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## **Postmillennial UNHCR refugee resettlement: New developments and old challenges**

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## **Introduction\***

Resettlement under the auspices of the office of the United Nations High Commissioner for Refugees (UNHCR) is a tool of protection and a durable solution for refugees. This paper contributes to the study of refugee resettlement by analyzing the policy development and challenges of the UNHCR resettlement after the turn of the millennium (the 2000s). While UNHCR has developed guidelines, tools and concepts to better manage the resettlement process, resulting in an increase of resettlement submissions, the admission criteria of resettlement countries have not fully adopted the protection based resettlement priorities developed by UNHCR. This disjuncture reveals two contentious issues: the double-screening of refugee claims and immigration-related restrictive or discriminatory selection criteria. Resettlement is highly dependent on the humanitarian and political will of resettlement countries in the vacuum of legal obligations.

The resettlement of a refugee to a third country from the country in which he or she first sought asylum is one of the three durable solutions (voluntary repatriation, local integration, and resettlement) that the office of the United Nations High Commissioner for Refugees (UNHCR) is mandated to seek, in tandem with its core function of providing international protection. Academic studies on refugee resettlement under the auspices of UNHCR are largely classified into three disciplinary approaches. One is a historical approach that examines the evolution of UNHCR resettlement in the macro-political landscape. Existing literature covers the development of UNHCR resettlement before and until 1990s.<sup>1</sup> The second approach is anthropological and reveals the micro-politics most specifically related to the identification of refugees for resettlement.<sup>2</sup> The third approach is to examine resettlement from a legal viewpoint.<sup>3</sup>

The current paper contributes to the study of UNHCR resettlement by analyzing the development and challenges of the UNHCR resettlement programme after the turn of the millennium (the 2000s) to answer one particular question: in what ways has the development of resettlement impacted international protection and what are the areas that may require further development?

## **Development of the UNHCR Resettlement Programme**

The UNHCR Resettlement Handbook<sup>4</sup> presents the following definition of resettlement:

Resettlement involves the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees – with permanent residence status. The status provided ensures protection against *refoulement* and provides a resettled refugee and his/her family or dependants with

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<sup>1</sup> See Troeller 2002; Troeller 1991; Bessa 2009

<sup>2</sup> See for example: Sandvik 2011; Jansen 2008; Horst, 2006

<sup>3</sup> The legal approach is often subsumed in the analysis of policies, noting that they are imbedded in international and domestic landscapes. Stanvik (2010) has made one such attempt, focusing particularly on the resettlement of refugees from Africa.

<sup>4</sup> UNHCR 2011a. The first edition of the Resettlement Handbook was published in July 1997; the handbook was then revised in 2004, and the most recent revision was made in July of 2011.

access to rights similar to those enjoyed by nationals. Resettlement also carries with it the opportunity to eventually become a naturalized citizen of the resettlement country.

The UNHCR resettlement programme has undergone historical shifts regarding its application and main resettlement caseloads. The earlier history of resettlement is an important prologue to understand its development after the turn of the millennium. As there are several good articles covering earlier resettlement, this section only summarizes major episodes.

### *Resettlement programmes before the millennium*

In the 1950s and 1960s, during the cold war era, most of the UNHCR's resettlement activities focused on resettling refugees from Eastern Europe to the West. In the 1970s, the focus began to shift from Europe to Latin America, Africa (Ugandan Asians) and, later in the decade, to Southeast Asia (Indo-China).<sup>5</sup> The resettlement of Indo-Chinese refugees from first asylum countries in Southeast Asia increased substantially in 1979.<sup>6</sup> The major thrust of UNHCR's resettlement operations centred on Southeast Asia during the subsequent decade. More than 1.2 million Indo-Chinese refugees were resettled under the auspices of the UNHCR between 1976 and 1991.<sup>7</sup> The Indo-Chinese refugee resettlement was conducted in a manner that it was almost an automatic transfer process of refugees from first countries of asylum to resettlement States.

