



## **Moving Ahead: Ten Years after Tampere UNHCR's Recommendations to Sweden for its European Union Presidency (July-December 2009)**

### **1. Introduction**

Sweden takes up the Presidency at a key moment for the future of refugee protection in the European Union. The “Stockholm Programme”, due to be adopted by the European Council in December 2009, will determine the course of EU law and policy on asylum and international protection from 2010 through 2014.

The United Nations High Commissioner for Refugees (UNHCR) urges the Swedish Presidency to use this opportunity to reassert the importance of ensuring that persons who need international protection can find it, both inside and outside the European Union. Other important goals in the Justice and Home Affairs (JHA) field, including control of the Union's external borders, the management of migration, and the prevention of security risks and of transnational crime should be pursued in a manner consistent with international refugee protection obligations. UNHCR appeals to the Presidency to take a rights-based approach to all of these issues.

The effort to build a Common European Asylum System began nearly ten years ago, following adoption by the Council of the Tampere Conclusions and entry into force of the Amsterdam Treaty.<sup>1</sup> The Hague Programme, adopted in 2004, provided guidance for the second phase of work toward a common system.<sup>2</sup> The results of this process to date are mixed. Common minimum standards are in place but leave considerable room for discretion, varying interpretations and derogations, and the quality of implementation of the agreed standards varies widely. As a result, while international protection has improved in some areas, significant gaps and shortfalls remain in others.

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<sup>1</sup> Council of the European Union, *Presidency Conclusions, Tampere European Council, 15-16 October 1999*, 16 October 1999, available at: [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/ec/00200-r1.en9.htm](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/00200-r1.en9.htm).

<sup>2</sup> Council of the European Union, *The Hague Programme: Strengthening Freedom, Security and Justice in the European Union*, 13 December 2004, JAI 559; 16054/04, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:053:0001:0014:EN:PDF>.

From the start of the harmonization process, UNHCR has sought to provide constructive advice and support to EU Member States and institutions, in line with its consultative role set out in Declaration 17 to the Amsterdam Treaty,<sup>3</sup> and its supervisory responsibility with respect to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.<sup>4</sup>

The present recommendations address issues which will be on the EU agenda during the Swedish Presidency, as well as the longer-term perspective of the Stockholm Programme, as foreshadowed in the European Commission's recent Communication entitled 'An area of freedom, security and justice serving the citizen: Wider freedom in a safer environment'.<sup>5</sup>

## 2. Completion of the Common European Asylum System (CEAS)

### a) *The fundamental premises*

The Stockholm Programme affords Member States an opportunity to reaffirm their commitment to building an asylum system based on the full and inclusive application of the 1951 Convention relating to the Status of Refugees and other relevant treaties.

The goal of establishing a common asylum procedure and a uniform status for persons granted asylum or subsidiary protection was endorsed by the Council in The Hague Programme, as well as the Lisbon Treaty.<sup>6</sup> In the Pact on Immigration and Asylum adopted in October 2008, the Council restated its resolve to achieve this, observing that "considerable disparities remain between one Member State and another concerning the grant of protection and the forms that protection takes", and that "the time has come to take new initiatives to complete the establishment of a Common European Asylum System [...] and thus to offer a higher degree of protection".<sup>7</sup>

A common procedure should be one which ensures greater consistency and better quality of asylum decision-making across the Member States. A uniform status for refugees and

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<sup>3</sup> Declaration 17 to the Treaty of Amsterdam provides that "consultations shall be established with the United Nations High Commissioner for Refugees (...) on matters relating to asylum policy"; *Declaration on Article 73k of the Treaty establishing the European Community* [OJ C 340/134, 10.11.1997], available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11997D/AFI/DCL/17:EN:HTML>.

<sup>4</sup> *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, vol. 189, p. 137, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>, and *Protocol Relating to the Status of Refugees*, 30 January 1967, United Nations Treaty Series, vol. 606, p. 267, available at: <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html> (together referred to hereinafter as the "1951 Convention").

<sup>5</sup> Commission of the European Communities, *Communication from the Commission to the European Parliament and the Council, An area of freedom, security and justice serving the citizen*, 10 June 2009, COM (2009) 262 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0262:FIN:EN:PDF>.

<sup>6</sup> European Union, *Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community*, 13 December 2007, 2007/C 306/01, available at: <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>.

