

UNHCR's Recommendations to Poland for its EU Presidency

July – December 2011



Asylum-seeking youngster in a Warsaw centre

Photo: UNHCR

A landmark moment for the international protection regime

Poland takes up its first EU Presidency at a landmark moment for refugee protection. July 28, 2011 will mark 60 years since adoption of the 1951 Convention relating to the Status of Refugees. UNHCR welcomes the Polish Presidency's plan to mark this important anniversary with a Conference in Warsaw on July 11-12.

It is particularly fitting that Poland – today an important asylum country – should convene such a Conference. Many refugees from Poland received protection under the umbrella of the 1951 Convention for nearly four decades, both in Europe and beyond. In September 1991, Poland signed on to the 1951 Convention and its 1967 Protocol, one of the first international human rights treaties to which the country acceded after democratisation.

The 1951 Convention was born of Europe's experience in the Second World War, and in the environment of the Cold War, yet its continued global relevance has been demonstrated time and time again over the past 60 years. Marking its anniversary is therefore not simply a ceremonial occasion. As the Polish Presidency begins, there are still significant refugee protection challenges in Europe and in the European neighbourhood.

It is impossible in the space of a few pages to do justice to the many issues on the agenda during the Polish Presidency are of importance to UNHCR. This paper has selected four to which the UNHCR attaches particular priority at this juncture, and on which it urges Poland to show leadership during its Presidency.

Although the announced priorities of the Polish Presidency do not explicitly address refugee issues, Poland's focus on the Union's Common Security and Defense Policy and on the EU's relations with its immediate neighbours will clearly require engagement with refugee and broader humanitarian matters. Around one million civilians have fled from Libya in the space of just a few months, illustrating how acute, and how close to home, forced displacement unfortunately remains.

Poland highlights border security and the role of Frontex among its priorities. UNHCR appeals to Poland to use every opportunity to make clear that border management is not only about state security. As recent events demonstrate, access to the territory of States where international protection can be sought -- including European States -- is as necessary as ever. Proper border management must also ensure such access. With this in mind, UNHCR continues its co-operation with Frontex and recently published a Protection Training Manual for European Border and Entry Officials.

1. North Africa: A Call for Solidarity

The exodus from Libya since February has been one of the largest and most complex of recent times. The media call this flow "refugees". But the real picture is more complex, as the exodus consists of different categories of people on the move: stranded migrant workers, refugees and asylum-seekers – Palestinians, Eritreans, Somalis, Iraqis and others – forced to flee for the second or even third time and, more recently, Libyans leaving their country in search of safety.

In leading discussions on the many dimensions of this crisis, UNHCR urges the Polish Presidency to recognize that Tunisia and Egypt, despite their own post-revolutionary challenges, have borne the brunt of the outflow – taking in almost one million people. Their own citizens, who had been working in Libya, have returned in droves, depriving their families of remittances badly needed at a time of change. At the same time, people from more than a dozen other countries have also streamed into Tunisia and Egypt, while others have crossed into Algeria, Chad, Niger and Sudan. Europe has been affected as well, though the numbers are much smaller. Around 20,000 persons have left Libya and reached southern Italy or Malta by boat, as have another 24,000 Tunisians, mostly young men hoping to find employment. The number of lives lost at sea will never be known.

The European Union should show vigorous support for Tunisia and Egypt as the most affected asylum countries, both by providing humanitarian and development aid, and by engaging in refugee resettlement. UNHCR calls on the Presidency to lead a sustained and significant exercise with Tunisia and Egypt. UNHCR also supports intra-EU responsibility-sharing, including through relocation of refugees out of Malta, to help that small island cope with the demands it faces. Italy also deserves recognition for its readiness to accept those arriving, and in particular, for maintaining access to its territory and asylum procedures for those who are seeking protection.

At a Ministerial Conference convened by the European Commission and the Hungarian Presidency on May 12, 2011, Commissioner for Home Affairs Malmström said: “The situation is very serious both in North Africa and in Malta. The deteriorating humanitarian situation ... is ... of major concern.” UNHCR shares that view. While the pledges made by Member States at that Conference for resettlement of refugees stranded in North Africa, and to decongest Malta, are a good start, UNHCR believes that much more can and should be done.

In this environment, UNHCR urges the Polish Presidency to stress the vital need for Europe to keep its doors open to people fleeing the turmoil in Libya, and to recognize that this is a multi-faceted outflow requiring a variety of responses. For that reason, UNHCR joined forces with the International Organization for Migration to mount an airlift and a sea-bridge to repatriate migrant workers who had fled Libya and were stranded in Egypt and Tunisia.