This large scale and automated resettlement of Indo-Chinese refugees was eventually critically reviewed from within the UNHCR leading to 'considerable disenchantment' with the programme due to its abandonment of promoting first country asylum and because resettlement created a pull factor that led many Indo-Chinese to leave their homes for economic or social reasons rather than fleeing persecution.<sup>8</sup> On 14 June 2001, the Executive Committee (ExCom) of the High Commissioner's Programme made a remark that during the large-scale resettlement programmes of the 1970s and 1980s, 'resettlement was considered by many as having been divorced in its functioning from fundamental principles of protection and become a *migration programme in disguise*, which was compounding rather than resolving the problem.'<sup>9</sup>

Based on the criticisms of Indo-China resettlement, in the 1990s, the UNHCR shifted its resettlement policy and less promoted resettlement while taking steps to review and conceptualize it. As a result, the position of resettlement among the three durable solutions eroded, and resettlement became the 'least desirable durable solution'.<sup>10</sup> Additionally, in the 1990s, as the UNHCR faced mass influx situations in Eastern Europe, the Middle East and Africa, expensive major resettlement operations were no longer operationally attuned,<sup>11</sup> although the UNHCR continued to provide resettlement solutions for targeted refugee

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<sup>5</sup> Troeller 2002

<sup>6</sup> UNHCR 1981

<sup>7</sup> UNHCR 1991

<sup>8</sup> Troeller 2002

<sup>9</sup> UNHCR 2001a. emphasis added.

<sup>10</sup> Fredriksson and Mougne 1994

<sup>11</sup> Troeller 2002

situations, such as Afghanistan, the ‘lost boys’ from the Sudan, and Bantu Somalis in Kenya.<sup>12</sup>

Drawing from the lessons learnt, UNHCR concluded that ‘resettlement must not stand alone and has to be anchored within broader protection and durable solutions strategies’ and it identified the lack of basic standards as a problem with past resettlement.<sup>13</sup> A strong urge within the UNHCR drove the organization to re-establish resettlement apparatus to ‘realize the full potential of resettlement as a tool of international protection, as a durable solution, and also as an expression of international solidarity and burden or responsibility-sharing.’<sup>14</sup>

The general categories of refugees who qualify for resettlement because of protection and other specific needs were defined for the first time in 1991,<sup>15</sup> through which the concept of resettlement as a tool of protection was ‘crystallized’.<sup>16</sup> The 1991 paper defined situations where resettlement must be pursued. That were: the need for legal and/or physical protection; women at-risk; victims of torture/violence; physical or mentally disabled refugees; medical cases; long-stayers determined according to a time frame, which may be longer or shorter depending on the situation prevailing in the country concerned, or on conditions of asylum (including detention, denial of right to work, right to education of children, etc.) when there are no prospects for another durable solution; and family reunification needs.

In response to the need to develop a standard and strengthening resettlement mechanisms, the UNHCR presented a visionary paper in 1994 after an internal review of its resettlement policy. The 1994 paper illustrated directions in which the office could improve the management of resettlement in a concrete and comprehensive manner.<sup>17</sup> Its aim was also to bring about targeted protection-related resettlement according to well-defined UNHCR criteria.<sup>18</sup> A number of the recommendations suggested in this 1994 paper were subsequently implemented. The first Resettlement Handbook, which comprehensively outlined the process, criteria, goals, and objectives of the UNHCR resettlement programme was published in July 1997. UNHCR thereafter established the Resettlement Service, an independent unit, as a part of the Department of International Protection at its Headquarters, opened Regional Hubs and Regional Offices to oversee resettlement activities in respective regions, and developed objective resettlement needs criteria and various tools for harmonized assessment.

### *Resettlement in the Millennium: Defining resettlement as a protection tool*

Resettlement continued to evolve after the turn of the millennium under the same proposition. The significant achievements in the 2000s in comparison to before were that protection function of resettlement was clearly laid out, and key concepts were developed in an effort to

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<sup>12</sup> Loescher 2001

<sup>13</sup> UNHCR 2001a.

<sup>14</sup> *Ibid.*

<sup>15</sup> UNHCR 1991. Situations presented in the paper where resettlement must be pursued included the need for legal and/or physical protection; women at-risk; victims of torture/violence; physical or mentally disabled refugees; medical cases; long-stayers determined according to a time frame, which may be longer or shorter depending on the situation prevailing in the country concerned, or on conditions of asylum (including detention, denial of right to work, right to education of children, etc.) when there are no prospects for another durable solution; and family reunification needs.