<sup>7</sup> Council of the European Union, *European Pact on Immigration and Asylum*, 24 September 2008, 13440/08, available at: <http://register.consilium.europa.eu/pdf/en/08/st13/st13440.en08.pdf>.

subsidiary protection beneficiaries should ensure, as a minimum, effective access to and enjoyment of all the rights conferred by international and regional instruments which bind the Member States. This will entail lifting the level of entitlements for subsidiary protection beneficiaries to approximate those of refugees, rather than unifying the two forms of status at a lower standard inconsistent with international law.

The dual goals of improving quality and consistency in a common procedure and guaranteeing respect for basic rights through a uniform status should underpin the Stockholm Programme, thereby fulfilling the Pact's commitment to offer a "higher degree of protection" in a "Europe of asylum".

*Recommendation: The further development of the Common European Asylum System should be guided by the principles contained in international and primary Community law, as well as the EU's Charter of Fundamental Rights. These include the right to seek and to enjoy asylum and the right of all people to protection from refoulement.*

*b) High-quality, consistent asylum decision making*

UNHCR urges Sweden to make the quality of asylum decision-making a central aim of its Presidency and of the Stockholm Programme.

It is well known that asylum applications from persons of the same nationality, with similar histories, have divergent outcomes from one Member State to another. This undermines not only the EU's harmonization objective, but also the rights of people needing protection, and encourages onward movement within the EU. Moreover, support for the return of persons whose protection applications have been rejected can only be built if there is confidence in the correctness and fairness of such decisions. The need to resolve problems of consistency and quality is widely acknowledged. The challenge is to develop legislative and practical measures to address this.

The interest of Member States in strengthening the quality of asylum decision making is evident in their commitment to training (including through the European Asylum Curriculum); collaboration on country-of-origin information (COI); willingness to exchange good practices; and participation in a variety of research and quality initiatives, including projects led by UNHCR. However, more needs to be done to ensure the quality of asylum decision-making in a sustainable and systematic manner. Consideration could be given to ways to promote excellence in national asylum systems; to set standards for qualifications for recruitment of asylum officials as well as benchmarks for ethical behavior and accountability frameworks; and to adopt other professional best-practices from different fields of civil service.

Quality assurance mechanisms for asylum processes have been developed and implemented in a number of Member States in recent years. UNHCR has designed and taken part in the establishment of a number of these mechanisms: for instance in Austria, Bulgaria,

Germany, Hungary, Poland, Slovakia, Slovenia, Romania and the UK.<sup>8</sup> These collaborative projects have been welcomed by States as contributing significantly to improving their asylum systems, and aim to lead to permanent, national quality assurance arrangements. If further proposed projects receive EC financial support, UNHCR plans to extend their geographical reach to additional countries and to consolidate progress made in others. Building on these experiences and structures, an EU-wide quality mechanism could be developed and coordinated through the future European Asylum Support Office (EASO),<sup>9</sup> with UNHCR cooperation and support.

UNHCR considers that structured information-collection on asylum decision-making can assist Member States to manage their asylum processes more effectively. This work is distinct from the monitoring of transposition of EU law, which remains the responsibility of the European Commission. Systematic analysis of asylum procedures and decisions would enable timely diagnosis of problems, yield more informed data on the basis of which to address problems, and allow the development of effective measures to address them. It would ensure better accountability, as well as recognition of those systems which achieve good results, and facilitate harmonization on the basis of good practices.

Such information-gathering, which connects also to the foreseen role of the EASO in facilitating exchange of information and good practice, would make it possible to provide longer-term support to asylum systems, complementing work undertaken through specific projects. All concerned parties would benefit from having more information on best practices through which Member States fulfill their obligations. Such information would also assist the EC in its Treaty responsibility for ensuring compliance with the asylum *acquis*.

*Recommendation: The Presidency should seek to ensure that quality in asylum processes and outcomes is the overarching objective of all practical and legislative measures during its tenure and under the Stockholm Programme. Quality assurance mechanisms should be developed and promoted. Practical cooperation should proceed not only in its existing forms, but also in new areas which can build capacity and promote excellence among national authorities. Effective information-gathering about asylum practices will be needed to ensure that legal norms and practical challenges are met.*

### *c) Application and revision of the asylum instruments*

Ensuring correct application of the current instruments is a challenge. The Court of Justice of the European Communities is expected to play a decisive part in ensuring the uniform application of these instruments, in particular in clarifying diverging interpretations of certain standards through its preliminary ruling procedure. UNHCR trusts that the Court will do so in the light of the 1951 Convention since the Treaty establishing the European

<sup>8</sup> The Home Office publishes UNHCR's reports on the establishment of quality assurance mechanisms online at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/unhcrreports>.

