

The Challenge of Protecting Refugees: UNHCR's Recommendations for Finland's 2006 EU Presidency

Five years after its meeting in Tampere in October 1999, the European Council adopted the Hague Programme¹, setting a new multi-annual agenda to strengthen security and justice in the European Union. This agenda addresses both the internal and external dimensions of asylum and migration.

With regard to the internal dimension, EU Member States agreed to work to improve the “common capability of the Union and its Member States to guarantee fundamental rights [...] and [...] to provide protection in accordance with the Geneva Convention on Refugees and other international treaties to persons in need [...].” This objective is to be achieved by building a Common European Asylum System “based on the full and inclusive application of the Geneva Convention on Refugees and other relevant treaties”.²

With regard to refugees outside the European Union, the Hague Programme reiterates that EU policy should aim at assisting third countries to improve their capacity for refugee protection, and to resolve refugee situations by providing better access to durable solutions.³

UNHCR would like to take advantage of the mid-point review planned by the Republic of Finland (Finland) to highlight a number of issues, as set out below.

Preserving access to protection in the context of broader migration challenges

The number of asylum applications in the European Union fell in 2005 to 237,840, the lowest level since 1988.⁴ The number of *new* applications is lower still, as the figure cited above includes both repeat applications within individual Member States and applications subject to the Dublin II Regulation.⁵

The decline in applications may, to some extent, reflect improved conditions in certain countries and regions of origin and transit. However, UNHCR is concerned that it may also reflect the impact of border control and offshore interception measures undertaken or supported by EU Member States. Such measures, which aim at combating irregular

¹ The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, OJ C 53/1, 3.3.2005.

² Ibid., p. 1.

³ Ibid., p. 5, p. 17.

⁴ UNHCR, Asylum Levels and Trends in Industrialized Countries, 2005, 17 March 2006, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/statistics/openssl.pdf?tbl=STATISTICS&id=44153f592>.

⁵ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L 50/1, 25.2.2003.

migration into the EU, may, if applied indiscriminately, affect the possibility to seek protection in the EU. UNHCR believes that EU Member States should assess the extent to which border control measures applied by them allow persons seeking protection to have access to Member States' territories and asylum procedures.

Access to the territory and to a fair and efficient asylum procedure for persons seeking international protection is essential, if States are to respect their international obligations. Interception measures need to comply in particular with the principle of *non-refoulement*. Steps need to be taken to ensure that asylum-seekers and refugees are identified in the context of broader migration movements, and that their specific needs are met.

Recommendation: UNHCR encourages Finland to promote respect for the institution of asylum in the context of EU measures to combat irregular migration. Access to the EU territory and to a fair and efficient asylum procedure for persons seeking international protection rank should stand at the top of the Finnish EU Presidency's priorities. Similarly, the need for protection-sensitive border management systems, including measures to identify and protect refugees, and for cooperation with UNHCR should be an integral part of discussions with third countries on migration issues.

Quality of asylum decision-making

In its Communication on strengthened practical cooperation, the European Commission stressed that such cooperation should lead to an "improvement in quality across all aspects of the management of asylum in Member States and particularly on decision making, given the focus of the Hague objectives".⁶ UNHCR applauds this statement. The significant number of negative first-instance asylum decisions which are overturned on appeal in many Member States is an indication that there is considerable room for improvement. The European Commission and Member States should work to ensure that asylum procedures are of a high quality. UNHCR is ready to contribute actively to initiatives to ensure that asylum procedures are fair and efficient, and that protection is extended to all those who need it.⁷

Recommendation: UNHCR hopes that Finland encourages the European Commission and Member States to develop and support concrete initiatives to assess and improve the quality of asylum decision-making in the European Union. Based on its mandate and in view of its long experience, UNHCR should be closely involved and invited to contribute to an EU-wide "Quality Initiative".

⁶ Communication from the Commission to the Council and the European Parliament on Strengthened Practical Cooperation – New Structures, New Approaches: Improving the Quality of Decision Making in the Common European Asylum System, COM(2006) 67 final, 17.2.2006, paragraph 4.