<sup>16</sup> Fredriksson and Mougne 1994

<sup>17</sup> *Ibid.*

<sup>18</sup> Troeller 2002

standardize the resettlement application and reach out to a wider category of refugees in need of resettlement in a fairer, more systematic, and transparent manner. The UNHCR resettlement programme manifested its role as a protection tool.

The resettlement categories first presented in 1991 were further elaborated and defined through the establishment of the Resettlement Handbook. In July 1997, the first edition of the UNHCR Resettlement Handbook was released, and the profiles and eligibility criteria of refugees who would qualify for resettlement were clearly established.<sup>19</sup> The second edition was published in November 2004. In this second edition, the UNHCR criteria for determining resettlement as the appropriate solution included Legal and Physical Protection Needs; Survivors of Violence and Torture; Medical Needs; Women at-Risk; Family Reunification; Children and Adolescents; Older Refugees; and Refugees without Local Integration Prospects. These resettlement categories were further refined when the Resettlement Handbook was revised in 2011 and some of the resettlement categories were re-named: Women and Girls at Risk instead of Women at Risk; Lack of Foreseeable Alternative Durable Solutions instead of lack of Local Integration Prospects; and the Older Refugees category is no longer a stand-alone category.

Resettlement needs and submission categories reflect situations in which refugees' need for protection and other specific needs are not being met in their countries of asylum. The UNHCR has tasked resettlement to provide international protection and appropriate durable solutions to refugees when refugees are at risk in their country of refuge or have particular needs in the absence of the prospects for another durable solution.<sup>20</sup>

It was a natural course of action for the UNHCR to develop policies, procedures and tools to effectively identify the refugees who are eligible for resettlement following the establishment of clear resettlement categories. To assist field office personnel in qualitatively and quantitatively improving resettlement management, the UNHCR introduced various tools in 2007, such as baseline standard operating procedures for resettlement, methods of identifying high-risk refugees, performance indicators for resettlement staff, more precise programming instructions, a revised planning process to assess resettlement needs and processing capacities, and anti-fraud measures.<sup>21</sup>

In 2008, the UNHCR developed the Heightened Risk Identification Tool (HRIT) to enhance the effectiveness of identifying at-risk refugees by linking community-based participatory assessments with individual assessment methodologies.<sup>22, 23</sup> The five risk categories identified by the HRIT directly corresponded to the resettlement criteria.<sup>24</sup> The 2011 version of the

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<sup>19</sup> Second edition was published in November 2004 and widely distributed. In this second edition, the UNHCR criteria for determining resettlement as the appropriate solution were defined. They include Legal and Physical Protection Needs; Survivor of Violence and Torture; Medical Needs; Women at-Risk; Family Reunification; Children and Adolescents; Older Refugees; and Refugees without Local Integration Prospects.

<sup>20</sup> UNHCR 2004c

<sup>21</sup> UNHCR 2007; UNHCR 2008b

<sup>22</sup> Second edition was released in 2010: UNHCR 2010a

<sup>23</sup> HRIT was designed for use by UNHCR staff involved in community services and protection activities (including resettlement) and by partner agencies. As such, it contains a set of questions to a person of concern to identify a heightened level of risk.

<sup>24</sup> HRIT five risk categories are Older People, Children and Adolescents, Women and Girls at Risk, Legal and Physical Protection, and Health and Disability.

Resettlement Handbook contains more guidelines and tools for managing resettlement identification procedures.<sup>25</sup>

As the aforementioned initiatives demonstrate, the UNHCR embarked on rigorous efforts to develop a more systematic needs analysis and a more standardized and mainstreamed means of identifying refugees in need of resettlement. Unlike the preceding decade, when resettlement was applied restrictively to a smaller number of individual refugees, resettlement became a tool to address the needs of a large number of refugees. Furthermore, the UNHCR developed mechanisms for identifying and processing refugee groups for resettlement.<sup>26</sup>

With the procedural standardization and instrumental developments, resettlement became a more predictable and, thus, planned activity. UNHCR offices were therefore required to integrate resettlement in their planning exercises and ‘proactively plan for resettlement and report on resettlement needs in a manner that is reflective of actual needs based on existing criteria and policy directives, as distinct from field-level capacity and challenges to service delivery.’<sup>27</sup> The emphasis on proactive planning for resettlement is reflective of the organization’s belief that based on resources provided through the dissemination of policy, standards and guidelines on resettlement and on training provided ‘to broaden the knowledge base of staff in the Field in terms of identification and processing methodologies and improved quality assurance and compliance systems’,<sup>28</sup> offices are equipped to project needs and plan for future resettlements.