<sup>9</sup> Commission of the European Communities, *Proposal for a Regulation of the European Parliament and of the Council establishing a European Asylum Support Office*, 18 February 2009, COM (2009) 66 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0066:FIN:EN:PDF>.

Community provides, in its Article 63(1), that asylum measures shall be in accordance with the Convention. At the same time, the process of completing the legal framework as envisaged at Tampere must continue, through the conclusion of negotiations on current and pending legislative proposals.

UNHCR encourages the Swedish Presidency to use its best efforts to achieve swift progress on the legislative proposals already under discussion. Aware that Member States' views on these proposals differ, UNHCR urges Sweden to work towards compromise – within the Council, and between Council and Parliament – in an effort to achieve higher standards and to remedy problems observed in the existing instruments.

Concerning Reception Conditions, while not all Member States agree to regulate in more detail the detention of asylum seekers, UNHCR considers that enhanced safeguards are needed *inter alia* to improve detention conditions in many States, to ensure systematic judicial scrutiny of detention, to limit detention periods and to reduce detention of children. UNHCR also supports the proposed requirement for national mechanisms to identify vulnerable asylum seekers, to ensure their needs are effectively addressed.

With regard to Dublin II, UNHCR supports the EC's proposal to extend the definition of family members for the purpose of reunifying families split between EU Member States. UNHCR also considers that the provisions on unaccompanied children should be clarified. Regarding Eurodac, UNHCR continues to support the data protection safeguards that the Commission's proposal would add. With reference to potential access to Eurodac for law enforcement bodies, UNHCR cautions that such access would risk stigmatizing asylum-seekers.

Significant progress is expected this year toward adoption of the Regulation setting up a European Asylum Support Office (EASO). UNHCR believes it can make an important contribution to the EASO's effective operation, and urges the Presidency to encourage support for provisions that foresee a non-voting seat for UNHCR on the Management Board.

UNHCR also considers that NGOs are important partners in building a fair and effective CEAS, and appeals to the Presidency to support a role for NGOs in the EASO, including through an effective consultative forum.

UNHCR believes that ongoing, in-depth evaluation of the application and outcomes of the EU asylum instruments is essential for the further development of the *acquis*. The EASO should play a key role by providing information based on which practical steps can be taken to redress problems, as well as highlighting the need for legislative action where required.

The Commission is expected to issue proposals to amend the Asylum Procedures Directive and the Qualification Directive. UNHCR believes that modifications are indeed needed in several areas, and urges the Presidency to support proposals that would reduce exceptions to basic standards, and introduce important procedural safeguards. In late 2009, UNHCR will complete an ERF-funded project which examines implementation of the Asylum

Procedures Directive and seeks to identify good practice in 12 Member States. This Study should assist in deliberations on amendments, by offering evidence on the impact of current provisions, and highlighting gaps in law and practice.

There are two areas where, in UNHCR's view, new legislation is called for. The first concerns the need for greater free movement rights for people granted international protection in the EU. Free movement is a core principle and *raison d'être* for the Union. After the defeat in 2008 of proposed amendments to the Long-Term Residence Directive, however, the rights of refugees and subsidiary protection beneficiaries remain significantly restricted as compared to other legally-staying third country nationals. While other non-EU nationals may, subject to conditions, take up residence in another Member State, refugees and subsidiary protection beneficiaries do not have this entitlement. UNHCR believes that legislative measures to promote mutual recognition of positive asylum decisions, which would include the transfer of protection responsibility, are required to redress this anomalous situation. Such a change could also contribute to greater responsibility-sharing among Member States.

Secondly, UNHCR believes legislation is needed to ensure access to child protection mechanisms for unaccompanied and separated children who are third-country nationals. While several instruments, including Dublin II and the Asylum Procedures Directive, contain child-specific provisions, these apply only after a child has made an asylum claim. For many reasons, however, children in need of international protection may not apply for it immediately upon arrival in an EU Member State. UNHCR also suggests that the existing provisions in the asylum *acquis* should be reviewed to ensure they comprehensively cover the needs of unaccompanied and separated children for care and representation, best interest determinations, and durable solutions.

