

ANNUAL TRIPARTITE CONSULTATIONS ON RESETTLEMENT
Geneva, 20-21 June 2001

Background Note for the Agenda Item:
**STRATEGIC UTILISATION OF RESETTLEMENT TO ENHANCE
ASYLUM AND PROTECTION PROSPECTS**

I. RESETTLEMENT, GLOBALISATION AND INTERNATIONAL MIGRATION

1. The question to ask is “How much further should resettlement move from being the *exceptional* response in specific individual situations to which it was relegated post-the Southeast Asian refugee experience?” More specifically, is there a role for resettlement in the nexus between international migration, border control mechanisms, and the international obligations to provide access to asylum and protect refugees from ‘*refoulement*’? These important open questions are critical for UNHCR and its partners in resettlement, and should be addressed in the immediate future.

2. Migration, as a worldwide social phenomenon, has become a permanent fixture of the new globalised economy. An increasing number of persons are on the move across international borders. At the beginning of the 1990’s, 80 million people were estimated to be in the migration stream. As the century ended, that number had increased to 120 million. The 22 million refugees and other persons of concern to UNHCR are a small but important piece of this larger phenomenon.

3. In many parts of the world, the entanglement of migration and asylum has made the work of UNHCR more complex and challenging. One of the outcomes of globalisation is a higher degree of human mobility. People searching for protection travel alongside those just seeking better economic prospects. Some States have created an array of obstacles aimed at preventing migrants from reaching their territories, even as they are concerned about the expense and difficulty of sorting out who needs protection.

4. As a consequence, many asylum seekers resort to unscrupulous criminal trafficking and smuggling networks – becoming victims yet again. Fair asylum systems must be an essential component of any strategy to combat migrant trafficking and smuggling. The choice is between a world of law and the law of the jungle. UNHCR can help States to build and strengthen their governance capacity in refugee matters.¹

5. At the same time, recent studies project that at least 83 countries will see negative population growth in the next 15 years, most of these in the developed world. This demographic shift will have, in the opinion of some experts, a significant impact on the social infrastructures and economic stability of these countries. Some believe that many countries may be forced to adopt more generous immigration policies to sustain current levels of economic growth and maintain their standards of living. The tension between the “fear of the stranger” at the gate and the impact of these important demographic

¹ See address by UN High Commissioner Ruud Lubbers to the 57th Session of the United Nations Commission on Human Rights, Geneva, 21 March 2001.

indicators is an important factor affecting the international debate over migration generally, and by consequence, refugee protection, asylum and resettlement.²

6. Why are these broad globalisation and migration trends important to the UNHCR resettlement efforts? *First*, they form the broad context through which donor States view UNHCR policy, practice, and programme implementation, including the continued relevance of the mandate to provide international protection to refugees. In a narrow sense, this new context of globalisation and international migration is also affecting perceptions about the role and function of resettlement within the governance and programme operation of the organisation.

7. *Second*, these trends, combined with the changing nature of conflict, the ever-increasing complexity of humanitarian assistance in situations of inter-ethnic armed struggle, and the intractability of many refugee situations, have put pressures on UNHCR to adapt the principles of its mandate and the obligations and responsibilities that flow from the 1951 Convention to the new realities of today's world. Indeed, some have challenged the very core of the 1951 Convention and its applicability to solving today's refugee problems.³

8. *Third*, undoubtedly, the pressures generated by international migration impel many States to gravitate towards policies that rely on control and enforcement mechanisms. UNHCR continues to be concerned about how these increasingly restrictive mechanisms affect the obligations of States to maintain access to asylum in line with the 1951 Convention and other instruments of international law.⁴

II. REFUGEE PROTECTION AT THE CORE

9. The cornerstone of the mandate given to UNHCR by the international community is the obligation to ensure that refugees are protected. However, the responsibility to guarantee legal and physical protection lies foremost with States. Creating or restoring a protection regime at the national level, through the attainment of durable solutions, is therefore the desired outcome and in the interest of the international community at large.

Resettlement and Asylum as two expressions of protection

10. While refugees have fundamentally different reasons for moving across international borders than other migrants, many times they are part and parcel of this broader migration phenomenon. States, unwittingly at times, seriously impact the relevance of the international refugee regime through imposition of control mechanisms such as airport pre-inspection abroad, interception and visa restriction regimes. Refugees are left with few options when faced with these enforcement measures; many

² See Jeremy Harding, *The Uninvited: Refugees at the Rich Man's Gate*. Profile Books/London Review of Books, London, 2000.