In the new millennium (the 2000s), the UNHCR established methodologies and mechanisms to use resettlement as a mainstreamed protection tool. Resettlement also became recognized as a proactive durable solution tool for the UNHCR. Underlying the office’s conviction was the belief that ‘the efficient and transparent identification of refugees for resettlement consideration is essential to ensuring a continuum of refugee protection.’<sup>29</sup> As a result, resettlement was finally ‘incorporated in the development of overall protection strategies as part of regional and country operational planning.’<sup>30</sup>

### *Growth in resettlement numbers*

The number of refugees resettled has increased in 2000s reflecting the efforts made by UNHCR as described below. In 2006, UNHCR made a submitted over 54,000 refugees for resettlement globally, and in 2007, the number of submissions increased to almost 99,000. In 2007, for the first time in 20 years, the UNHCR’s submission exceeded the global number

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<sup>25</sup> Include the guidelines on protection for women, children, and refugees with disabilities. The resettlement identification tools include the participatory assessment tool. The managing processes include the revised Baseline Standard Operating Procedures on Resettlement and the UNHCR-NGO Toolkit for Practical Cooperation on Resettlement.

<sup>26</sup> Identifying groups in need of resettlement supplements individual identification and serves as an additional component of UNHCR’s resettlement and durable solution activities. In practice, group processing involves a simplified large-scale processing of cases by UNHCR and resettlement States. Members of a group should ideally, but not necessarily, have the same nationality, a shared refugee claim and a need for resettlement, should share some common characteristics, etc. (UNHCR 2001a: 233-234).

<sup>27</sup> UNHCR 2006

<sup>28</sup> *Ibid.*

<sup>29</sup> UNHCR 2001a.

<sup>30</sup> *Ibid.*

of approximately 70,000 places (persons) made available by resettlement countries.<sup>31</sup> In 2008, the UNHCR submitted 121,214 refugees for resettlement, and 128,558 in 2009, the highest number in 16 years.<sup>32</sup> In 2010, the UNHCR submitted a total of 108,042 refugees for resettlement,<sup>33</sup> and 91,843 in 2011.<sup>34</sup>

The allotment of resettlement space among the total refugee population worldwide gives a perspective on the history of resettlement. In 1979, 1 in 20 of the world's 5 to 6 million refugees was resettled. In 1990, at the end of Indo-China operations, resettlement was offered to 150,000 of the 15 million refugees worldwide,<sup>35</sup> *i.e.*, 1 in 100 refugees. By 1993, this ratio had dropped dramatically to only 1 in 400.<sup>36</sup> Currently, resettlement countries offer resettlement space for 1 in 130 refugees of the 10.4 million refugees worldwide.<sup>37</sup> As these figures show, the UNHCR resettled refugees in 2010 about the same level as it did in 1990, after a considerable fall in between.

Another statistical component that demonstrates the development of resettlement is the number of refugees in need of resettlement. The number of refugees in need of resettlement is greater than the actual number of refugees submitted for resettlement. The organization's ability to quantify the number of refugees in-need of resettlement has improved through procedural and instrumental developments and it started to widely publicize the number since 2010. However, the growth in the number of refugees in need of resettlement has not been met by equal growth in resettlement places in the world, despite the continuing growth in the number of countries who offer resettlement - from 10 in 1991 to 25 in 2011.<sup>38</sup> In 2008, some 70,000 places were made available, which addressed less than 50 per cent of the identified global needs.<sup>39</sup>

In 2010, resettlement countries provided fewer than 80,000 places for UNHCR resettlement submissions, while the UNHCR estimates the global resettlement needs at approximately 800,000 persons, including populations in which resettlement is expected to occur over a period of several years.<sup>40</sup> During the Annual Tripartite Consultation on Resettlement in 2010, UNHCR and the Swedish chair reported that only 10 refugees are offered resettlement out of every 100 refugees identified by UNHCR as in need of resettlement.<sup>41</sup> The trend continues. UNHCR most recently projected that 859,305 refugees are in need of resettlement worldwide, among whom 181,676 refugees require resettlement in 2013,<sup>42</sup> which is more than double the 81,000 resettlement places available.

