

Resettling refugees, the european instrument for the externalisation of asylum procedures

Resettlement is a concept born after the Second World War, at a time when thousands of people, displaced because of conflicts in Europe, found refuge in host countries all over the world, notably under the auspices of the ICEM (Intergovernmental Committee for European Migration, the ancestor of the IOM). Until the 1950s, little distinction was made between displaced persons and refugees.

With respect to refugees, the UNHCR, whose mandate is to provide international protection, has had, since its creation in 1950, three categories of solution at its disposal with this aim in mind:

Voluntary repatriation (when circumstances in the country of origin of the refugees allow it).
Local integration in the country of asylum.
Resettlement from the country of asylum to a third country.

In the history of the UNHCR, this third solution (resettlement) was first used in 1956 following the exodus of some 200 000 Hungarians who found refuge in other european countries. In the 1970s, this solution was also adopted for about two million Indo-Chinese refugees in Thailand (coming from Vietnam, Laos and Cambodia), of which a majority was resettled in the United States.

The UNHCR has regular recourse to resettlement, based on the voluntary participation of host countries. The main countries participating in resettlement programmes are Australia, Canada, Denmark, the United States, New Zealand and Sweden. Apart from Denmark and Sweden, EU Member States hardly use resettlement at all. According to the UNHCR, the use of this protective tool must be encouraged, as it represents on one hand a concrete engagement for the protection of refugees and, on the other hand, the expression of a shared responsibility at the international level.

The European Union and resettlement

First stage: following the British proposal of external camps for asylum seekers, 2003.

In a communication of June 2003¹, « *Towards more accessible, equitable and manageable asylum systems* », the European Commission explains that the European asylum system has deficiencies and that it is therefore necessary to move towards a new approach which would take into account mixed flows (that is, both asylum seekers and migrants) as well as the « *external dimension of these flows* ». This « *new approach would reinforce the credibility, integrity and efficiency of the standards underpinning the systems for spontaneous arrivals, by offering a number of well-defined alternatives* ». This communication is in response to the demand of the Council (heads of State and of government) to “*consider ways to strengthen the reception capacity of third-party countries, including through the use of development co-operation*”. following the British proposal of March 2003 to set up camps for asylum seekers outside the EU in order to process their claims. The idea was to find a middle way which would satisfy those who, together with the UK, are in favour of radical solutions to reduce the number of asylum claims in Europe, and those who remain attached to principles of reception for those people identified as being in need of protection.

The European Commission bases itself on the proposals contained in a world programme set up previously by the UNHCR concerning the management of the international refugee protection regime, entitled « *Convention Plus* »² (referring to the 1951 Geneva Refugee Convention). *Acknowledging the fact “that the asylum and international protection system can come under serious threat if it is used for other purposes or repeatedly misused, notably by networks of smugglers in human beings”, the objective of the Convention Plus is “to improve the operation of the Geneva Convention, boost solidarity and extend the management of asylum-related migratory flows by means of supplementary instruments or policies”.*

On this basis, the European Commission recommends facilitating: 1) the orderly and managed arrival of persons in need of international protection in the EU from their regions of origin; and 2) a burden and responsibility sharing within the EU as well as with the regions of origin, enabling effective protection to be provided as quickly as possible and to correspond as closely as possible to the needs of the persons in question.

Concerning the « *orderly and managed arrival* » chapter, the Commission is trying to find a compromise between Community management (this would mean a European resettlement programme, « *in which all or almost all of the chronological steps in the resettlement process are set out at EU level* ») and the difficulty that there would be in imposing a constraining system on individual states. Aware of the fact that « *the necessary political will to convert immediately to those models may not yet exist across the fifteen Member States nor the enlarged Union* », the Commission has imagined a hybrid system in which « *the EU could establish the goals, the selection criteria - including the definition of those to be considered for resettlement - and the total annual target for resettlement* », but in which « *however, it would be left to the Member States to establish their own quota within that target. Furthermore, Member States would also establish their selection procedures, and be free to organise their own policy and approach to issues related to the arrival of refugees, including the immigration procedures to be carried out. Finally, in that*

1. COM(2003) 315 – Brussels, 3/6/2003

2 www.unhcr.org/convention-plus

« *Convention Plus* » is not a new convention, but a process According to the former High Commissioner Ruud Lubbers: “*The “plus” concerns the development of special agreements or multilateral arrangements to ensure improved burden sharing, with countries in the North and South working together to find durable solutions for refugees. This includes comprehensive plans of action to deal with mass outflows, and agreements on “secondary movements”, whereby the roles and responsibilities of countries of origin, transit, and potential destination are better defined. It also includes agreements aimed at better targeting development assistance*” (Agenda for protection , october 2003, foreword).

model, Member States would also develop their own approach to the progress of a resettled refugee from arrival towards longer-term integration. »

At their meeting in Rome in October 2003, the representatives of the EU Member States welcomed the proposal of the Commission and invited the Commission to present a more detailed resettlement programme at the EU level, which would allow global solutions to be found for the situation of refugees and to fight against illegal immigration and human trafficking. « *The managed arrival of persons in need of international protection would also constitute an efficient tool in combating sentiments of racism and xenophobia, as the public support for the asylum system is likely to be increased* ».

