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CAPACITY AND INSTITUTION BUILDING IN THE CIS IN REFUGEE AND HUMAN RIGHTS PROTECTION WITH EMPHASIS ON CENTRAL ASIA AND KAZAKHSTAN

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Résumé de l'article

La présente étude a pour cadre général l'évolution et la capacité de transformation de certaines institutions de l'ancienne Union Soviétique au regard des changements socio-politiques récents des années 1990'. L'emphase est surtout mise en l'espèce sur l'analyse des progrès réalisés en matière de traitement des réfugiés au regard notamment du *CIS Program of Action (POA) of the Regional Conference* de mai 1996 et du *Central Asia South West Asia and Middle East Action Plan of the Countries of the Central Asian Region (CASWAME)* de février 1998. Le premier chapitre résume les progrès et les résultats obtenus à la suite du Programme d'Action CIS à la lumière du suivi fait lors de la Conférence régionale de 1999 du CSI Steering Group. Le second chapitre examine, quant à lui, les développements et les défis auxquels ont dû et doivent faire face les Etats d'Asie centrale, en particulier le Kazakhstan; avec comme points de référence l'ouverture du bureau du HCR au milieu des années 1990' et la mise sur pied du CASWAME concernant les réfugiés afghans. Le troisième chapitre analyse les nouvelles opportunités à la disposition des autorités nationales vers une coopération avec l'Union Européenne (UE), avec l'Organisation pour la sécurité et la coopération en Europe (OSCE) ou encore avec les Nations Unies afin de maintenir le cap. Enfin, le quatrième chapitre se penche sur les nouvelles politiques européennes en cette matière et notamment le plan développé en 1999 dans le *EU High Level Working group on Asylum and Migration.*

CAPACITY AND INSTITUTION BUILDING IN THE CIS IN REFUGEE AND HUMAN RIGHTS PROTECTION WITH EMPHASIS ON CENTRAL ASIA AND KAZAKHSTAN

By Louise Druke[*]

La présente étude a pour cadre général l'évolution et la capacité de transformation de certaines institutions de l'ancienne Union Soviétique au regard des changements socio-politiques récents des années 1990'. L'emphase est surtout mise en l'espèce sur l'analyse des progrès réalisés en matière de traitement des réfugiés au regard notamment du *CIS Program of Action (POA) of the Regional Conference* de mai 1996 et du *Central Asia South West Asia and Middle East Action Plan of the Countries of the Central Asian Region (CASWAME)* de février 1998. Le premier chapitre résume les progrès et les résultats obtenus à la suite du Programme d'Action CIS à la lumière du suivi fait lors de la Conférence régionale de 1999 du *CSI Steering Group*. Le second chapitre examine, quant à lui, les développements et les défis auxquels ont dû et doivent faire face les États d'Asie centrale, en particulier le Kazakhstan; avec comme points de référence l'ouverture du bureau du HCR au milieu des années 1990' et la mise sur pied du CASWAME concernant les réfugiés afghans. Le troisième chapitre analyse les nouvelles opportunités à la disposition des autorités nationales vers une coopération avec l'Union Européenne (UE), avec l'Organisation pour la sécurité et la coopération en Europe (OSCE) ou encore avec les Nations Unies afin de maintenir le cap. Enfin, le quatrième chapitre se penche sur les nouvelles politiques européennes en cette matière et notamment le plan développé en 1999 dans le *EU High Level Working group on Asylum and Migration*.[1]

This study[2] examines the capacity and institution building process, which started in the early nineties following the transformation of the Soviet Union into the Commonwealth of Independent States (CIS). The emphasis of this study is placed on an examination of progress made specifically in the refugee area, on the basis of the CIS Program of Action (POA) of the Regional Conference, to address the problems of refugees, displaced persons, other forms of involuntary displacement and returnees in the countries of the CIS and relevant neighbouring States in May 1996 and of the Central Asia South West Asia and Middle East (CASWAME) Action Plan of the Countries of the Central Asian Region in solving problems of asylum-seekers and refugees adopted at the Sub Regional Meeting in Bishkek in February 1998. Chapter 1 reviews progress, results and impact of the 1996 CIS Conference Program of Action on refugees and displaced persons, and reflects on the Meeting of June 1999 of the CIS Steering Group in the Follow-up of the Regional Conference. Chapter 2 examines developments and challenges in Central Asia with special emphasis on Kazakhstan following the opening of UNHCR Offices in the mid-nineties and the 1998 CASWAME action plan specifically concerning Afghan refugees. Chapter 3 analyses new opportunities for co-operation especially with the European Union (EU) and the Organisation of Security and Co-operation in Europe (OSCE) as well as the United Nations (UN), whose institutional support for national refugee capacity and institution building has been and will continue to be crucial. Chapter 4 explores the new EU approach toward refugee and migration policy and the action plans developed by the 1999 EU High Level Working group on Asylum and Migration, including Afghan refugees, in consultation with UNHCR.[3]

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1 Une première version du résumé nous a été fournie par l'auteur. Pour des raisons liées à la publication, cette version a dû être modifiée.

2 The views expressed here are personal views and do not necessarily reflect those of UNHCR or of the United Nations.

3 The first draft of this abstract was from the author. For practical reasons related to the publishing, it has been modified.