³ See statement by Erika Feller, Director, Department of International Protection to the 18th meeting of the Standing Committee, 5 July, 2000: "The Convention is unfortunately more and more held accountable for what it has not achieved ... This is particularly the case where migration and asylum intersect ... [it] has, for example, been charged as being useless in the face of important irregular migration challenges. This, in UNHCR's view, is false reasoning."

⁴ See *Interception of Asylum Seekers and Refugees: The International Framework and Recommendations for a Comprehensive Approach*, UNHCR document EC/50/SC/CRP.17, 18th Meeting of the Standing Committee, 9 June 2000.

times the only viable option for passage is to join the migration stream and use irregular if not illegal means of egress and entry into countries of asylum.

11. Resettlement, as a process, is by definition an orderly mechanism of identification, assessment, processing, transportation, reception and integration of individuals who need it in order to restore legal protection, obtain personal safety and find a durable solution to their plight. It is also, in most cases, a process of selection, subject to the judgment of States. Asylum, on the other hand, is a broader and essential form of protection to which States are committed in order to fulfil the core of the international protection regime: the principle of *non-refoulement*. Asylum is therefore a response to the individual need of the refugee to seek protection, and is not subject to selection criteria by States.⁵ While resettlement sometimes operates within larger efforts of migration management and legal and orderly immigration programmes, asylum is essential to protect refugees within the context of irregular and unregulated flows. Resettlement and asylum are but two expressions of the same refugee protection mandate; they should not be confused nor should they be viewed as oppositional or alternative means of offering international protection.

What resettlement is not

12. It is important, in this context, to define what resettlement is *not*. While it is indeed a multi-faceted response mechanism, it is not the panacea for all problems besetting asylum systems today, particularly those related to widespread illegal migration. Persons who meet resettlement criteria might well be different from asylum seekers who move from a country of first asylum and enter a third country in an irregular manner, much less those seeking to bypass migration controls by using the asylum channel. The 1951 Convention has at times been criticized for not doing something it was never intended to do – i.e. function as a migration management tool. It would be similarly inappropriate to distort the role of resettlement as primarily a tool for managing migration, particularly where this is at the expense of the right to seek asylum.

13. The decision to resettle refugees should not be approached in too discretionary a manner, with each State designing their own selection and eligibility criteria. Just as the institution of asylum is anchored in the protection mandate of UNHCR, resettlement also is centred on the same principle. This point is fundamental to the proper operation of UNHCR's protection mandate, which is pursued in the area of resettlement on the basis of criteria jointly agreed by States. The mandate of UNHCR is undermined when States are able to opt in and out of resettlement responsibilities because of considerations de-linked from protection needs or humanitarian concerns such as family ties.

⁵ Hence the right of the individual to seek and enjoy asylum, enshrined in Article 14 (1) Universal Declaration of Human Rights of 10 December 1949.

Resettlement as the rule or the exception?

14. The end of the large resettlement programmes for Vietnamese through the implementation of the various aspects of the Comprehensive Plan of Action (CPA) provided an opportunity for UNHCR to redefine resettlement and its intrinsic relationship to the overall protection mandate of the organization. A 1991 paper that sought to redefine resettlement policy was followed by an Executive Committee Conclusion that reaffirmed, in part, “the link between international protection and resettlement as an instrument of protection and its important role as a durable solution in specific circumstances”⁶

15. Throughout the early 1990s, emphasis was placed on a targeted approach that moved the organisation away from the larger scale programmes of the past and focussed efforts on the particular, individual protection function of resettlement for those refugees who needed relocation for security or personal safety reasons. Additional criteria were developed for refugees with special needs, such as medical cases, victims of severe forms of trauma and torture, women at risk, and other vulnerable refugees and incorporated in the “Resettlement Guidelines” issued in 1991.

New directions of resettlement policy and practice

16. An evaluation of UNHCR resettlement policy and practice, launched in 1994, called for a substantive revision of UNHCR resettlement policies, criteria, procedures, implementation and operational response as well as a renewal of cooperative arrangements with governments and non-governmental organisations.⁷ Recently, corrective measures are being complemented by other initiatives, including the launching of the integration initiative to strengthen, *inter alia*, the diversification of resettlement opportunities through agreements with – so far eight – new resettlement countries.⁸

17. Substantive and consistent efforts have been made to better rationalize and define resettlement policy and criteria, anchored in the core functions of the UNHCR mandate. UNHCR, very consciously, did so in close collaboration with both governmental and non-governmental partners. While well aware of UNHCR's limitations to deliver resettlement services due to staffing and resources constraints, these substantive gains have been consolidated through close collaboration with both governmental and non-governmental partners. UNHCR's policy, therefore, continues to place emphasis on anchoring resettlement as part of comprehensive protection and durable solutions strategies. Resettlement cannot stand alone; rather, the goal must be to realize the full potential of resettlement as a tool of international protection, as a durable solution, and also as a means of responsibility sharing.

