

Talking Points of the High Commissioner

Informal JHA Council, the Hague, 1 October 2004

Introduction

- I would like to thank the Netherlands Presidency for giving me this opportunity – once again – to exchange views with you. I am honored to be addressing for the first time this expanded Council of 25 Member States.
- In advance of this meeting, we have sent you – through the Presidency – a detailed paper containing UNHCR's recommendations for the next multiannual program in the area of freedom, security and justice. I hope that this paper is helpful.
- I also hope when the European Council meets on November 5, it will reaffirm – in the clearest possible fashion – its commitment to refugee protection, and to “the absolute respect of the right to seek asylum”, as was done five years ago at Tampere.
- In the nine months since we met in Dublin, there have been many developments, both within the EU and beyond. I will briefly comment on some of these.
- The key to dealing with today's challenges, it seems to me, is to be flexible in our approach, while remaining scrupulous in our respect for fundamental principles of human rights and refugee protection.

Asylum in the EU

- Let me start with the *internal* dimension of the EU's refugee policy, and congratulate you on having laid the foundation for a common asylum system through the adoption of a set of Directives based on the Tampere Conclusions and the Treaty of Amsterdam.
- However, we cannot rest on our laurels. We now enter the second of phase of building a common system. This phase is potentially even more exciting. It is not just about implementation of the instruments already agreed. This phase gives us a chance to make progress toward the creation of a genuine European asylum space.
- A European asylum space is essential, since Dublin II does not provide a balanced way of addressing flows of asylum-seekers, one based on burden-sharing. A truly



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common asylum system is needed because of the tension between the obligation to provide asylum to those who need it, and legitimate concerns of states, including in the security realm. We therefore must give substance to a common system, based on the full and inclusive application of the 1951 Convention. I will return to this in a moment.

- But first, concerning transposition of the instruments agreed to date, I have two concerns. *First*, because the Directives only contain minimum standards, I worry that Member States will be tempted to lower the protections they offer to asylum-seekers and refugees. Please do not allow this to happen. Since the number of asylum-seekers in Europe is going down, States should be able to devote the necessary resources to ensuring the highest possible quality of protection.
- My *second* concern is that these Directives leave Member States such wide discretion to derogate from the established standards, that we risk remaining far from the goal of a harmonized, let alone a common, European asylum policy. During my recent visit to Poland and Hungary, I have seen a clear need for a more coordinated EU approach toward reception of asylum-seekers, decision-making, and even for burden-sharing to provide durable solutions.
- Cooperation is especially needed to support new Member States facing a significant increase in the number of asylum-seekers. In the first half of 2004, Slovakia registered over 6,300 asylum applications – a 90% increase over the same period last year, and more than were registered in Denmark, the Netherlands or Norway.
- The problem is not just one of numbers. Asylum-seekers of the same nationality are often dealt with in widely diverging ways by different member states. For instance, recognition rates for Chechen asylum-seekers vary dramatically from one Member State to another. Yet we are speaking of applicants with very similar case histories.
- Because of these different practices, asylum-seekers do move within the European Union in an irregular manner, rather than remain in the first country in which they asked for protection.
- This is where UNHCR's "EU prong" proposal might help. I presented this proposal to you in Dublin in January. It reflects my belief that we ultimately need to have a

European space for refugees, not a series of national spaces. We could consider a phased approach toward reaching this goal, starting with practical cooperation and moving toward a true “communitarization” of EU asylum policy.

- Some interesting pilot projects could already be undertaken with respect to one or several groups of asylum-seekers, in the interest of ensuring the necessary, consistent level of protection, discouraging secondary movements within the EU, and promoting burden-sharing. I would be happy to discuss these ideas with you in more detail.

The external dimension

- Now let me turn to the external dimensions of European refugee policy, and especially to the need to build protection capacity in third countries and to find durable solutions for refugees.
- I welcome the Commission’s excellent Communication on this subject; in fact, our thinking is very similar. We launched our own “Convention Plus” initiative a little more than a year ago. Its goal is to promote greater multilateral cooperation for capacity building and durable solutions. There has already been some good work done. Still, it is clear that we need to redouble our efforts in the regions from which refugees come.
- I have just returned from one such region – a trip to Chad and Sudan, where I was accompanied by a number of government officials as well as by a representative of ECHO. What we saw – and I think I can speak for all of us – was a devastating reminder of man’s inhumanity to man. 1.2 million people are uprooted within the Darfur region alone, and another 200,000 have fled into Chad – a country of just 9 million people. Despite the heroic work of aid agencies – UN, ICRC, NGOs – the conditions in which these victims are trying to survive are unacceptable. We must do more to help them, and we must do more to put an end to the causes of their flight. Right now it is mostly about emergency assistance, and about helping the host population in Chad. But eventually we will also need to find durable solutions for these refugees and displaced people.