The UNHCR enhanced its pool of resettlement candidates as a result of adopting more standardized identification methodologies and resettlement management tools. It enabled defined profiles of refugee populations to be submitted for resettlement. Consequently, not

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<sup>31</sup> UNHCR, 2008a

<sup>32</sup> UNHR 2010b

<sup>33</sup> UNHR 2011b; UNHCR 2012

<sup>34</sup> UNHCR 2012

<sup>35</sup> *Ibid.*

<sup>36</sup> Fredriksson and Mougne 1994

<sup>37</sup> UNHCR 2011c

<sup>38</sup> UNHCR 2011b

<sup>39</sup> UNHCR 2008a

<sup>40</sup> UNHCR, 2010b.

<sup>41</sup> *Ibid.*

<sup>42</sup> UNHCR, 2012



only the resettlement quota offered by resettlement countries, but also the application of their refugee selection criteria has become a contentious subject of discussion.

## **The Resettlement and Asylum Crossroad**

The creation of clear in-need categories of refugees for resettlement and subsequent procedural and instrumental developments contributed to strengthen protection function of resettlement in countries of asylum. At the same time, resettlement involves a ‘transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – *as refugees* – with permanent residence status’<sup>43</sup> and therefore resettlement has an asylum component to the countries of resettlement.

As noted in the previous section, the UNHCR resettlement activities have undergone qualitative and quantitative changes. The development of relevant tools and an increase in resettlement numbers have enabled UNHCR to reach a wider profile and a greater number of refugees who would benefit from resettlement. However, the resettlement quota and selection criteria offered by resettlement countries have continued to be subjected to domestic interests. This section examines whether there were any changes between the period in which resettlement targeted mass numbers of refugees from specific geographical locations driven mostly by political interests and the period when resettlement came to be used within a more protection-oriented framework.

### *Resettlement-asylum discourse*

While appreciating the ‘generous contributions [by the resettlement countries], in providing a new life to a large number of deserving persons, and their humanitarian approach’, the UNHCR report of 1991 noted that a mass automated resettlement was being influenced by domestic pressure in resettlement countries and that the project had resettled refugees ‘who do not actually face protection problems or who are actually not even refugees’ as a result of groups of people who were processed independently of the UNHCR..<sup>44</sup> Furthermore, refugees’ integration potential was used as key criteria by resettlement countries at that time.<sup>45 46</sup>

Ten years after the 1991 report was published, the resettlement discourse began to focus on the inverse relationship between resettlement and asylum. The UNHCR report of 2001 provides a starting point to examine the challenges faced by the UNHCR resettlement programme.<sup>47</sup> The report addresses the concern that some countries exhibited a tendency to control their total refugee intake by balancing between refugees who arrive through resettlement and those who apply directly for asylum. Accordingly, the UNHCR argues that “off shore” processing for resettlement [is] not to be used to block the admission of individual asylum seekers for assessment “on shore”, since this would undermine the right to seek asylum’. An example of this is the ‘Pacific Solution’ introduced by Australia.<sup>48</sup>

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<sup>43</sup> UNHCR, 2011a. emphasis added.

<sup>44</sup> UNHCR 1991

<sup>45</sup> Fredriksson 2002

<sup>46</sup> Troeller 1991

<sup>47</sup> UNHCR 2001b.

<sup>48</sup> Hathaway 2004

Australia further instituted a system that the country sets a ceiling for the number of refugees admitted, dividing it between those who arrive through resettlement and those seeking on-shore asylum.

UNHCR continues to raise the concern that resettlement is, at times, applied at the expense of asylum granted to domestic asylum seekers or used as an asylum path through which countries exercise control over the number and profile of refugees they admit through resettlement. This practice clearly undermines the protection principles of both asylum and resettlement. In 2001, the ExCom of the High Commissioner's Programme stressed that resettlement is "a component, not alternative to asylum":

Resettlement and asylum are two distinct and separate possibilities. It is therefore critical to the integrity of the international protection system that resettlement processing and the promotion of asylum are pursued in tandem, and not used to work against each other. Renewed interest in resettlement in quite a number of countries has, in some instance, coincided with large-scale arrivals of would-be migrants. [...] Using resettlement to further restrict the admission of individual asylum-seekers would undermine the right to seek asylum, which is anchored in the Universal Declaration of Human Rights, and is at the very core of the protection regime for refugees. Resettlement must continue to function as a complement to other protection activities and durable solutions. It is not a substitute for the right to seek and enjoy asylum.<sup>49</sup>