Second stage: the structuring of resettlement with the objective of « asylum elsewhere »

In a communication of 4th June 2004³, « *Improving access to durable solutions* », the European Commission considers that resettlement of refugees should play an important role in EU asylum policy « *in a context where the majority of applications in the EU do not meet the criteria for international protection* » (another way of naming mixed flows). The Commission did not give many more details than in its 2003 communication, other than that « *the watchwords of such a scheme would be flexibility and situation-specific* » and that it would be « *aimed at a specific caseload, limited but consistent in number and adaptable to the ability of Member States to host refugees* ». “Detailed quotas would be established at European level and resettlement” would be organised under the auspices of the UNHCR, with the logistical support of the IOM. [Question: guillemets en français; source pas trouvée].

Above all, this communication explains that resettlement must associate with the refugee protection programmes in the regions of origin in order to enhance the “*protection capacity of third-party countries and to better manage the (orderly) arrival of refugees on european territory* ». Furthermore, it proposes that a financial instrument should be set up to allow Member States, third-party countries, international organisations and NGOs to work together efficiently towards this goal.

The idea which is clearly taking shape is to **have the main part of the asylum claims processed in third-party countries close to those of the departure of the refugees** (the « regional protection ») **and to proceed to a manageable arrival based on quotas** within a European scheme, while still on a voluntary basis, where each Member State could remain free to define its policy and orientation.

The « Hague programme », adopted by the Council of the European Union on 4th November 2004, concluded the first phase of the communitarization of asylum and migration policies (which had begun at the Tampere Summit of 1999) and presents the main lines of the policy which is to be driven during the next five years. On the menu is « *the external dimension of asylum and migration* » which includes in particular the partnership with third-party transit countries and with the countries of origin of migrants and asylum seekers. As regards asylum, the European Council “*invites the Commission to develop EU-Regional Protection Programmes in partnership with the third countries concerned and in close consultation and cooperation with the UNHCR*”.

Third stage: the project put into effect

The Council of ministers responsible for migration issues in the 25 Member States put externalisation of asylum on the programme of its January 2005 meeting, and explored three aspects of it: 1) the reinforcement of the protection in countries of origin; 2) the reinforcement of protection

³ COM(2004) 410, Brussels 4th June 2004.

in regions of transit; 3) the resettlement of refugees. The High Commissioner for Refugees was invited to this meeting and pointed out that European states were significantly behind on this last point compared to other countries.

Regarding resettlement which “offers a solution for refugees who can neither return home nor settle permanently in their first country of refuge”, Ruud Lubbers remarks that the “countries of immigration (Australia, Canada, New Zealand and the United States) offered up to 100,000 places for refugee resettlement last year, whereas in Europe only 4,700 places were made available”.

With reference to earlier discussions on the benefit of drawing on an increased investment to improve protection in the regions of origin, Ruud Lubbers indicated that « step by step, we need to move towards more refugee resettlement and less irregular movements. Over time, the availability of such a channel of access to Europe for refugees could help to reduce the pressure of spontaneous arrivals. Of course, this will be even more likely if channels for economic immigration are opened as well.»

The general Affairs and External Relations Council invited the Commission to present a proposal for a resettlement scheme by July 2005 for possible inclusion into Regional Protection Programmes (...) which needs to be situation specific, flexible and designed in a way that allows Member States to participate in it or not (...). The UNHCR plays a key role in preparing and referring the dossiers to a resettlement country for selection of a certain number of refugees ». It precises that « it is understood that any resettlement programme cannot prejudice the proper treatment of individual asylum claims expressed by refugees arriving spontaneously in the EU from regions of origin ».

This statement would be more credible if:

- 1) the greater part of the normative and operational activity of the EU regarding asylum had not consisted, in the last five years, of restricting access to asylum procedures and dissuading the claims (see for example the analysis of the Coordination Française pour le Droit d'Asile « Lourdes menaces sur le droit d'asile en Europe »” *Serious threats to the right of asylum in Europe*, <http://cfda.rezo.net/Europe/rapport-02-04.html>);
- 2) the official statements of the EU institutions had not tried to convince us that Europe was submerged by asylum claims and that it could not face up to them, when UNHCR statistics negate this: the total number of asylum claims in the 25 Member States fell by 30% between 2003 and 2005.
- 3) the contemporary examples of resettlement did not encourage great prudence in analysis. Except for Canada, in most of the countries having recourse to resettlement, the admission procedure is far from simply being complementary to « asylum on-the-spot » and has the tendency of becoming exclusive.

