement scheme is limited at present to a modest proposal for resettlement from those countries which are the subject of Regional Protection Programmes, to those EU States which volunteer to participate. UNHCR encourages Member States to consider extending the scope of a common EU resettlement scheme, to make it a flexible tool which could be used to resettle refugees wherever and whenever there are pressing needs, not only in the context of specific RPPs.

¹² Council Conclusions, 2-3 November 2004, paragraph 7.

¹³ Hague Programme, section 1.6.2, paragraph 2.

¹⁴ Communication, paragraph 8.

¹⁵ Communication, paragraph 9

Regions identified for the first Regional Protection Programmes

UNHCR appreciates the Commission's consideration of the 38 protracted refugee situations identified by UNHCR in 2004¹⁶, in which 25,000 or more refugees have been living in exile for at least five years. These, and the other situations which qualify for this sobering designation over time, are definitely candidates for support from the EU in Regional Protection Programmes and otherwise.

UNHCR agrees that needs for capacity building and for resettlement exist in both the Western Newly Independent States ('WNIS') of Belarus, Moldova and Ukraine, and in Tanzania, along with other areas in Sub-Saharan Africa. UNHCR has well-established programmes in the Western NIS and in Tanzania, including substantial activities supported by EC funds. UNHCR works successfully in these regions with the host governments and a wide range of other partners. Its established relations with these actors could provide a useful starting-point for a coordinated effort. The following comments are based on UNHCR's experience in the regions concerned:

Western NIS

A Regional Protection Programme will need to build on the already well-developed range of activities and programmes in that region, and should seek to identify and fill gaps in the protection framework. A coherent regional strategy, as well as further scrutiny of the specific needs in the countries concerned, will be required.

Some key areas have been highlighted in the "gaps analysis" recently undertaken by UNHCR in the wider Commonwealth of Independent States (CIS) region¹⁷. Also, the activities initiated under the EC-TACIS programme and in the context of the Cross-Border Cooperation (Söderköping) process will provide an important foundation for the RPP.

Efforts to promote durable solutions for refugees in this region should address the need to create greater scope for local integration. This will involve working with and encouraging the local authorities to take the steps required. Resettlement, as part of a burden-sharing effort, could reinforce efforts to establish viable asylum systems and to create opportunities for local integration.

Tanzania

Tanzania hosts Africa's largest concentration of refugees, mainly from Burundi and the Democratic Republic of Congo. The tremendous scale of needs must be acknowledged, and the RPP pilot should be seen as part of a broader effort, involving humanitarian and development actors from the EU and elsewhere, with a much longer timeframe than the Council may set to evaluate the success of the pilot programme.

Moreover, the situation in the region is evolving rapidly, with respect both to Burundi and the Democratic Republic of Congo. Flexibility in the preparation of a pilot programme will therefore be required. Prospects for significant voluntary repatriation movements in

¹⁶ UNHCR Standing Committee document, 'Protracted refugee situations', EC/54/SC/CRP.14, 10 June 2004. Available on www.unhcr.org

¹⁷ UNHCR, Regional Bureau for Europe, "Identifying Gaps in Protection Capacity: CIS Countries", September 2005.

particular will have to be taken into account, and these may have an impact on the potential for resettlement activities.

UNHCR has been present in Tanzania for decades and has extensive operations there. UNHCR's recent work in Tanzania under the Strengthening Protection Capacity (SPC) project, financed largely by EC budget line B7-667, has produced a detailed analysis of protection gaps.¹⁸ A plan of action to address these has been developed through consultation with governmental and other stakeholders,¹⁹ and could usefully inform a small pilot RPP.

Evaluation and sustainability

The Communication also looks ahead to the future of RPPs. UNHCR agrees that any further initiatives should await the evaluation of the first pilot projects. The future direction of RPPs will depend also on the political engagement, not only of the EU, but of potential target regions, as well as their absorption capacity and the practical scope for improving the lives of refugees and prospects for durable solutions.

Evaluation should take place after a reasonable period has elapsed for implementation of the pilots, allowing for changing conditions on the ground, and for the emergence and systematic examination of results. However, capacity-building measures are inherently difficult to evaluate in quantitative terms. It is particularly challenging to judge the impact of training measures or public awareness activities on the well-being of refugees and asylum-seekers. The achievements of RPPs could be examined through broader qualitative assessments in specific areas where gaps had previously been identified. In a short space of time, qualitative assessment is likely to offer the most instructive measurement of progress. Quantitative assessments, based on statistics for durable solutions achieved, or numbers of beneficiaries of protection, may prove difficult to link directly to the activities of the RPP.

UNHCR's role

UNHCR is ready to contribute to discussions about the content and implementation of the proposed pilot Regional Protection Programmes, and about other RPP initiatives in the future. Its experience in the regions identified for the pilot programmes, and other refugee-affected areas, equip it well to take forward concrete activities, and ensure their coordination with other initiatives aimed at improving the availability and quality of protection for refugees.

UNHCR
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¹⁸ UNHCR, "Identifying Gaps in Protection Capacity: Tanzania", March 24, 2005, available on www.unhcr.org

¹⁹ UNHCR, Strengthening Protection Capacity Project, "Recommendations from the Tanzania National Consultation", April 5-6, 2005; and "Report of the Meeting of Partners on the Implementation of the Plan of Action", Dar es Salaam, Tanzania, July 12, 2005, available on www.unhcr.org