UNHCR had expressed concern decades ago that there were 'immigrants' who do not deserve international protection status among the refugees who were resettled. The more recent focus of the discussion on resettlement-asylum is that resettlement is used to justify a potential restriction to inland asylum. This change in the focus of debates is closely linked to the increase in asylum applications in the West, as many Governments in West began to introduce or enforce restrictive immigration and asylum policies and control measures<sup>50</sup> and, yet again, 'the distinction between refugees and immigrants has become blurred and the very principle of asylum endangered as Governments attempt to avoid being "overrun" by new arrivals.'<sup>51</sup> As a consequence, more and more countries have given preference to the UNHCR resettlement referrals.<sup>52</sup>

The main factor influencing resettlement countries' admission decisions is a well-founded fear of persecution, *i.e.*, the applicant's refugee status. Refugees are in most of cases admitted as refugees<sup>53</sup> or with subsidiary protection status by resettlement countries. The admission criteria for resettlement are generally not based on the current needs of refugees in their first asylum countries. This is ironic in the sense that it is mainly the situation in country of asylum that the UNHCR bases to promote a refugee for resettlement. At every opportunity, the UNHCR advocated for resettlement countries to adopt more flexible resettlement admission criteria and refrain from applying immigration-oriented restrictive selection criteria.<sup>54</sup> By using the term 'flexible use of resettlement criteria', the UNHCR suggests that a wider category of refugees be admitted to resettlement countries, *i.e.*, not limited to the strict application of the 1951 Convention status but considering refugees recognized under the

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<sup>49</sup> UNHCR 2001a.

<sup>50</sup> See Crisp and Dessalegne 2002; Crisp 2003; Clayton 2008

<sup>51</sup> Troeller 2002

<sup>52</sup> Van Selm 2003

<sup>53</sup> Canada grants refugees permanent resident status upon resettlement.

<sup>54</sup> See for example: UNHCR 2001a; 2001b; 2001c; 2003b; 2008a.

UNHCR mandate, including the broader refugee definition and ultimately do not reject them for resettlement for not meeting the 1951 Convention status.

The UNHCR launched the Global Consultations on International Protection in late 2000 to engage States, non-Governmental organizations (NGOs) and refugee experts in a broad-ranging dialogue on refugee protection to explore ‘how best to revitalize the existing international protection regime while ensuring its flexibility to address new problems.’<sup>55</sup> UNHCR and the States jointly adopted the Agenda for Protection. The UNHCR’s initiatives to harmonize the interpretation of the 1951 Convention in light of the developments in refugee law accords with Goal 1, Objectives 6 and 7 of the Agenda for Protection refers specifically to the resettlement of refugees recognized on a *prima facie* basis.<sup>56</sup> Accordingly, the organization urged the States to examine how more flexible resettlement criteria could be applied in these special cases.<sup>57</sup>

It was indeed hoped in 1991 that the UNHCR resettlement cases would be ‘inextricably linked to protection cases and will, in turn, require flexibility on the part of the government in the determination of annual admission ceilings and allocations by nationality, and less emphasis on immigration criteria by resettlement countries when admitting refugees.’<sup>58</sup> Ten years later, however, the ‘flexible use of resettlement criteria’ continued to be a recurring topic in discussions about resettlement. Resettlement admission criteria and the selection of refugee profiles are at the discretion of the resettlement countries.<sup>59</sup> Admission criteria have remained a contentious issue between UNHCR and resettlement countries; *inter alia*, refugee status determination continues to be a recurring topic of discussion.

In 1994, Fredriksson and Mougne (1994) noted that one of the reasons that resettlement countries often determined UNHCR cases to have weak refugee claims in terms of the 1951 Convention was the poor quality of the case file prepared by UNHCR staff. Since that time, various measures have been taken to improve the quality and credibility of UNHCR resettlement cases. Regardless of the efforts UNHCR makes to ensure quality assessment, resettlement countries continue to apply a ‘double-screening’ practice. The core issue remains the same. It is about inconsistent use and application of refugee protection doctrine rather than the relative strength or weakness of the underlying refugee claim,<sup>60</sup> which results in a stand-off between the international protection principle and immigration-oriented interests.