The risks of resettlement

Australia no longer even respects the Geneva Convention in the sense that, for claims lodged on the spot, it only grants subsidiary protection. Not to mention the systematic imprisonment of asylum seekers in camps set up on islands or in desert regions⁴.

Historically, the United States rarely grants refugee status to exiles already present on its territory. Thus in 2004 the country only received 27,900 asylum claims (barely more than Austria). Twice as few refugees were admitted under the procedure of individual determination on the spot (25,254) than under the resettlement procedure (52,900)⁵.

4 Eva Le Pallec La criminalisation des réfugiés en Australie Plein Droit n°58, décembre 2003 : <http://www.gisti.org/doc/plein-droit/58/australie.html>

5 Source : <http://www.unhcr.ch/cgi-bin/texis/vtx/events/opendoc.pdf?tbl=STATISTICS&id=42b283744>

Denmark, often cited as an example of a European state using resettlement, has one of the most restrictive legislations of the EU regarding asylum: to such an extent that, to preserve it, the country stayed out of the European harmonisation process. In 2004, only 507 spontaneous applicants were granted asylum. Thus the very modest number of beneficiaries of resettlement (500 persons per year on the average) invites us to put this model into perspective.

The current stage: the « regional protection programmes »

The communication of 1st September 2005 was the response of the Commission to the conclusions of the Council of 2nd and 3rd November 2004 which had invited the Commission to present an action plan for one or more pilot Regional Protection Programmes. Regarding resettlement (one of the seven axes of RPP), the Commission reaffirmed that EU Member States should commit themselves on a voluntary basis to provide resettlement places in their countries. An eventual merging of national programmes into Community structure is envisaged. Funds will be made available within the European Refugee Fund (ERF) so that resettlement “*can be substantially financed by the Community*”. A pilot project in Tanzania might be able to see the light of day: this country hosts the largest population of refugees in Africa, few of which however have been resettled (1200 in 2004). The UNHCR would like to see this number increase and is supported in this by many NGOs already present in Tanzania.

According to the Commission, resettlement should be associated with the other EU objectives concerning regional protection (“*a registration component, building on the UNHCRs’ Project Profile for persons of concern to the HCR in the area, could assist in measuring the impact of RPP*”). It is supposed “*to push refugee and protection issues up the political agenda*”, but most of the communication is devoted to the presentation of the « *need for intensified cooperation and capacity building, both on the southern and eastern borders of the EU to enable those countries better to manage migration and to provide adequate protection for refugees* ». Resettlement is therefore clearly taking place within a process of externalisation of border controls in order to reduce the arrival of migrants in Europe. In this view, the Commission especially targets the Western newly Independent States (Ukraine, Moldova and Belarus) and considers very seriously that Belarus, excluded from all other Community programmes because of its lack of democracy, should consolidate its present capacity for protection.

Dangerous support? : NGOs and resettlement

Having expressed its support since the Tampere summit (1999) for an investment of the EU in resettlement programmes, ECRE (the European Council on Refugees and Exiles), the main European NGO network concerned with the rights of refugees, has worked on making the existing resettlement programmes better known⁶. This study was aimed at defining best practice regarding resettlement. During the past few months, ECRE has on several occasions reaffirmed that the EU should substantially increase its resettlement activities and that it would be more appropriate to do so collectively at the EU level rather than individually at the national level⁷. This lobbying was accompanied by a number of warnings against possible distortions of the objectives of resettlement, which must be primarily the protection of the refugees. In particular:

- the resettlement programme must be a proof for poor countries of the engagement of the EU for taking a larger share of the asylum burden;
- resettlement must not be viewed as a substitute for the processing of asylum applications inside Europe;
- the selection of those who qualify for resettlement must be based on criteria which favour the most vulnerable persons (women, children, handicapped people, ...);
- the involvement of the UNHCR and of NGOs should be institutionalised.

After the tragic events of Ceuta and Melilla and before the European council meeting of 12th and 13th October, ECRE reaffirmed that resettlement was one of the solutions to look at in order to try to avoid similar situations in the future.