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- Let me also briefly mention two countries we discussed early this year in Dublin – Afghanistan and Iraq. These remain in the forefront of our concerns. As far as Iraq is concerned, the situation still does not permit us to promote voluntary repatriation.
- In Afghanistan, more progress has been made, although the security situation remains precarious and the risks to humanitarian workers are ever-present. Still, three million Afghan refugees have gone home – this is a huge number – around two million from Pakistan and a million from Iran. UNHCR and other humanitarian agencies are working hard to assist them. But the needs of the returnees and of the people who never left the country go well beyond humanitarian assistance.
- For this reason UNHCR launched the initiative we call “Afghanistan Plus”. We are trying to get the development actors and financial institutions much more actively involved in helping to make return to Afghanistan sustainable. But we also see that there are Afghans who still have not returned to their country, who earn their living in another country, who have established long-term links, and who do not pose a security threat. The money they send home is also contributing to Afghanistan’s development. Why not allow them stay abroad as migrant workers, at least temporarily. This is currently under discussion in Iran and Pakistan – so why not also consider this in other countries, too?
- On the former Yugoslavia, I would be remiss if I did not emphasize that we have been highly successful with repatriation – returns to Bosnia passed the one-million mark two weeks ago. But at the same time it is becoming obvious that lasting solutions in this region require the prospect of accession to the EU.

Resettlement: an EU programme?

- There is still another way in which you can contribute to strengthening the international protection regime – I am thinking of resettlement.
- I believe it is time to establish a European Union resettlement program. This would not only help us to find lasting solutions for more of the world’s refugees, but it would also contribute to better management of today’s migration challenges. Resettlement can help to reduce irregular secondary movements of refugees and

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diminish pressure on asylum systems. Of course, proper asylum channels should always remain in place – as is the case in traditional immigration countries that practice large-scale resettlement.

- Resettlement is also a way of sharing the burden with countries of first asylum. And, by contacts between our own populations and resettled refugees, we can help to create better understanding of the situation of refugees around the world, and a more sympathetic environment for refugees in our own countries.

The need for multilateralism: The Mediterranean issue

- Finally, I will speak about a subject that has been much in the news lately: the phenomenon of people getting on small boats, trying to cross the Mediterranean to reach Europe, or dying trying to cross the desert. An answer to this humanitarian drama is imperative. It is good that reflections on possible solutions have now started.
- The issues at stake are complicated ones, and need to be seen in the broader context of the poverty and instability and human rights violations which drive people to undertake dangerous journeys. Let me set out what I believe should be the parameters for further discussion of this issue:
- *First*, persons who have reached European territory and who solicit protection here cannot be shifted outside European territory. They need to have their claims heard in a fair procedure, in accordance with national, European and international law. Burden-sharing and greater harmonization will help the most affected Member States;
- *Second*, for people who are intercepted en route to Europe, whether in third countries or on the high seas, we need to find workable approaches based on burden-sharing, not burden-shifting. Any approach must contain a transparent and fair process to identify refugees and other persons in need of international protection, and to find durable solutions for them. There must be credible alternatives to a dangerous sea crossing. These alternatives could take the form of protected entry procedures, refugee resettlement and other legal migration options



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- including to the EU. People need information about these alternatives and must be able to access them freely.
- *Third*, decent living conditions are essential to respect the basic rights of people who may be intercepted. Detention should not be part of such a scheme. Arrangements are needed to care for victims of trafficking – especially women and children – and to find appropriate solutions for them, as well as for refugees.
- *Fourth*, whatever approach we consider must also make it possible for migrants to return home in safe and dignified conditions. Safe return should be facilitated for persons not in need of protection, and for whom onward migration is not an option.
- There is no quick fix for the problem of mixed migration. It is very much a matter of addressing root causes, developing status determination procedures and building protection capacity in transit countries. At the same time we have to invest in durable solutions.
- The creation of a genuine asylum space in North Africa is a long-term goal. It requires serious institution- and capacity-building efforts, and the active involvement of the affected transit countries. We need to avoid a Eurocentric approach, one which focuses on sending people back. An open and transparent dialogue among all concerned states is essential, and UNHCR is ready to facilitate this dialogue.
- I look forward to our discussion of these challenging issues.