⁶ Executive Committee Conclusion No. 67 (1991).

⁷ “*Resettlement in the 1990s: A review of policy and practice*”; an evaluation summary was prepared by the Inspection and Evaluation Service for the 1995 Consultations on Resettlement.

⁸ General information about the integration initiative and the *International Conference on the Reception and Integration of Resettled Refugees* can be found at <http://www.unhcr.org/cgi-bin/texis/vtx/protect?id=3b8366bc4>

III. RESETTLEMENT: A COMPLEMENT NOT A SUBSTITUTE FOR ASYLUM

18. A renewed interest in resettlement has emerged in the European Union (EU). While broadly seeking to re-examine the relationship of the 1951 Convention to what is considered the large-scale arrival of migrants into Europe, attention has focused on the development of a EU-wide resettlement programme. Some proposals, in this context, suggest screening mechanisms to identify refugees in their regions of origin, thus presumably helping to avoid exploitation by smugglers and traffickers and an often perilous journey to find safety and asylum in the EU. The perception exists that the asylum systems in the EU are overwhelmed, and that current high rejection rates indicate most asylum applicants are economic migrants who attempt to gain entry into Europe through the avenue of the refugee protection regime.⁹

19. The proposal to establish a EU-wide resettlement programme that could serve as a safer route for refugees to reach protection is not without precedent. In the context of the Southeast Asian programme, alternative strategies were designed to help potential refugees avoid the perils of flight by sea. UNHCR was instrumental in developing the Orderly Departure Programme (ODP) from Vietnam, which over the years facilitated the orderly migration of some 524,000 Vietnamese.¹⁰ Arguably, many of these persons would have taken to the seas if the ODP had not been available as an alternative route. The unintended consequence, in some cases, was that direct departure programmes became the preferred vehicle for resettling persons of humanitarian interest. By the early 1990s, for example, close to 85 percent of all resettlement admissions to the United States of America came via direct departure schemes, which had the unfortunate effect of marginalizing worldwide UNHCR efforts to focus on resettlement as a protection tool for refugees.

20. The initiative to expand resettlement in the European Union is important and welcome, as long as specific emphasis is placed on protection needs and the achievement of durable solutions under UNHCR criteria. EU member States currently resettle less than 3,000 under their quota systems.¹¹ On the other hand, the asylum systems of EU member States received a combined total of about 354,000 asylum applications in 1999.¹² 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

⁹ One example is the speech “An Effective Protection Regime for the Twenty-first Century” by Mr. Jack Straw before the Institute for Public Policy Research, London, 6 February 2001. Available from The Guardian Newspaper Limited, 2001 website. See also John Morrison, “*The Trafficking and Smuggling of Refugees: The Endgame in European Asylum Policy?*” A paper commissioned by UNHCR’s Evaluation and Policy Analysis Unit, Geneva, July 2000.

¹⁰ See W. Courtland Robinson, Terms of Refuge: The Indochinese Exodus and the International Response, Zed Books, London, 1998 at 56-58 and 171-175.

¹¹ See latest statistics (1999) in UNHCR website at <http://www.unhcr.org/statistics>. Only four EU member States have formal resettlement quotas programmes, Denmark, Finland, Netherlands and Sweden. Norway additionally has a quota of 1,500 per year, and Switzerland, though a resettlement country, has frozen the resettlement quota since 1998. Additionally, the United Kingdom and Germany resettle refugees in an ad-hoc basis without a formal quota system. Spain, Iceland and Ireland are emerging resettlement countries.

¹² See World Refugee Survey 2000, U.S. Committee for Refugees, Washington, DC, table 10 at 12.

realise a world of law and in giving practical meaning to the need to offer durable solutions to refugees under the UNHCR mandate.¹³

21. Key to any such effort, however, is the recognition of the inherent limitations of resettlement within the broader range of responses to a refugee crisis. It has to be viewed as a complement to other protection and assistance efforts and not as a substitute for asylum. Any use of resettlement, as an “off-shore” mechanism, to further restrict the admission of individual asylum seekers who are processed “on-shore” would undermine the right to seek asylum, anchored in the Universal Declaration on Human Rights.¹⁴ Answers to the impact of large numbers of asylum seekers in the developed economies must come from strategies and plans that provide complementary and additional protection options. Adopting restrictive policies towards spontaneous asylum seekers on the basis of the presence of a resettlement option elsewhere will only serve to undermine the validity of resettlement as a tool of international protection.