*Recommendation: UNHCR encourages the Swedish Presidency to lead negotiations on pending and forthcoming legislative proposals, to achieve improved standards. In this connection, gaps in the existing legal framework should be addressed, in particular with a view to extending free movement rights to people found to be in need of protection and to ensuring respect for the rights of children. UNHCR further urges recognition of the importance of ongoing evaluation of State practice.*

### **3. Access to Territory and to Asylum Procedures**

The Common European Asylum System will fail to meet its central objective if persons seeking protection are not able to apply for it in the EU or at its borders. The sovereign right of States to control their borders must therefore be reconciled with the individual right to seek and enjoy asylum from persecution. UNHCR, through long-established cooperation with Member State border authorities and more recently, with Frontex, seeks to contribute constructively to policy-making and practical initiatives in this area.

In its Ten Point Plan of Action for Refugee Protection and Mixed Migration ('Ten Point Plan'),<sup>10</sup> UNHCR put forward suggestions to help governments and other stakeholders develop responses to irregular migration which include safeguards for people seeking protection. This grows more pressing as control of the Union's external frontiers becomes more comprehensive, in particular where control measures operate beyond the physical borders of Member States. While UNHCR welcomes and is ready to contribute to the EU's cooperation with third countries on migration issues, it considers that such cooperation must be additional to, and not a substitute for, access to asylum procedures in line with the EU *acquis* for people who seek protection in the EU or at its borders.

Mixed migratory movements toward the EU include refugees and asylum seekers and others who need and are entitled to special protections, such as victims of trafficking and unaccompanied children. To cite just one example, 75% of persons who arrived irregularly by sea in Italy in 2008 applied for asylum; 50% of the applicants were subsequently recognized as being in need of international protection. Further efforts are therefore needed to ensure that border control measures are 'protection-sensitive'. Good practices exist in the management of air, land and sea borders which could be further developed, including border monitoring arrangements involving collaboration among UNHCR, State authorities and NGOs. Some activities have been initiated with Frontex which could be extended at national level, and vice-versa, such as border guard training on identifying asylum-seekers, and their referral to appropriate procedures.

At the Union's maritime frontiers, recent events have thrown the challenge of ensuring access for people in need of protection into sharp relief. In early May 2009, Italian State vessels intercepted several boats in international waters, and escorted them back to Libya, from where they were believed to have departed. UNHCR remains concerned that such actions threaten the fundamental right to seek and enjoy asylum from persecution, and affirms that the principle of *non-refoulement*, as enshrined in the 1951 Convention and in primary Community law, binds States wherever they exercise jurisdiction, including outside their borders.<sup>11</sup>

International maritime law enshrines a number of key principles, including the obligation to rescue people in distress at sea and to disembark such people in a place of safety, regardless of their status, suspected motives, number or mode of travel. Member States disagree, however, on the extent and means of implementation of some of these obligations. Solutions must be found which ensure the safety and safeguard the rights of the people concerned. UNHCR stands ready to contribute to efforts to find practical solutions which respect the important principles at stake.

*Recommendation: UNHCR urges Sweden to facilitate discussions among Member States on border management measures which respect key principles, including the right to seek*

<sup>10</sup> UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, Rev.1, January 2007, available at: <http://www.unhcr.org/refworld/docid/45b0c09b2.html>.

<sup>11</sup> UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, available at: <http://www.unhcr.org/refworld/docid/45f17a1a4.html>.

*asylum and to be protected from refoulement. The Council, under Presidency leadership, should respond to actions which depart from these principles. Efforts should be redoubled to ensure that border control measures include safeguards for people seeking protection, and UNHCR and others with expertise on protection matters should be given the opportunity to take part in the development thereof.*

#### **4. Responsibility-Sharing**

Some Member States have recently renewed calls for EU action in the face of significant numbers of people arriving irregularly at their frontiers. Where the scale of arrivals exceeds the capacity of their asylum, reception or integration systems, the situation is often described as one of 'particular pressure'. UNHCR acknowledges the importance of responsibility-sharing within the EU. However, this issue arises even more acutely between the industrialized world and States in regions of origin and transit. UNHCR urges the Presidency to make clear that intra EU-solidarity should not be at the expense of support, notably in the form of resettlement, for third countries.

The notion of 'pressures' is neither simple nor uniform. Statistics comparing asylum applications to population show that it is not a phenomenon which only affects southern European countries, nor only those faced with arrivals by sea. Comparable and reliable data can help to assess the scale and nature of needs which may exist in different States at different times.

