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ON REFUGEES AND EXILES
CONSEIL EUROPEEN
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RENEWING THE PROMISE OF PROTECTION

**Recommendations
from the European Council on Refugees and Exiles¹
to the Brussels European Council, 5 November 2004
on the Multi-Annual Programme
‘Strengthening Freedom, Security and Justice in the European Union’
and recent proposals to establish camps in the Mediterranean region**

The EU’s Asylum Policy for the next five years

The international refugee protection system is a global safety net, with 80% of the weight carried by developing countries. A key element of the European Union’s agenda for the next five years will include the development of Regional Protection Programmes that will consist of a ‘tool box’ of measures aimed at helping third countries to improve the quality of protection they offer and to do more to facilitate the long term integration of refugees. These tasks are likely to be difficult:

- If those countries see European Union (EU) Member States dropping standards of protection in Europe to the minimum levels that have been agreed in the first phase of the creation of a Common European Asylum System.
- If the EU attempts to use its muscle to shift its responsibilities for refugee protection onto poorer developing countries.
- If EU States pursue policies that aim to contain refugees within their region of origin.
- If the EU does not take concerted action to effectively address the reasons why refugees are forced to flee in the first place and work to create conditions conducive for people to undertake safe, dignified and sustainable voluntary returns.

A European Union of 25 States has the potential to be a powerful force for good. By setting an example and using its influence in the world, it could strengthen the international refugee protection regime, improve the quality of protection for millions

¹ ECRE, the European Council on Refugees and Exiles, represents 80 refugee-assisting and human rights organisations in 30 countries, in the wider Europe.

of refugees and help to resolve the protracted refugee situations that have left seven million of the world's twelve million refugees 'warehoused', their lives on hold for five years or more. If Europe is serious about helping to improve refugee protection and respect for human rights elsewhere in the world, it must embrace its own responsibilities to those who seek protection in Europe, and not attempt to shirk or shift them to poorer states. It must therefore improve access to the EU, national asylum procedures, reception conditions of asylum seekers and promote the integration of refugees and asylum seekers in European societies, in order to pave the way for a common procedure based on best practice. It must focus on building public support for the institution of asylum. All this requires political courage, leadership and a long-term vision.

Refugee Camps as part of a European Mediterranean Strategy?

ECRE agrees that there is a humanitarian crisis in the Mediterranean. It is neither new, nor confined to the Mediterranean. Every year thousands of people die attempting to reach the EU across the Mediterranean. It is not known how many others die in the backs of lorries, under the wheels of trains or by other means as they try to circumvent the EU's migration controls. Neither is it known what proportion of those who die are refugees. But in the absence of any legal means of reaching refuge in Europe, we do know that many refugees are forced to take desperate measures. We therefore welcome the recent recognition of the gravity of the situation and of the impact of EU migration controls on refugees.

The ideas being discussed at the EU level, now led by the German and Italian ministries of Interior, are not clearly defined. However they seem to have two core elements: i) increased interception of persons crossing the Mediterranean to prevent them reaching Europe's shores and ii) the establishment of some sort of camps in North Africa, though their purpose and scope remains unclear.

If the EU is serious about finding a humane solution to the many tragic deaths of people trying to reach its territory, ECRE is of the view that EU States should exempt nationals from the top refugee-producing countries from the need to obtain a visa to travel to the EU, and that they should also explore issuing humanitarian visas to persons who justifiably want to seek asylum and are from countries where serious human rights violations are taking place, so that they can travel legally. Such persons would subsequently have their asylum claims considered through an asylum procedure in the EU.

ECRE firmly believes that asylum seekers intercepted in EU territory, including in EU territorial waters, must be given access to an asylum procedure within the EU. When States give themselves the right to intercept irregular migrants beyond their borders, they acquire a corresponding responsibility to ensure that, by their actions, directly or indirectly, those persons' rights under international law are not violated. Foremost among those rights that must be guaranteed is the right not to be returned to a country where they may face persecution or be sent on to face persecution. The question of which State is responsible for considering any asylum claims from intercepted asylum seekers, especially when they are intercepted at sea, needs a

multilateral approach in order to develop a more shared understanding of responsibilities between States.

In terms of any proposals to establish centres on the southern shore of the Mediterranean any short-term and mid-term plans must address the following questions in a way which is in accordance with States' obligations under international law:

- Are they legal? Do they comply with the 1951 Refugee Convention, European Convention on Human Rights and other applicable international human rights instruments? How would compliance with these instruments relate to any use of detention, provision of legal advice and the possibility of appeals? What legal jurisdiction would apply?
- Do they guarantee protection and a timely durable solution to refugees, together with the return of those not in need of protection?
- Are they practical and proportionate? The costs of 'off-shore' processing by countries like Australia and the US have proved prohibitive in the past.
- Would the centres facilitate the safe arrival of refugees to the European Union?

If these issues remain unresolved, ECRE is extremely concerned that the centres would likely lead to long-term 'warehousing', rapidly resembling 'super Sangattes' just outside the EU and become magnets for human smugglers and traffickers.

ECRE's Recommendations to EU Ministers at the Brussels European Council on 5 November 2004

The following recommendations are to be read in conjunction with the key ECRE recommendations from ECRE's Comments on Future Orientations for an Area of Freedom, Security and Justice, September 2004.²

ECRE calls upon EU Ministers to continue working towards the achievement of the Tampere commitments they signed up to through:

General Orientations

Recommendation 1

Refocusing Europe's asylum system and refugee policies on the need to protect refugees, rather than to deter, deflect or prevent their access to the territory.

