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POLICY BRIEF 2

Access to Durable Solutions

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Background/Overview

There are three traditional durable solutions to the protection needs of refugees: local integration in a country of asylum, return or repatriation to the country of origin, and resettlement to a third country. These solutions were employed by states in many refugee crises of the past century. For some, comprehensive plans were developed including all three durable solutions. There was less attention for these long-term solutions during the 1990s, when it was thought that many refugee crises could be resolved relatively quickly through temporary protection and return. While the number of refugees worldwide seems to be slowly diminishing, as are the number of claims for asylum in Europe, the need for protection and assistance remains strong for several million people. Most of these refugees remain in their region of origin, although some do move on for protection and other reasons.

Throughout the twentieth century European states and the countries of North America, Australia and New Zealand played a significant role in providing assistance to refugees within their regions of origin, through nationally run programmes and funding for UNHCR and NGOs. This has helped in ensuring some level of initial assistance, and has contributed to return processes. Several EU Member States have also conducted resettlement programmes. In policy terms, however, European attention has been particularly drawn to the issue of asylum within European borders, to the integration of newcomers and to returns from Europe, rather than to policies for refugee protection in the places where most refugees are to be found. Policies aimed at protection in regions of origin of refugees are quite distinct from the provision of assistance to those refugees.

In her statement to the Standing Committee of June 2004, the Director of the Department of International Protection at UNHCR, Erika Feller, pointed to the differences between Refugee Policy and Asylum Policy. Refugee policy is the 'umbrella' for global action. Asylum policy is the domestic mechanism through which some refugee protection takes place. In re-focusing on refugee policy more broadly, by encompassing access to durable solutions everywhere in its policy thinking, the European Union will strengthen its essential role in global refugee protection. Increasing access to durable solutions through a wider approach to refugee policy also has the potential to make a significant contribution towards the efficiency and effectiveness of the asylum system within the EU. Situating asylum in Europe within a clearly articulated broader refugee protection policy framework would help to clarify debate across the continent for the benefit of the public, politicians and policy makers, as well as refugees.

The European Commission's June 2004 Communication on "Improving Access to Durable Solutions" (COM (2004) 410) elaborated some of the current, and initial, thinking on the role of promoting access to durable solutions linked to the European Union's asylum system. Responding to Conclusion 26 of the Thessaloniki European Council, the Communication set out the ways and means to enhance protection capacity in regions of origin and proposed a series of policy measures, including the outline of a resettlement scheme for the European Union. Both of these elements would clearly contribute to increased access to durable solutions for the world's refugees.

Discussions among states on issues including closer cooperation on protection, resettlement and return have begun in the context of the High Commissioner's Forum and UNHCR's Convention Plus initiative, as well as in other contexts. Nonetheless, there remain confusion and misunderstandings about some policy aims, contents and motives. Some advocacy groups and some key actors within major international organizations and within several European Union Member States are cautious in dealing with refugee protection policy issues going beyond asylum in Europe. Others see a strong need to investigate fully the potential for these policies, while cautioning that refugee protection **must** include asylum in Europe. Amnesty International's assessment of the Tampere Agenda (2 June 2004), for example, says that resettlement schemes and protection in the region are "valuable instruments" and indicates that they and other NGOs would be "ready to support [them] provided that they are never used as a substitute - legally or politically - for the legally binding rights that are attached to a refugee or asylum seeker who has directly engaged the protection obligations of a state party to the Refugee Convention." Many on both sides of this spectrum acknowledge the need to go beyond short-term measures, to deal with the causes of forced migration and to cooperate with countries most immediately affected by refugee movements.

In order to proceed with a comprehensive approach to increasing refugees' access to durable solutions, all concerns, fears, desires and hopes need to be fully discussed between participating states, and between states and civil society.

Discussion

Recent discussion on refugee protection has brought renewed attention to durable solutions. The UNHCR "Agenda for Protection" re-emphasises the three durable solutions. The solutions are complementary and together form a comprehensive package. None can stand alone: the fact that each of the three is theoretically possible enhances them all.