Complementary benefits of resettlement programmes

22. In addition to meeting the objectives of protecting refugees and providing them with a durable solution, resettlement can also act as a “safety valve” to relieve the strain on countries of refuge. This positive impact, sometimes in a quantitative way, at others in a qualitative or political way, can assist a country of refuge in coping with the sudden and sometimes large-scale arrival of refugees into its territory. These corollary and complementary benefits can mean that resettlement for the few can act as a positive motivator to maintain asylum for the many.

23. When resettlement efforts are undertaken in line with UNHCR policy and criteria, they can lead to a change in attitude and practice with regard to the asylum policy of a country of first refuge. The success of these strategies will depend on specifically agreed upon and time-limited arrangements with host countries so that the benefits of resettlement are evident not only for the resettled refugees but also for the asylum country. Such agreements could emphasise the preparedness of the international community to share part of the responsibility for refugees in a given country - by resettling a certain portion of refugees recognized in a status determination procedure. The country of refuge would need to complement these efforts by steps to institutionalise and implement fair asylum procedures and by granting adequate asylum conditions to those refugees who are not resettled.

24. Although not strictly a resettlement programme, the Humanitarian Evacuation Programme (HEP) and the Humanitarian Transfer Programme (HTP) for Kosovo Albanians in 1999 are practical examples of international solidarity in the effort to maintain first asylum in the midst of an evolving refugee crisis. UNHCR, with the cooperation of IOM and concerned States, moved almost 96,000 refugees out of harm’s way, creating a political space for the former Yugoslav Republic of Macedonia to maintain an open door and continue hosting more than 200,000 other refugees. Many of

¹³ See presentation by Mr. Ruud Lubbers, UN High Commissioner for Refugees, at the Informal Meeting of the European Union Ministers for Justice and Ministers for Home Affairs, Stockholm, 8 February 2001, and “*Mechanisms of International Cooperation to Share Responsibilities and Burdens in Mass Influx Situations*”, UNHCR Global Consultations on International Protection (EC/GC/01/7), February 2001, at 3-4.

¹⁴ See Article 14 (1) Universal Declaration of Human Rights of 10 December 1949.

these refugees, including those offered permanent resettlement as opposed to temporary refuge, returned to Kosovo after the end of the conflict.¹⁵

Giving the right signal

25. One goal in resettlement is to enhance, not diminish, asylum and protection prospects for the entire refugee population. While undertaking resettlement activities and thereby ensuring individual physical safety, UNHCR seeks to reinforce asylum in the host countries and to promote durable solutions benefiting the entire refugee population concerned. Such positive side effects of resettlement can be a realistic opportunity, if used consciously and strategically.

26. Resettlement can become an essential element of a comprehensive strategy of refugee protection and the attainment of durable solutions. Further dialogue will be necessary to explore these possibilities and complementary benefits of resettlement. The goal should be to utilise resettlement not only to resolve protection problems of individual refugees, but to enhance protection and asylum prospects of the remaining refugee population, possibly improving prospects for local integration strategies.

IV. COMPLEMENTING ASYLUM THROUGH SHARING RESPONSIBILITIES

27. The use of resettlement as a burden sharing mechanism to improve the quality of asylum in countries of refuge needs closer examination. Indeed, delineating the inter-relationship between the three traditional solutions will be an important issue discussed under the third theme -- "The Search for Protection-Based Solutions"-- of the Global Consultations on International Protection later in 2001 and 2002. Closer attention needs to be given to this inter-relationship, and the specific role that resettlement can play to advance burden and responsibility sharing among States.

28. There is a considerable recognition by States of the need to cooperate and ensure that movements across borders do not place a disproportionate strain on receiving States. To a significant degree this emerging principle reflects the practice of some States to act within the framework established in part in the Preamble to the 1951 Convention:

*"Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of the problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation ..."*¹⁶

29. In the early years after the Second World War, the General Assembly reiterated that durable solutions should be sought through voluntary repatriation and assimilation within new communities, either locally, in countries of refuge, or in countries of immigration.¹⁷ It was recognised that the initial "burden" may fall in fact upon the receiving country,¹⁸ but solutions are the responsibility of the international community

¹⁵ See UNHCR, *The State of the World's Refugees 2000: Fifty Years of Humanitarian Action*, Oxford University Press, Oxford, 2000, at 233-239. Other analysts view the HEP/HTP model with more scepticism, i.e., see Bill Frelick, "Humanitarian Evacuation from Kosovo: A model for the Future?" *World Refugee Survey 2000*, at 32-39.