⁷ See UNHCR Observations on the Communication from the Commission to the Council and the European Parliament on Strengthened Practical Cooperation – New Structures, New Approaches: Improving the Quality of Decision Making in the Common European Asylum System, 25 April 2006.

Long-term residence rights for beneficiaries of international protection

On 25 November 2003, the Council adopted the “Directive concerning the status of third-country nationals who are long-term residents”.⁸ While the original Commission proposal⁹ also included refugees as beneficiaries of the rights contained in the Directive, the Council decided to work at a later stage on the long term residence rights of refugees. The Commission is therefore now preparing a draft amendment to the November 2003 Directive, with a view to extending the rights of long-term residents to refugees and beneficiaries of subsidiary protection.

UNHCR welcomes this initiative and encourages Member States to ensure that both refugees and holders of subsidiary protection status will be entitled to move and reside within the Union under appropriate conditions. In addition, it should be assured that making use of the freedom of movement within the European Union does not result in the loss of protection, as long as protection is needed.

Recommendation: It is hoped that Finland encourages the European Commission to issue the draft amendment to the “Council Directive concerning the status of third-country nationals who are long-term residents” at the earliest possible date, and to include in its scope both refugees and beneficiaries of subsidiary protection. Furthermore, Finland is encouraged to take all necessary steps to ensure that the negotiations by the Council on this issue proceed quickly and result in strengthened rights for persons enjoying international protection in the European Union.

Responsibility-sharing within the EU

During the Finnish EU Presidency, the European Commission is expected to issue its Report to the European Parliament and the Council on the application of the Dublin II Regulation.¹⁰ Both UNHCR and the European Council on Refugees and Exiles (ECRE) have undertaken comprehensive research on the Dublin system and have recently published their findings.¹¹ These reports highlight the need for a system to ensure equitable sharing of responsibility for the examination of asylum applications in the European Union.

⁸ Council Directive 2003/109/EC, OJ L 16/44, 23.1.2004.

⁹ Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents, COM(2001) 127 final, 13.3.2001.

¹⁰ Op. cit. note 5, Article 28.

¹¹ See UNHCR, “The Dublin II Regulation – A UNHCR Discussion Paper”, April 2006, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDLEGAL&id=4445fe344>; also see ECRE, “Report on the Application of the Dublin II Regulation in Europe”, March 2006, available at: <http://www.ecre.org/positions/ECRE%20Dublin%20Report%2007.03.06%20-%20final.pdf>.

Also, the European Parliament, in a recent Resolution on the situation with respect to refugee camps in Malta, urged the Commission to take the initiative as soon as possible to revise the Dublin II Regulation and to introduce a fair mechanism for sharing responsibilities among the Member States.¹²

Recommendation: Based on the forthcoming Commission report on the application of the Dublin II Regulation as well as on the findings of UNHCR and ECRE, Finland is encouraged to initiate discussions in the Council with the aim of reviewing the Dublin II system and possible alternatives, to achieve a more equitable system for sharing the responsibility for determining asylum applications.

EU support for UNHCR's work in Europe

The Amsterdam Treaty recognizes UNHCR's key role in the context of asylum matters in general and the development of the Common European Asylum System in particular.¹³ UNHCR wishes to contribute actively and constructively to this unprecedented effort. However, in view of the challenges facing UNHCR in other parts of the world, the resources available to UNHCR to support its protection work in the European Union are increasingly limited. While the Commission and the Member States are important donors to UNHCR's programmes,¹⁴ many of their contributions are earmarked for activities outside of the EU.

For its part, UNHCR is engaged in an effort to refocus and rationalize its structure and presence in Europe, through six Regional Representations. UNHCR remains nonetheless committed to its protection responsibilities and to the role given to it in the Amsterdam Treaty and asylum-related EU legislation.¹⁵ UNHCR therefore suggests that the Finnish Presidency consider putting on the agenda for Council discussion the need for the European Commission and Member States to provide substantial direct support to cover the costs of UNHCR's presence and protection work within the EU.

¹² See European Parliament Resolution on the situation with refugee camps in Malta, 6 April 2006, P6_TA(2006)0136, paragraph 15.