A number of suggestions have been put forward which could contribute significantly to addressing the current needs. Developed and tested appropriately, such a 'menu' of options could include the following:

- *Relocation of people recognized as refugees or in need of other forms of international protection within the EU:* UNHCR is prepared to work with the EU to elaborate this concept further. Discussion will be needed on the criteria for intra-EU relocation, which should in any case require the consent of the individual. States benefiting from such arrangements must continue to work to strengthen and improve the capacity and quality of their asylum and reception systems, and should not make relocation a precondition for fulfillment of their existing obligations. UNHCR reiterates its call for Member States not to allow the development of intra-EU relocation mechanisms to undermine efforts to expand resettlement of refugees to the EU from first countries of asylum where other durable solutions are not available.
- *Intra-EU family reunification:* UNHCR encourages streamlining of family reunification procedures among Member States, to ensure they are accessible and swift, and that requirements can effectively be met by refugees. Such improvements could contribute to responsibility-sharing by ensuring that refugees and their families are able to take up their entitlements to reunite where they are divided



between Member States, and enable them to take advantage of the support networks that families provide.<sup>12</sup>

- *Dublin II*: It is generally acknowledged that Dublin II was conceived as a responsibility-allocation instrument, based on criteria focusing primarily on the applicant's point of entry to the EU. Many observers argue that Dublin II needs to be balanced with more effective responsibility-sharing. Discretionary provisions in the Dublin Regulation provide some possibilities: greater use of the optional 'humanitarian clause', or the 'sovereignty clause', could enable Member States to step in when strict application of Dublin rules could lead to imbalances. The recent proposal of the Commission for a temporary suspension mechanism in cases of particular pressure, responds directly to this need.
- *Asylum support teams*: This proposal, as foreseen in the EASO Regulation, could be piloted through a project to identify staff – such as interpreters, registration personnel, country of origin experts, or others – from one Member State whose skills could help reinforce capacity in another.
- *Other ideas* include: increasing free movement rights of people identified as needing protection; support for returns of people found not to need protection; and ensuring more effective use of EC funds aimed at providing exceptional support.

*Recommendation: The Presidency is encouraged to launch a wide-ranging discussion on responsibility-sharing, and to involve UNHCR and other intergovernmental and non-governmental stakeholders. This discussion should encompass a range of measures including relocation of people in need of protection as well as expanded free movement rights, asylum support teams, improved possibilities for family reunification and changes to the Dublin II system, among others.*

## 5. Integration

Racism, xenophobia and discrimination pose a threat, not only to the integration of newcomers in the EU, but to the Union's core values. UNHCR calls for close scrutiny of this issue and active partnership with competent bodies, including non-governmental organizations, to address these problems. Measures are needed to address the root causes of these phenomena, to promote mutual understanding and dialogue, and to monitor the implementation of legal provisions relating to protection from discrimination and equality of treatment.

Within the EU, recognized refugees have a set of rights that should facilitate their effective integration. However, they often lack an effective opportunity to realize and enjoy these

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<sup>12</sup> The forthcoming review by the European Commission of the Family Reunification Directive provides an opportunity to assess whether its provisions need to be strengthened to ensure the special situation of refugees and subsidiary protection beneficiaries is adequately taken into account.

rights. Further efforts are needed to develop and apply methodologies and tools to guide, monitor and evaluate the implementation of integration policies and programmes as they affect refugees.<sup>13</sup> For subsidiary protection beneficiaries, however, the minimum standards in the Qualification Directive are inadequate, and allow States to impose far-reaching limits on employment rights and to deny integration support. These problems should be addressed, to ensure a realistic chance of integration for thousands of people recognized as having compelling international protection needs. Also, as stated earlier, mutual recognition of positive asylum decisions, coupled with broader entitlements for beneficiaries of international protection to move and take up residence within the EU, would also facilitate their integration.

Integration programmes often fail to take account of the special needs and circumstances of beneficiaries of international protection. UNHCR considers that EU policy should take account of the fact that refugees and subsidiary protection beneficiaries may have had experiences which hinder integration and warrant special support.