### *Resettlement-immigration discourse*

More recent reports highlight increasingly restrictive or discriminatory resettlement selection criteria<sup>61</sup> imposed by resettlement countries, which deny admission of refugees for non-legal and non-prejudicial reasons. Family size, health status, educational or professional background and religion are the factors that some of the resettlement countries apply to screen resettlement application. ‘The selection criteria, the size of targets and programmes, or

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<sup>55</sup> UNHCR 2003b

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.* 61.

<sup>58</sup> UNHCR 1991

<sup>59</sup> Since the millennium, this point has been raised more frequently in the context of *prima facie* refugee situations and the strategic use of resettlement.

<sup>60</sup> Fredriksson and Mougne 1994

<sup>61</sup> UNHCR 2008a

the priority accorded to certain populations, may be overly influenced by domestic considerations, rather than with actual resettlement needs and priorities’ and ‘restrictive legislation and criteria focusing on domestic considerations such as a refugee’s integration potential rather than protection needs or vulnerabilities’<sup>62</sup> continue to pose challenges for the UNHCR, and the trend appears to have become even stricter after a number of countries effected anti-terrorism legislation post-September 11.<sup>63</sup>

The 1951 Refugee Convention distinguishes between refugees who fled their home countries due to well-founded fear of persecution and people who left their countries for other reasons. The Convention does not disqualify a person from refugee status because of his/her nationality, family size, health status, educational or professional background, religion and integration potentials, *i.e.* non-persecution reasons. If resettlement countries are in agreement to use resettlement as a tool of off-shore asylum, applying discriminatory selection criteria over refugee claim infringes the normative requirements of the 1951 Refugee Convention. If resettlement countries are to use resettlement as an immigration pathway whereby the nationality and other profiles of refugees become the pre-requisites, it would result in an arbitrary selection possibly leaving the vast majority behind. In either way the UNCHR resettlement is practiced, resettlement needs, the key criteria for the UNHCR, have limited influence to inform resettlement countries’ decision making process. *The well developed resettlement needs and submission categories and associated instruments would be an in-house tool.*

Resettlement countries have long been eager to control their resettlement intake while simultaneously considering domestic interests. One of the consequences would be a compromise regarding international protection. The rigorous endeavors undertaken by UNHCR since the millennium strengthened the protection function of resettlement by putting the most vulnerable and in need forefront of this durable solution. The development of this protection apparatus, however, did not have an impact on resettlement countries to refrain from applying double screening and immigration-oriented criteria. As a result, a refugee applicant whom the UNHCR determined to be in need of this durable solution for protection reasons may be declined by the resettlement country for not fulfilling their requirements. While the number of resettlement applications has considerably increased in the past decade, UNHCR’s attempts to bridge the gap between the protection-durable solution function of resettlement and asylum-immigration function of resettlement has not been successful.

### **Strategic use of resettlement**

In the 2000s, a new concept referred to as the ‘strategic use of resettlement’ emerged, shedding new light on the potential benefits of resettlement. The development of this concept has a basis in the responsibility sharing function of resettlement and it is interesting in light of the preceding debate.

An idea that later shaped into the concept of the ‘strategic use of resettlement’ existed as early as 2001. Its scope included the enhancement of protection and asylum prospects for the entire refugee population including the prospect for local integration. Its primary beneficiaries remained individual resettled refugees but the UNHCR proposed that ‘while

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<sup>62</sup> *Ibid.*

<sup>63</sup> Crisp 2003

meeting the needs of refugees whose life, liberty, safety, health or other fundamental human rights are at risk, resettlement can also reduce the strain imposed on receiving States, both in terms of sheer numbers and of the political pressure they may face.’<sup>64</sup>

In June 2003, at the standing committee of the ExCom, the UNHCR and resettlement countries recognized that resettlement ‘produced secondary benefits other than to the resettled refugees themselves. In some cases, it has sustained first asylum in the face of continued flows of refugees, in others it has played a role in achieving comprehensive solutions and often it has been an expression of burden sharing. Additionally, resettlement has often engendered support for refugees among the publics of resettlement countries’ as unplanned secondary benefits.’<sup>65</sup> The responsibility sharing function of resettlement was stressed in the document to benefit a refugee population in first asylum country and ‘[a] more planned and coordinated approach to use resettlement in order to burden share may ensure additional benefits are created or that those that arise can be maximized.’