² See also ECRE Comments on the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin 'Improving Access to Durable Solutions' COM(2004) 410 final, Sept. 2004 and ECRE Comments on 'A more efficient common European asylum system - the single procedure as the next step' COM (2004) 503 final, Sept 2004.

Asylum Systems

Recommendation 2

Reinforcing the international effort to protect refugees by ensuring that the European Union's asylum systems stand as a model, consistent with fundamental rights and guided by the principle of responsibility sharing rather than responsibility shifting.

Recommendation 3

The transposition and implementation of the EU legislation at national level should lead to the raising of standards where they currently fall below the EU standard set. In addition Member States should undertake to not lower their standards of protection to the minimum ones set out in the instruments of the first stage of the Common European Asylum System but should maintain or adopt higher standards.

Recommendation 4

The scope of the evaluations on which the second and final stage of creating a Common European Asylum System will be based should include both measures adopted on asylum and in the fight against illegal immigration. They should be analysed for their internal coherence and their compatibility with the 1951 Refugee Convention, the European Convention on Human Rights and other international human rights instruments so that the necessary amendments can be made to bring the adopted legislation into line with international law.³ Their coherence with the EU's external relations and development objectives should also be evaluated. A key question must be whether the measures support or undermine the international refugee protection regime. The Council should ensure that the Commission and NGO partners have the resources to conduct the evaluations upon which the Common European Asylum System will depend.

Recommendation 5

The EU should advance in its efforts to promote "frontloading" of national asylum procedures, exchange of best practice and to promote the need for a single asylum procedure.

Access to the EU

Recommendation 6

EU Member States need to clearly balance the need to control Europe's borders with the right to seek asylum, by renewing and acting on the Tampere guarantee of the 'absolute respect of the right to seek asylum' as well as the recognition at Tampere that there are many others world-wide who cannot enjoy the freedom Union citizens take for granted and that the EU should therefore not deny access to its territory to those whose circumstances lead them justifiably to seek it.

Recommendation 7

EU Member States should exempt nationals from the top refugee-producing countries from visa obligations to enter the EU.

³ See in particular ECRE's concerns relating to the draft Asylum Procedures Directive: *Refugee and human rights organisations across Europe express their deep concern at the expected agreement on asylum measures in breach of international law*, Press Release, 28 April 2004, and *Refugee and human rights organisations across Europe call on EU to scrap key asylum proposal*, Press Release 29 March 2004, www.ecre.org

Recommendation 8

EU Member States should consider issuing humanitarian visas to other persons who justifiably want to seek asylum and are from countries where serious human rights violations are taking place, so that persons fleeing persecution have a way of legally travelling to the EU and do not place themselves in the hands of smugglers and traffickers.

Recommendation 9

European States undertaking any interception measures must in turn recognise their concomitant responsibilities which *as a minimum* include guaranteeing the right of intercepted asylum seekers to not be returned to a country where they may face persecution, and they must maintain the norm of non-discrimination in their treatment of intercepted asylum seekers, for example on the grounds of nationality, age or sex. Asylum seekers intercepted in EU territory, including EU territorial waters, must be given access to an asylum procedure within the EU. In turn, a more shared understanding of which State is responsible for addressing the protection needs of persons intercepted at sea needs to be developed, based on the findings of independent analysis.

Integration

Recommendation 10

The EU must ensure that further progress towards a Common European Asylum System is consistent with an integration agenda which recognises that integration is a two-way process and depends on the development of a tolerant, inclusive society just as much as on efforts by refugees to adapt to their environment. It must be ensured that EU legislation, its implementation, national legislation and policies do not undermine or impede the integration of refugees – both those with Convention status as well as those with complementary forms of protection - recognising that a proportion of today's asylum seekers and refugees will become tomorrow's citizens.

Durable Solutions

Recommendation 11

In further integrating migration issues into its external policies towards third countries the EU should ensure that this remains coherent with its human rights and development co-operation policies and objectives. The proposed Regional Protection Programmes should focus on addressing protracted refugee situations by helping to provide durable solutions for more of the world's refugees through capacity-building in third countries and the development of a EU resettlement scheme.

Resettlement

Recommendation 12

The EU should commit to establishing a EU wide resettlement programme. In order to build up an effective scheme and maximise its potential benefits, the aim should be for all Member States to participate through the *physical* resettlement of people into their countries, although we recognise that some Member States may initially only be able to resettle relatively low numbers of refugees, which could progressively be increased over time. This would constitute concrete action to provide protection and durable solutions to some of the world's most vulnerable people, make a powerful contribution to the toolbox for use in any Regional Protection Programmes, demonstrate the EU's commitment to burden and responsibility sharing and help foster public support for refugees in Europe.

Protection in Regions of Origin

Recommendation 13

The EU should undertake capacity building to help countries in regions of origin and transit provide effective protection to refugees and any benchmarks used to judge standards of protection must include all existing international human rights standards. We warn against measures to include the 'safe third country' concept in the Regional Protection Programmes and using those measures to facilitate swift returns to third countries alongside the stated capacity-building aims as, if people are sent back before third countries can actually provide effective protection, this could put refugees at risk, exacerbate secondary movements and undermine the promotion of fruitful partnerships with third countries.

Voluntary Return

Recommendation 14

The EU should do more to foster conditions which would make it possible for people to undertake safe, dignified and sustainable voluntary returns. This includes more concerted action to tackle the root causes of refugee flight such as conflicts, poor governance and widespread human rights abuses.

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