¹⁶ United Nations Convention relating to the Status of Refugees of 28 July 1951.

¹⁷ UNGA res. 1166(XII), 26 Nov. 1957, paragraph 2 and UNGA res. 1285(XIII), 5 Dec. 1958.

¹⁸ UNGA res. 832(IX), 21 Oct. 1954.

at large.¹⁹ Based on the latter notion, in recent years the concept of “burden” sharing has been reframed as an effort to expand international solidarity and responsibility sharing.

30. This reformulation of “burden” sharing to responsibility sharing furthermore arises from the recognition that refugees are not a problem but part of the solution, as well as from the acknowledgment that countries of refuge are often the least equipped financially and logistically to assist refugees in situations of mass influx as well as those of a protracted nature.²⁰

31. The principles of cooperation and international solidarity have been consistently endorsed by the Executive Committee of the UNHCR Programme. In 1988, for example, it reaffirmed that “refugee problems are the concern of the international community and their resolution is dependent on the will and capacity of States to respond in concert and wholeheartedly, in a spirit of true humanitarianism and international solidarity.”²¹ In 1990 it emphasized “the close nexus between international protection, international solidarity, material assistance and the provision of solutions through voluntary repatriation, integration in countries of asylum, or resettlement.”²²

32. The resettlement programmes of the 1970’s and 1980’s, although heavily criticized by some, proved to be important mechanisms for solidifying responsibility sharing with countries of the Southeast Asian region, as well as protecting the basic institution of asylum. For many States in the region, the refugee protection equation was simple: temporary safe haven would only be available on the implicit and sometimes explicit commitment of the international community to resettle refugees out of their national territories. Two important complementary life-saving rescue programmes were developed as well, the Disembarkation Resettlement Offers (DISERO) established in 1979, and the companion programme established in 1985, the Rescue at Sea Resettlement Offers (RASRO). These programmes worked to save lives through the collective guarantee from a number of States that Vietnamese refugees would be resettled after being rescued at sea.²³

V. CONCLUSION

33. Resettlement is an important tool of international protection, and not primarily a migration management device. It is one of the durable solutions under the mandate of the UNHCR, not a discretionary immigration programme devoid of protection-based criteria and cross-cutting humanitarian principles. It is a means to promote responsibility sharing among States and therefore enhance asylum in countries of first refuge, not a panacea for overwhelmed asylum systems faced with the complex phenomena of irregular migration across international borders.

34. The most appropriate way to pursue resettlement is to ensure that policies and criteria are applied in a consistent and transparent fashion throughout every region of the

¹⁹ UNGA res. 1167(XII), 26 Nov. 1957.

²⁰ See Note on International Protection at the 51st Session of the Executive Committee (A/AC 96/930), as well as Conclusion No. 89 (2000). Additionally, see “*Mechanisms of International Cooperation to share Responsibilities and Burdens in Mass Influx Situations*”, cited above.

²¹ Executive Committee Conclusion No. 52 (1988) on International Solidarity and Refugee Protection.

²² Executive Committee General Conclusions on International Protection, (1990): *Report of the 41st Session*: UN doc. A/AC.96/760, paragraph 20.

²³ See *The State of the World’s Refugees 2000*, at 87. See also “*Mechanisms of International Cooperation to Share Responsibilities and Burdens in Mass Influx Situations*”, paragraph 14.

world, always carefully striking a balance between meeting needs and addressing quota-related issues. In this context, it is important to avoid magnet effects, just as it is imperative to dispel the perception of some host countries that resettlement is an automatic alternative to the provision of asylum. It is crucial and necessary, on a parallel basis, to develop other forms of effective interventions in first countries of asylum so as to enhance protection and solution strategies *in situ*, and to offer refugees genuine possibilities for leading their lives where they are.

35. Will resettlement emerge as a legitimate response to the concerns about the multifaceted impacts of international migration on the institutions of asylum? Much depends on a renewed commitment to the fundamental principles of international law, i.e., the recognition of the inviolate right of individuals to seek and enjoy asylum, and the indisputable obligations of States not to *refoule* refugees to situations where their liberty and lives are endangered. It will be critical to continue to focus on the complementary nature of resettlement and asylum, on the one hand, and to the other durable solutions, on the other.