In October 2005, the CCME (the Churches' Commission for Migrants in Europe) launched a campaign for the promotion of a European resettlement policy⁸. It bases itself on the conclusions developed by ECRE, the UNHCR and the European Commission, with direct reference to the above-mentioned communication of 1st September on regional protection programmes (RPPs). We note that after having explained what resettlement must not be (neither a programme replacing the spontaneous request for asylum, nor a temporary protection, nor a system of profiling refugees according to nationality or religion), the CCME cites Australia among the countries using resettlement, without mentioning however that that country has totally disengaged itself from its obligations under the Geneva Convention.

The British NGO OXFAM has formulated recommendations regarding resettlement which are close to those of ECRE⁹: *“EU resettlement schemes or other ‘orderly entry’ measures must be complementary to, not a replacement for, a full and fair system for dealing with spontaneous arrivals of asylum seekers on EU territory. Resettlement must be viewed as a tool for providing international protection and durable solutions for selected refugees and not as a tool of migration management. Any distinctions between ‘good’ resettled refugees and ‘bad’ spontaneous arrivals must be avoided in rhetoric and in practice”*.

“Within this context, Member States should be encouraged to expand their resettlement activity; first within a guiding EU framework, and subsequently as part of a more coherent EU-wide resettlement scheme”.

6 ECRE and US Committee for Refugees : « Responding to the Asylum and Access Challenge – An Agenda for Comprehensive Engagement in Protracted Refugee Situations », avril 2003.

7 Cf présentation d'ECRE au séminaire sur la réinstallation organisé par la présidence britannique du conseil européen le 4 juillet 2005 : <http://www.ecre.org/positions/UKpres.doc>

8 CCME lance à cette occasion un bulletin d'information sur la réinstallation, Resettlement Newsletter, dont le premier numéro est daté de septembre-octobre 2005.

9 OXFAM, Territoire inexploré. L'internationalisation de la politique européenne d'asile, mai 2005. <http://www.oxfamgb.org/ukpp/resources/foreignterritory.htm>

In its report, OXFAM pays particular attention to the criteria that must guide the selection of resettlement beneficiaries and to the necessity of protecting the most vulnerable populations. Measures tending to favour the interests of Western countries rather than those of the refugees are therefore denounced. *“The US, Canadian and Australian resettlement schemes, which do not always focus on vulnerability, but on selecting those refugees who demonstrate the best prospect of integration into their new country.”*

These NGOs therefore, without taking into account the reality of Community policies, call strongly for an ideal European resettlement model which, by its care for the protection of refugees, would distinguish itself from the existing programmes which often serve only to select the more desirable applicants.

For its part, Amnesty International (AI), which is not in principle opposed to a European resettlement programme, has taken a more reserved attitude concerning the proposals contained in the Commission’s communication on Regional Protection Programs. If these are to be placed « in a wider political context », AI has doubts about the sincerity and the realisation of the objectives mentioned, and fears that « they cover up the will to prevent asylum seekers and migrants to reach Europe » in a context where the Commission « remains silent on the increasing attempts on the part of the EU Member States to effectively withdraw from their international human rights and protection commitments »¹⁰.

10 AI, Asile : les programmes de protection régionaux. Une communication de la Commission européenne, 7 octobre 2005.

Dangers of a communitarization of the resettlement procedure

Resettlement remains an instrument that can offer a durable solution to refugees blocked in their first country of asylum, where they may not always benefit from efficient protection. Various European countries could use this instrument better and more often at the service of refugees.

Nonetheless, the fact that this question has been put on the Community agenda must be analysed within the global context of the externalisation by the EU of a growing part of its asylum and migration policy. Being mainly worried about protecting its external borders, the EU has chosen to close its eyes to human rights violations perpetrated by Member States or third-party states, provided the resettlement procedures demonstrate their effectiveness.

After the death of several sub-Saharan migrants under fire from Moroccan border guards at the end of September 2005, and after the public protests of the UNHCR about not being allowed contact with the asylum seekers in Morocco, the Commission, in a communication on the external dimension of the asylum and migration policy, persists in mentioning the cooperation with the aforementioned country regarding the control of migratory flows as an example of successful partnership. Moreover, it affirms that “*efforts to develop the dialogue with Libya on migration should be pursued*”¹¹, when that country is regularly denounced by NGOs and the European Parliament because of repeated human rights violations of which refugees and migrants are the victims. The European Commission therefore proves that a European resettlement programme, whatever the theoretical guarantees it gives, will not escape from the voluntary blindness of a Europe that has chosen to consider human rights as merely an accessory.

Under these circumstances, to be in favour of a Community resettlement programme amounts to accepting a European policy of keeping refugees at a distance.

Gisti, November 2005.

¹¹ Communication de la commission, Une stratégie relative à la dimension externe de l'espace de liberté, de sécurité et de justice, 12 octobre 2005.