The fact that some 24,000 Tunisians, mainly young men in search of work, have also arrived in Italy is a complicating factor. That migratory flow needs to be addressed, but should not be allowed to deflect attention from the obligation of EU Member States to provide international protection to those in need of it. Nor should the reality of mixed flows deflect from the fundamental obligation to rescue those in distress at sea, and to disembark them in a place of safety where their need for international protection can be properly assessed.

In the context of the crisis in Libya, UNHCR urges the Polish Presidency to seek to ensure:

- ✓ *EU support for Tunisia and Egypt, as the most-affected asylum countries;*
- ✓ *The preservation of asylum space in the EU for persons fleeing the crisis;*
- ✓ *A robust EU contribution to the international effort to resettle refugees who have fled the crisis;*
- ✓ *That EU Member States and Frontex recommit to rescuing people in distress at sea.*

2. Building refugee protection in the Eastern neighbourhood, including the Western Balkans

The 60th anniversary of the 1951 Convention is an occasion to note with satisfaction that all the countries in the EU's Eastern neighbourhood and in the Western Balkans are parties to that instrument. However, several maintain reservations to important aspects of the Convention. The anniversary of the 1951 Convention would be a fitting occasion for remaining reservations to be lifted.

While legal commitments are essential, it is also necessary to look at the practice of States. In that respect, much remains to be done to ensure the proper implementation of the 1951 Convention and its 1967 Protocol.

UNHCR welcomes the EU's continued engagement with third countries on asylum and migration. The EU has invested significant sums in capacity-building in the areas of asylum and migration in countries at the EU's Eastern border and in the Western Balkans. Good progress has been made in some areas, but significant gaps remain, and in some cases, political will appears lacking to ensure that asylum-seekers and refugees are treated with full respect for their fundamental rights. Instances of *refoulement* continue, including from countries to which asylum-seekers and refugees are returned under the terms of EU readmission agreements. Widespread detention of asylum-seekers in deplorable conditions, poor quality or non-functioning asylum procedures, lack of integration support and failure to combat racism and xenophobia all need to be addressed. Noting the recent entry into force of the provision in the EU-Ukraine readmission agreement pertaining to the readmission of third country nationals and stateless persons, UNHCR urges particular attention to the asylum situation in Ukraine.

The increase in mixed migratory flows through the Western Balkans makes asylum capacity-building in that region all the more important. While numbers are still comparatively small, it is vital to ensure – particularly in view of Croatia's foreseen accession to the Union -- that national systems are in place that can handle increasing flows in a manner consistent with international and regional norms.

UNHCR has also welcomed EU support in addressing issues remaining from the break-up of the former Yugoslavia, including questions of civil documentation and statelessness, particularly among minority groups such as the Roma. UNHCR urges the Presidency to give continued attention to these important questions.

The Presidency is urged to put a focus on ensuring that all countries in the Eastern neighbourhood put their international commitments to refugees into practice and in particular that they:

- ✓ *Treat asylum-seekers in line with international standards;*
- ✓ *Grant access to fair asylum procedures;*
- ✓ *Energetically combat racism and xenophobia;*
- ✓ *Enable persons recognized as refugees or otherwise in need of international protection to exercise their rights and to integrate fully in their new countries;*
- ✓ *Urgently address problems of lack of civil documentation and statelessness.*

3. Completion of the Common European Asylum System: Law and practice

The effort to establish a Common European Asylum System (CEAS) is unprecedented. There is no other example of so many countries working to align their laws and policies in an area so close to the core of state sovereignty. The European Union has made an important contribution to the development of international refugee law. In this anniversary year, completion of the CEAS takes on particular significance.

The EU has set 2012 as the target date for completion of the Common European Asylum System, and UNHCR welcomes Poland's intention to continue work on the adoption of legislation constituting the second stage of the CEAS.

However, from UNHCR's observation of the asylum practice of EU Member States, it is clear that interpretation and application of the asylum instruments continue to differ, often producing sharply divergent outcomes in terms of international protection. In 2010, looking only at countries that adjudicated significant numbers of applications, protection rates for Afghans seeking asylum ranged from 0% in one country to 91% in another – in the same sub-region. For Iraqis, the overall protection rates ranged from 14% to 79% and for Somalis, from 33% to 93%. Such differences cannot be in the interest of the Union, the Member States or – most importantly – those in need of international protection.

While such differences are particularly acute in the case of persons fleeing indiscriminate violence, and point to very inconsistent interpretations of the EU's [Qualification Directive](#), there are wide discrepancies in many other contexts, including with respect to conditions of reception. These discrepancies need to be addressed both through further legislative amendments and through practical co-operation.