The renewed discussion on durable solutions turns the spotlight on the roles that all states and International Organizations could play both in enhancing opportunities for protection and integration in the region of origin, and in assisting in return programmes between countries in the region. This discussion also draws attention to the links between capacity for effective protection in the region and secondary movements to seek asylum further afield. For refugee protection to be globally effective, all three solutions must co-exist and must be the concern of all states.

Local Integration: protection in the region

As a durable solution, local integration in the region of origin is the key. Short-term integration can provide a basis of confidence from which people can in fact choose to return to their country of origin as their 'ultimate' solution. For many refugees, longer-term integration in a regional host society is the most likely durable solution, but at present this

is not always possible. Integration in a neighbouring state is often inhibited by a lack of readiness on the political, economic or social front.

In order for local integration to be possible, there must first, of course, be protection: protection from *refoulement*, the granting of a legal status, and social, cultural and political acceptance of the refugees' presence within the territory, in the community and in the economy. Is there a role for European states to play in helping states in the region to increase their capacity to offer this sort of effective protection?

If there were such a role it would be one that goes beyond the type of humanitarian assistance in emergencies (including any large scale refugee influx) currently in place and beyond development aid. In order to enhance capacity for protection in the region that could lead to longer-term local integration, the governments of regional states need to develop strong legal systems, to adjudicate asylum claims, or provide *prima facie* protection, for example. They need to strengthen their physical infrastructure to accommodate refugees in such a way that their integration with their host society is not obstructed by charges of favouritism towards the refugees. Local civil society organizations need to be strengthened so that they can play an active implementing and advocacy role, on behalf of both the refugees and of the local, host society. How could the European Union support states in Africa and Asia in particular to undertake such capacity building, and to develop popular support for long-term refugee protection initiatives?

In its June 2004 Communication, the European Commission draws on UNHCR's "Handbook on strengthening protection capacities in host countries" to set out five key features, namely:

- Accession and adherence to refugee instruments;
- National legal frameworks for refugee protection/asylum;
- Registration and documentation of asylum seekers and refugees;
- Admission and reception of asylum seekers; and
- Support for self-reliance and local integration.

The most effective support from the EU and its Member States to enhance capacity in all of these areas would need to show several key characteristics. It would need to be:

- Targeted;
- Tailored to build on the existing capacity;
- Pragmatically and directly negotiated with the government of the asylum country concerned;
- Sustained over the medium- to long-term; and
- Evolutionary in nature, since protection needs and local readiness to meet those needs evolves over time.

Besides careful discussion within the Union, bi-lateral and multi-lateral discussions with countries in regions of origin are essential. Those are the states that already shelter millions of refugees: they will surely continue to do so.

The focus on durable solutions involves elaborating the mutually beneficial and acceptable means by which those states that receive refugees can be supported in their front line role. Such support does not have to be a question of 'shifting' the burden: it is rather a matter of acknowledging that refugee protection is a concern of all states, and creating a supporting role through which EU Member States can effectively demonstrate solidarity with refugee-receiving states and their populations.

Return and repatriation within the region

Voluntary and assisted return is the most tried and tested of the durable solutions – and the one most often used and sought out by refugees. EU governments contribute to existing programmes through their funding of UNHCR and IOM's role for example. However, the policy focus in the EU with regard to return issues is most strongly on the repatriation of people who have sought asylum in Europe. A more comprehensive approach to international refugee protection could involve more significant and targeted support to organizations, governments and societies involved at both ends of a regional return process. Such involvement in returns within a region of origin might give rise to opportunities for establishing the type of inter-state relationships required for the successful conclusion of meaningful readmission agreements where appropriate.

Intra-regional return frequently involves several hundred thousand refugees departing situations in which their sense of protection and personal security may have been limited, and going back without full confidence in their future. Support to such intra-regional return movements would not only be part of a comprehensive approach to ensuring durable solutions, but could also be effectively combined with appropriately timed returns from EU Member States. There is often a sense that return is called 'unsafe' for people who have been protected further away, while it is deemed 'safe' for people who were protected in the region of their country of origin. Some in Europe see this as contradictory: in some situations that may be the case. In other situations, however, a geographically spread approach to return might be most effective. It can also be the case that return is unsustainable, giving rise to renewed movement within the region.