¹³ See Declaration No 17 to the Amsterdam Treaty stating that "[c]onsultations shall be established with the United Nations High Commissioner for Refugees and other relevant international organisations on matters relating to asylum policy".

¹⁴ The list of donors to 2005 UNHCR programmes is available at: <http://www.unhcr.org/cgi-bin/texis/vtx/partners/openssl.pdf?tbl=PARTNERS&id=42aee4a72>.

¹⁵ See for instance Recital 15 of the Qualification Directive (Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304/12, 30.9.2004) and Articles 10(1)(c) and 21 of the Asylum Procedures Directive (Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326/13, 13.12.2005).

Recommendation: Finland, at the informal JHA Council in Tampere in September 2006, may wish to initiate discussions on how best to support UNHCR's work in EU, to enable it to continue to play an active role in the development of the Common European Asylum System.

Resettlement

UNHCR considers resettlement to be an important tool of refugee protection as well as a concrete sign of responsibility-sharing and a durable solution to refugee problems. Resettlement also may have a considerable strategic value. It can open up space for constructive dialogue with third countries about improvements in the quality of refugee protection and other lasting solutions.

As stated in the General Affairs Council Conclusions of 2 November 2004, the targeted use of resettlement will demonstrate the EU's commitment towards international efforts to find comprehensive and effective solutions to protracted refugee situations.¹⁶ The resettlement of refugees to EU Member States from countries of first asylum in regions of origin will be an important way of demonstrating the partnership element of Regional Protection Programmes (RPPs) to third countries. This view is also shared by the European Commission.¹⁷

UNHCR welcomes the idea of an EU resettlement programme and supports the provision of resources for this purpose. However, an EU resettlement scheme has so far only been discussed in connection with Regional Protection Programmes and without concrete results to date. Only a small number of European Union countries admit refugees for resettlement. UNHCR encourages all Member States to consider joining the refugee resettlement effort and is prepared to work with the EU and its Member States to this end.

Recommendation: Finland, as one of the few EU Member States with an annual resettlement quota, can encourage the Commission to propose new or expanded resettlement activities in the European Union. While resettlement should be an inherent part of EU Regional Protection Programmes, it should also be considered as one of the durable solutions for refugees and not be limited to the context of RPPs.

¹⁶ See 2614th Council Meeting, General Affairs and External Relations, 13588/04 REV 1 (Presse 295), 2 November 2004, Persons in need of international protection – *Council Conclusions*, paragraph 7.

¹⁷ See Communication from the Commission to the Council and the European Parliament on Regional Protection Programmes, COM(2005) 388 final, 1.9.2005, paragraph 7.

Strengthening protection capacity in third countries

Most refugees find protection in their regions of origin, usually in the developing world. Humanitarian aid generally addresses their immediate, short-term needs. Longer-term assistance is required for the principal durable solutions – voluntary repatriation and settlement in first countries of asylum – to be sustainable. In this context, UNHCR welcomes the current discussions on migration and development and on the need for a coherent approach to these issues.

UNHCR urges the EU clearly to acknowledge the importance of development aid with respect to durable solutions for refugees and forcibly displaced persons, as this link is often neglected.¹⁸

On 14-15 September 2006, the UN High Level Dialogue on International Migration and Development will take place in New York. The need to bridge the gap between humanitarian relief and development aid in order to promote durable solutions for refugees and other forcibly displaced populations will necessarily be discussed. This event could provide an entry point for the European Union to take the lead to promote more attention to this issue at the international level.¹⁹

Recommendation: Finland is encouraged to ensure that EU discussions on migration and development take into account the need to fill the gap between humanitarian aid and development, with a view to promoting sustainable solutions to refugee problems. In this context, the High Commissioner would be pleased to participate in an informal meeting of European Union Ministers of Development Cooperation.

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¹⁸ See UNHCR Observations on the European Commission Communication: “Migration and Development: Some concrete orientations”, available at: <http://www.unhcr.org/cgi-bin/tehis/vtx/protect/pendoc.pdf?tbl=PROTECTION&id=4360a51cd5>.

¹⁹ See in this context also European Commission, United Nations High Level Dialogue on International Migration and Development (14-15 September 2006): The European Union Common Policies and Programmes – Memorandum, 12 April 2006.