The legislative agenda

The European Commission has submitted a number of proposals to amend or “recast” the first phase Asylum Directives as well as the Dublin and Eurodac Regulations. UNHCR has participated actively in discussions with the Commission, the European Parliament and the Member States on these proposals, some of which support the objective of greater consistency and higher quality in asylum decision-making, without adding to costs or risks of misuse of asylum systems.

As the 2012 deadline for completing the Common European Asylum System approaches, UNHCR urges the Council, under Polish leadership, to work intensively with the Parliament to reach agreement on the recast proposals.

On the [Dublin II Regulation](#), UNHCR sees the need for clarification of some of the responsibility-allocation criteria, as well as for strengthened safeguards, notably for unaccompanied children and families. In procedural terms, the right of an applicant to an interview, and to effective remedies, should also be reinforced. Closer regulation of detention for persons subject to the Dublin II Regulation is also a pressing need.

The Dublin system raises broader issues that merit reflection. The Regulation assigns responsibility for asylum claims, but is not per se a responsibility-sharing mechanism. The Presidency is encouraged to promote discussion about what such a mechanism might entail. It would also be important to assess whether the system encourages secondary movement, and its human and financial costs.

On the [Reception Conditions Directive](#), negotiations will start under Polish chairmanship on the new recast proposal issued by the Commission on 1 June. UNHCR strongly supports efforts to reach common ground on this text, as it contains many elements that, if adopted, would strengthen applicable legal standards and address identified gaps. In particular, UNHCR encourages agreement on proposals to regulate detention of asylum-seekers with regard to duration, conditions and judicial oversight.

With respect to the [Qualification Directive](#), UNHCR supports changes to align the entitlements of subsidiary protection beneficiaries more closely with those of recognized refugees. This would not only discourage forum-shopping, but would facilitate integration of beneficiaries of subsidiary protection in their host country, which is in the interest of all concerned.

With a new proposal concerning the [Asylum Procedures Directive](#) before the Council and Parliament, concerted work on this very complex instrument will be needed in the coming months. UNHCR emphasizes in particular the need to limit the grounds for channelling asylum claims into accelerated procedures with reduced safeguards. The proposal to reinforce the right to an effective remedy is in line with European jurisprudence and existing practice in many Member States, and should be adopted. Greater consistency and improved quality of procedures would also result from the proposed provisions on training, access and admissibility procedures, as well as those on personal interviews.

Practical cooperation

The start of the Polish Presidency coincides with the formal opening of the European Asylum Support Office (EASO), which has been established to promote practical co-operation on asylum, including with a view to improved convergence and quality of asylum decision-making. UNHCR is a non-voting member of the EASO Management Board, and has appointed a Liaison Officer to the EASO, tangible signs of commitment to this new institution.

The fledgling EASO will already manage a varied portfolio, encompassing the further development of the European Asylum Curriculum (EAC); cooperation on country of origin information (COI), including establishment of a common EU COI portal; and co-ordination of the EURASIL network. It will also work to support Member States whose asylum systems come under particular pressure

One such Member State is Greece. The land border between Turkey and Greece has become a main entry point into the EU both for asylum-seekers and for irregular migrants. The asylum system in Greece has been dysfunctional for many years, but the pressure of growing numbers coupled with Greece's own domestic challenges has created a humanitarian crisis. For this reason, UNHCR called on other countries to refrain from returning asylum-seekers to Greece under the Dublin II mechanism. At the same time, UNHCR in 2010 launched an ambitious project to help Greece to build an asylum system in line with international and European norms. UNHCR welcomes Greece's commitment to this reform effort, although considerable further investment of time, resources and political will is needed to bring about the fundamental improvements that are essential.

UNHCR urges the European Union and the Member States to continue to show solidarity with Greece by accelerating help for the Government to bring its asylum system up to standard, and by supporting the efforts of UNHCR and the EASO in this respect.

Quality and convergence of asylum decisions

UNHCR has repeatedly highlighted the divergent outcomes of asylum procedures in the EU, and has appealed to Member States to devote particular attention to the quality of asylum decision-making. The European Refugee Fund has supported a number of UNHCR-led practical co-operation actions in this respect. The current ERF-funded "Further Developing Quality" initiative, which UNHCR is leading in central and southern Europe, involving 12 countries, will come to an end in September. UNHCR encourages the new European Asylum Support Office to engage in activities designed to promote high quality asylum-decision making, and is ready and willing to collaborate with the EASO to this end.