Resettlement

Most refugees do either return to their country of origin or, over a period of years, achieve local integration in a country in their region of origin. For those who do not achieve this durable solution there are currently three alternatives:

- They might remain in a protracted refugee situation, where they are not integrated locally but rather remain in camps or urban settings. Some term this 'warehousing'.
- The second possibility, open only to very few refugees at the moment, is that they will be resettled to one of the eighteen countries with resettlement programmes.
- If a protracted refugee situation becomes intolerable for an individual, and if resettlement, which is very limited, does not arise, then they might turn to the third alternative and seek a means to travel further afield to seek asylum.

A comprehensive refugee protection approach would include a resettlement component, which, if conducted on a sufficient scale, might have the beneficial effect of limiting the need for people to make hazardous and expensive journeys, often at the mercy of smugglers. Efforts to enhance capacity for local protection and integration, and to assist in intra-regional returns would seem most likely to be effective if the full spectrum of durable solutions is available. With the promise of resettlement opportunities for refugees who cannot be integrated locally and who cannot return, states in regions of origin are more likely to feel fully supported in accepting both the burden and responsibility for refugees in the first instance.

The Commission's June 2004 Communication on Communication on "Improving access to durable solutions" (COM (2004) 410) and the study conducted by MPI on the feasibility of setting up resettlement programmes in the EU, discuss the potential scope, objectives and

mechanisms of a resettlement programme for the EU as a whole. The nature of resettlement as a durable solution with humanitarian motives is stressed in both of those papers. In responding to the Thessaloniki Conclusions and deciding whether or not to develop resettlement as part of a wider approach to durable solution, Member States would need to consider the ways in which resettlement could be made operational. As an organized programme, resettlement requires planning, in terms of broad ranges of numbers and of criteria. At the same time flexibility is required to address real world needs.

Resettlement's nature as a durable solution is not its only facet. Resettlement programmes generally have two further impacts: solidarity with states in regions of origin and providing an effective tool of protection. These three aspects of resettlement combine to make it an essential component in a complete refugee protection approach.

A solutions-focused European approach to international refugee protection

How can the European Union move towards the development of a refugee protection policy approach, which includes the relatively well developed asylum system and national approaches to protection within Member State borders? Such a move does not necessarily mean an expansion of either thinking or activities. Assistance is already offered to refugees in regions of origin. Some level of funding for UNHCR activities, including the location of protection officers and regional protection-oriented training programmes, is also in place across Member States. Some return assistance is already in place. Some Member States have resettlement programmes, and others have joined UNHCR working group discussions, showing an interest in creating such programmes.

The development of a solutions-focused European approach to refugee protection is thus not a matter so much of shifting the conceptual underpinning of a broad refugee protection regime. It is rather a case of needing to reassess the scope of protection-related activities and their coordination. In addition, the relatively simple step of giving these activities an umbrella name in the EU context might solidify their nature as a managed approach to refugee protection issues. However, in order to achieve the desired outcomes, a number of changes in actual policy implementation would be required.

In its June 2004 Communication on "Improving access to durable solutions" (COM (2004) 410), the European Commission proposed the development of Regional Protection Programmes (RPPs). These programmes would involve a shift in terms of the required coordination of all protection efforts. Under an RRP, EU Member States and the International Organizations they support, especially UNHCR, would focus efforts and attention on specific regions and caseloads in one coordinated attempt to resolve a particular situation. This coordination would be intended to avoid the piecemeal approach that often prevails at present. The focus on a specific region and/or caseload should not mean that others are ignored. Rather it should mean that the solution to protection needs in a given area receives concentrated attention – and once one case appears to be resolved, and not just contained, another could be dealt with.