This document was the first to focus on the aspect of resettlement to potentially ‘convert a non-strategic situation into a strategic one’ and for the purpose, ‘resettlement states will need to consider how broader linkages can be achieved through partnership with first asylum states’ and ‘[f]irst asylum states need to be more open to making commitments on behalf of refugees beyond the provision of first asylum protection.’

Subsequently, the strategic use of resettlement was defined as follows<sup>66</sup>:

The planned use of resettlement in a manner that maximizes the benefits, directly or indirectly, other than those received by the refugee being resettled. Those benefits may accrue to other refugees, the hosting State, other States or the international protection regime in general.

In 2009 and 2010, this ambitious concept (strategic use of resettlement) was further developed in collaboration with resettlement countries and defined as the ‘planned use of resettlement in a manner that maximises the benefits, directly or indirectly, other than those received by the refugee being resettled. Those benefits may accrue to other refugees, the hosting State, other States or the international protection regime in general.’<sup>67,68</sup> These efforts conceptualised the strategic protection benefits of resettlement in countries of first asylum and countries of resettlement as well as in regional contexts. The 2010 paper mentions the following benefits: protection benefits in countries of first asylum: unlocking alternative durable solutions by creating conditions conducive to dialogue with the host country, assistance with the decongestion of camps, effects on the behaviour/attitudes of refugees; protection benefits in countries of resettlement: reductions in xenophobia and encouragement of positive attitudes, enrichment of cultural and socioeconomic diversity, etc.; protection benefits in regional contexts: potential reduction in the push-pull dynamics within refugee movements, assistance balancing the burdens and responsibilities of the host countries.

An advantage of this new concept for the UNHCR resettlement is therefore that it not only broadens the definition of the benefits accrued from resettlement but also that it brings

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<sup>64</sup> UNHCR 2001b

<sup>65</sup> UNHCR 2003a

<sup>66</sup> UNHCR, 2009

<sup>67</sup> UNHCR 2009

<sup>68</sup> UNHCR 2010c

resettlement into the political arena. The success of the strategic use of resettlement relies on the ability of the resettlement countries to plan and execute multi-year resettlement programmes under the responsibility sharing framework because strategic resettlement benefits are intended to be achieved progressively. It has to be recognized that the pressing situations in the first asylum countries were often created by mass-influx of refugees who were recognized on prima-facie basis or who might have fled generalized violence. Strategic use of resettlement implies that resettlement countries will have to flexibly consider their admission criteria including 1951 Convention refugee status.

In this way, the UNHCR tries to use the protection benefit of refugees in first countries of asylum as leverage to achieve consensus with resettlement countries to accept refugees for resettlement who, under normal resettlement channels, might not be eligible to be admitted for resettlement. It might not be too optimistic to read this development as a proactive move on the part of the UNHCR that is intended to bring resettlement into the political arena not as an immigration tool but as a tool for strengthening international protection. Certain resettlement countries have been successfully persuaded to adopt flexible criteria, but the comprehensive impacts of these efforts are yet to be fully evaluated.

## **Conclusion**

The UNHCR resettlement policy has developed significantly since the turn of the millennium impacting the resettlement programme both qualitatively and quantitatively. The UNHCR undertook rigorous efforts to streamline resettlement case identification as a vital protection tool and to improve its resettlement management and planning. The development of the protection principle is based on the lessons learned from the political use of earlier resettlement criteria; ironically, it did not achieve its full capacity to inform the admission decisions made by resettlement countries except in certain situations, such as when resettlement is strategically applied.

While resettlement needs are the criteria applied when identifying a refugee for resettlement, each refugee's claim is independently assessed by the country of asylum, which bases its decision on refugee status determination and immigration-specific or integration-prospect considerations. Double-screening of refugee claim and restrictive or discriminatory admission criteria are the issues continue to be debated between the UNHCR and the resettlement countries in 2000s, as these issues could undermine the protection function and humanitarian value of the resettlement. While the strategic use of resettlement, a new concept introduced in the 2000s involves using resettlement as political leverage to enhance protection dividends, the protection function of resettlement be firmly defined and protected.

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