Integration: a durable solution

The timely and effective integration of refugees and beneficiaries of subsidiary protection should be a priority for the EU and Member States. Not only does integration provide the individual refugee with a durable solution, it makes a strong contribution to social cohesion, and helps to reduce secondary migration.

Beneficiaries of international protection may have special needs during the integration process. Many have experienced great personal loss, and adjusting to new circumstances may be more challenging for them than for migrants who have the option to return home from time to time. UNHCR encourages the Presidency to lead discussions on the steps necessary to support the integration of beneficiaries of international protection, in particular by encouraging stronger

engagement of local communities and civil society. UNHCR has observed that the lack of support for language acquisition and vocational training, failure to recognize refugees' qualifications, discriminatory employment and housing practices and family separation are elements that hinder integration, and would therefore merit more focused attention. Cultural diversity management should be an important part of these efforts. The discussions that will follow issuance of the Commission's forthcoming Communication on the Second Agenda for Integration offer an opportunity to advance on these issues.

With regard to EU law and practice on asylum, UNHCR:

- ✓ *Encourages the Presidency to seek swift progress on the remaining recast proposals. While compromises will be necessary, it is essential to include a number of new legal safeguards to bring the texts into line with European and international law;*
- ✓ *Recommends support for the EASO in taking forward its ambitious practical cooperation agenda. UNHCR is ready to offer its expertise and experience in working to strengthen asylum procedures;*
- ✓ *Appeals for a focus on the quality of asylum decision-making. Accurate, consistent decisions at the earliest possible stage in the procedure are in everyone's interest. Work both in the legislative and practical spheres should be guided by this aim;*
- ✓ *Urges the Polish Presidency to lead discussions on integration that acknowledge the special needs of international protection beneficiaries and place these individuals and their host communities at the centre.*

4. Filling protection gaps worldwide: UNHCR's 2011 Commemorations

In 2011, UNHCR is commemorating the 60th anniversary of the 1951 Refugee Convention, its own 60th birthday, and 50 years of the 1961 Convention on the Reduction of Statelessness. In the course of the year, UNHCR and others are organizing a number of events on current challenges relating to refugees and stateless people. The July Polish Presidency Conference will be one of this series of key events and should provide an opportunity, among other things, for reflection on possible EU accession to the 1951 Refugee Convention. Although all EU Member States are individually States Party to this Convention, accession by the EU would be an important expression of collective commitment. Indeed, the "Stockholm Programme", adopted by the European Council in December 2009, called on the EU to consider accession to the 1951 Convention and its 1967 Protocol.

UNHCR's mandate extends not only to refugees but also to stateless persons. In view of its responsibility to help to resolve issues of statelessness, UNHCR is actively encouraging countries, including Poland, which have not yet acceded to the 1954 Convention on the Status of Stateless Persons, and/or the 1961

Convention on the Reduction of Statelessness, to do so. Of the 27 EU Member States, just 14 are party to both of these international instruments, seven are party only to the 1954 Convention, and six have not acceded to either the 1954 or the 1961 Convention. UNHCR hopes the Polish Presidency will promote accession by all EU Member States to these two important instruments.

On December 7-8, 2011, the UN High Commissioner for Refugees António Guterres will convene a Ministerial Meeting in Geneva to mark the end of the commemorations year. At this event, participants, including the EU and the Member States, will be invited to make concrete pledges of action to improve international protection in law and practice, and to help to reduce statelessness. With this in mind, UNHCR invites the Polish Presidency to encourage reflection on protection gaps within the EU, and ways to fill them. The December meeting will also be a treaty event, where states will have the opportunity to formalize their accession to the refugee and statelessness conventions and/or remove any reservations to these instruments.

One specific area where the EU as a whole could come forward at the December meeting with a concrete pledge would be in the area of refugee resettlement. UNHCR estimates that as many as 800,000 refugees around the world are in need of resettlement, yet the number of resettlement places available annually is only around 10 % of that. All 27 EU Member States together last year provided just 4,707 places, or approximately 6.5 % of the number of refugees resettled worldwide. UNHCR believes that the 27 Member States of the European Union could together establish and implement a resettlement programme on the scale of the United States of America, which during 2010 resettled nearly 54,000 refugees.

With a view to UNHCR's December 2011 Ministerial Meeting, UNHCR invites the Polish Presidency to:

- ✓ *Lead reflection on EU accession to the 1951 Refugee Convention;*
- ✓ *Encourage accession by all EU Member States to the 1954 and 1961 Conventions on statelessness;*
- ✓ *Propose to the EU to come forward at the Ministerial Meeting with an ambitious and sustainable pledge with respect to refugee resettlement.*