*Recommendation: The Swedish Presidency is urged to pay particular attention to the integration needs of beneficiaries of international protection, through practical cooperation, information exchange and the development of evaluation tools. Efforts should be made to reduce the gap between legislative provisions and the effective enjoyment of rights. As a concrete measure to promote integration, the Presidency is encouraged to open a debate on free movement of beneficiaries of international protection within the EU.*

## 6. The External Dimension

### *a) Resettlement*

Since discussions at EU level on resettlement began several years ago, UNHCR has advocated for more resettlement to the European Union. While some progress has been made, efforts are still needed to expand both the number of Member States involved in resettlement and the number of refugees resettled to the EU, which currently stands at less than one in ten refugees resettled worldwide.

The number of refugees in need of resettlement is growing, yet available resettlement places are not keeping pace. In 2008, UNHCR presented 121,000 refugees for resettlement consideration, and in 2009 the figure is likely to be higher, yet only some 79,000 places are offered by all resettlement States together. EU countries provide about 7,000 places. UNHCR's efforts to expand resettlement, in order to meet the protection needs of vulnerable refugees and to provide a viable durable solution, must be matched by a commitment from States to open more opportunities for refugees to be resettled.

<sup>13</sup> UNHCR is working with the Migration Policy Group to develop an evaluation tool for refugee integration which will be piloted in Member States in Central Europe in 2010.

UNHCR therefore looks forward to a proposal for an EU resettlement scheme, and urges the Swedish Presidency to take this subject forward vigorously, highlighting the protection imperatives that underpin resettlement, as well as the strategic benefits of resettlement in helping to resolve long-standing refugee situations, strengthening protection frameworks in regions of origin and mitigating onward movements. An EU information campaign explaining resettlement and illustrating the experience of resettled refugees would be helpful to build public support for and understanding of resettlement, including awareness of the fact that resettlement from third countries which host large numbers of refugees is an important way to demonstrate the EU's solidarity with those countries.

An EU resettlement scheme should, in UNHCR's view, add value to existing national programmes, by providing more places overall. It should be integrated into UNHCR's global resettlement activities, allow for multi-year planning, and lead to streamlining of the resettlement process. It could usefully incorporate a private sponsorship mechanism such as elaborated by Australia and Canada over many years. Last but not least, an EU scheme should include predictable participation by EU countries in the resettlement of refugees evacuated by UNHCR to the Emergency Transit Centre in Romania.

*b) Capacity-building*

UNHCR will continue to contribute to EU-sponsored asylum capacity building activities in third countries. The importance of efforts to increase asylum space in third countries has been highlighted by recent debates on Libya, but similar issues arise in many other contexts as well. UNHCR welcomes EU support – both political and financial – to promote protection principles and practice in third countries. EC and/or Member States' resources contribute to ensuring that UNHCR can fulfill its mandate, including through advocating for the rights of refugees, and in some cases, carrying out refugee status determination, where the host state lacks the legal or institutional framework, resources and/or political will to do so.

However, UNHCR's activities cannot replace the provision of protection by States. Conditions for asylum-seekers and refugees in some countries where UNHCR operates are far from adequate, and many of their rights – including to liberty and security of the person – are not respected. In this respect, UNHCR welcomes Member State interest in the concept of Regional Protection Programmes (RPP), but notes that such programmes are not a substitute for allowing effective access to the Union for persons seeking international protection. UNHCR also notes that significantly increased resources and more effective coordination among EU actors are required to increase the impact of RPPs, which at present remains limited.

*c) Return*

Return of people found not to be in need of international protection, following a fair asylum procedure, is important to uphold the credibility and integrity of the asylum system. UNHCR recognizes the widespread Member State interest in facilitating returns. It recalls, however, that certain standards must apply, and that return must take place in safety and

dignity. Where the return of children is contemplated, their best interests must be a primary consideration. UNHCR urges States to work toward the sustainable return of persons to their countries of origin, in a manner which does not aggravate problems of internal displacement. UNHCR notes with concern that returns to countries of transit do not generally provide a durable solution and may lead to further irregular movements.

*Recommendation: UNHCR urges the Presidency to work with Member States, the Commission and Parliament to expand resettlement to the EU, and to facilitate productive discussions on an EU resettlement scheme, involving UNHCR, IOM and other stakeholders. While asylum capacity-building in third countries should remain a priority for the EU, it should be approached in a manner which will encourage widespread respect for international protection norms, set realistic expectations, and does not undermine or seek to replace access to protection in the European Union. UNHCR urges the Presidency to take forward discussions on the return of persons not in need of protection in a manner which not only ensures respect for the rights and dignity of the individuals concerned but promotes sustainable reintegration in countries of origin.*

UNHCR  
June 2009