The required coordination in policy-making and in implementation would require a significant expansion in institutional cooperation at Member State and at European (Commission and Council of Ministers) levels. Justice and Home Affairs, Foreign and Development Ministries and Departments would all need to be involved in policy decisions and delivery.

Europe's interest in undertaking a more coordinated and comprehensive approach to durable solutions for refugees is not isolated to the altruism of protecting and assisting

refugees elsewhere, or to simply supporting the states that undertake such protection. The benefits of a comprehensive and well-managed approach should be felt in various ways in Europe too. If successful in enhancing access to durable solutions, Member States might find that secondary spontaneous movements to the EU decrease, while access to protection in Europe through resettlement would be available to refugees whose protection in their region is not effective or sustainable. Secondary movements for economic purposes could be dealt with without the issue of asylum arising, if protection was not a central motive for the movement. Assessing the effectiveness of protection in regions of origin will require consistent attention, and the involvement of a range of actors.

Asylum channels must remain open for those in need. Creating full and effective regional protection for all displaced persons would be impossible, although protection in some regions and for many refugees could be enhanced through targeted projects. If such projects were to be comprehensive, both in relation to the specific situation they seek to address and in the scope of a broad refugee policy, effective methods of monitoring and evaluation of the protection available would be important components.

With full and careful explanation of the approach, Member States might find that populations across Europe understand refugee protection issues and the role of their states better, and see their own humanitarian principles reflected in the actions of their governments. A focus on the positive response to protection needs could in turn be channelled into greater acceptance of both those asylum seekers who need to request protection in Europe and resettled refugees.

While resettlement would be one of the steps needed for such a successful solutions-oriented approach, the other key would be assistance to governments of countries of first asylum in developing the social, economic and political circumstances in which their populations accept the need to protect and potentially integrate refugees. If such integration becomes possible, and protection in the region is effective, then fewer refugees should simply be 'warehoused', and fewer would be likely to need to turn to smugglers to seek a protection goal further afield. Support through capacity building for protection in regions of origin can only be successfully offered in a situation-specific way, and in full cooperation and dialogue with the governments and civil society representatives of the countries in the region.

Conclusion

Greater attention to the long-term solutions to refugee protection needs, and to the fact that those needs change and solutions evolve, could enhance the international protection regime and bolster the EU's position in that regime. The effects of re-developing a broad, coordinated and comprehensive refugee protection policy could have beneficial effects on the asylum system within the EU. These would come, for example, from the potential impact on secondary movements. A comprehensive approach to refugee protection would embrace policies designed to:

- Enhance the political, legal, administrative, social and economic capacity of states in regions of origin to protect the refugees who cross their borders;
- Support voluntary intra-regional return programmes;
- Continue to strengthen the Common European Asylum System; and
- Offer resettlement to refugees for whom that is the only way in which a durable solution can be achieved.

Questions/Challenges

- How can EU Member States cooperate with each other and with other states to increase access to the three durable solutions for refugees?
- How can European states play a role in helping states in the region increase their capacity to offer effective protection and/or long-term local integration as a durable solution?
- How could capacity building be undertaken to support effective protection in 'front-line' states and intra-regional returns while respecting the sovereignty and national interests of those states as well as upholding international law?
- What practical steps would have to be taken by European states, states in regions of origin with EU support and by international organizations to improve access to durable solutions?
- What would be the role of civil society in Europe and in the regions of origin in enhancing capacity for fuller access to all durable solutions?
- How can EU Member States convey to citizens that their refugee protection policies, in order to be effective, need to encompass elements complementary and supplementary to asylum in Europe?
- To what extent is institutional cooperation and coordination necessary within the EU and within individual Member States to fully address the external relations components of a broad refugee protection policy that includes asylum?
- Does the European Union have the capacity to generate situation-specific approaches to the spectrum of protection needs and the range of mechanisms, if an approach to greater emphasis on durable solutions and refugee policy were to be pursued?
- What kind of monitoring and evaluation mechanisms would need to be in place to assess the effectiveness of protection in regions of origin when considering the use of the asylum channel by refugees from specific countries of origin and when considering the resettlement of refugees?