I. Introduction

A. The refugee in international law

Throughout the centuries, politicians, the general public and the media have described persons who have been obliged to flee home as "refugees". It is important to distinguish between persons who are fleeing outside their countries and those who are displaced within their own country, even though this internal displacement may occur at times for the same reasons as external displacements, that is, in search of protection. The causes of flight are complex. More than in the post Cold War time.

The ones escaping from persecution for the reasons spelled out under the 1951 Geneva Convention relating to the Status of Refugees[4] are usually called Convention refugees. If persons flee for a variety of reasons, including armed conflict, ecological disaster or/and political motivated poverty, they are often granted humanitarian status, which in some countries is also called 'B-status', or 'exceptional leave to remain', such as in the United Kingdom. As established in article 1 of the 1951 Convention, the word refugee refers to a person who,

> owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, or membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such a fear, is unwilling to avail himself of the protection of that country.[5]

Refugees leave their country and seek admission to another country not by choice or reasons of personal convenience, but for a safe life or liberty. As refugees could not avail themselves of their national protection, throughout the 20th century, and especially since the end of the Second World War, states have devoted a considerable amount of effort and resources to the task of providing international protection for refugees. Their purpose has been twofold:

> first, to safeguard the lives and liberty of people whose basic rights have been threatened in their country of origin; and second, to safeguard their

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4 *Geneva Convention relating to the Status of Refugees*, july 28th 1951, (1954) 189 U.N.T.S. 137 (entered into force: April 1st 1954). Hereinafter the *1951 Convention/UNHCR Statute.* This Convention was drawn up pursuant to a decision of the General Assembly GA Res. 429 (V), UN GA 5th sess., UN Doc. (1950), by a United Nations Conference of Plenipotentiaries who met at Geneva in 1951, with a result that the Convention was adopted on 28 July 1951 and entered into force on 21 April 1954 following the deposit of the sixth instrument of ratification.

5 *1951 UN Convention relating to the Status of Refugees*, Collection of documents on refugees and persons in refugee-like situations in the Republic of Kazakhstan with comparative analyses concerning countries in Central Asia and the CIS, Almaty, UNHCR, 1998, art. 1.

> own interest by ensuring that population-movements are managed in a predictable manner and in accordance with agreed principles.[6]

In order to demonstrate the importance which governments attach to this issue, it is important to note that at the time this article was written (January 1999), a total of 137 States, including Kazakhstan on January 5th 1999, had acceded either to the 1951 Convention or its 1967 Protocol, making it one of the most widely endorsed international legal instruments[7].

B. International protection and UNHCR

The laws, agreements and institutions that have been established to regulate and resolve the refugee problem are often collectively referred to as the "international refugee regime" or "international protection system". At the centre of this system is the Office of the United Nations High Commissioner for Refugees (UNHCR), that was established in 1951. The Statute of UNHCR, adopted by a UN General Assembly Resolution in December 1950, outlines the responsibilities of the Office, the most important of which are "providing international protection... and seeking permanent solutions for the problem of refugees"[8].

This study focuses on a particular region, the former Soviet Union, as this region, on the basis of a number of similarities, offered room for analyzing and seeking solutions for refugees and other persons in refugee-like situations. The UNHCR has been very actively involved since 1991 in addressing refugee related problems in the States of the former Soviet Union. According to specialists, over 200 different ethnic groups lived for centuries within the cultural mosaic of the Russian Empire, and the Soviet Federal system that emerged after the Bolshevik Revolution was based on a hierarchy of different ethnic groups. Artificial borders were drawn to divide national groups decreasing possibilities of threats to the central power in Moscow. As is well-known, Stalin's policies of relocation and colonization still have repercussions today. Blats, Poles, Chechens, Germans, Crimean Tartars, Kazakhs, to only name some, were forcibly relocated in and out of Central Asia and Siberia. While at the same time, Stalin and following Soviet leaders encouraged Russians to settle in the non-Russian Republics of the former USSR, which resulted in the diluting of the ethnic homogeneity of each Republic and in reducing the titular nationality and other non-Russian minorities to a somewhat inferior status[9].

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6 UNHCR, *The State of the World Refugees 1997-1998. A Humanitarian Agenda*, (Oxford: Oxford University Press, 1997) at 52-53.

7 The *1951 Convention* was essentially limited to refugees from Europe, whereas the *1967 Protocol* extended the scope of the Convention to refugees from other parts of the world. In this article, references to the Convention should also be read as references to the Protocol.

8 GA Res. 428(V) UN GA, 5th sess., UN DOC. (1950)

9 I. Prat, "Nationality and Statelessness Issues in the Newly Independent States" *in* V. Gowlland-Debbas, (ed.), *The Problem of Refugees in the Light of Contemporary International Law Issues* (The Hague, Martinus Nijhoff Publishers, 1996) at 25.

The disintegration of the USSR's hegemony has not only created ethnic tensions but left the new States with a total population of ethnic minorities of more than 60 million people, including an estimated 25 million Russians, 6.7 Ukrainians, 2.5 Uzbeks and about a million each of Armenians and Tajiks, who found themselves all suddenly living abroad. In line with information available, about one third of the population of Latvia was Russian (34%), Estonian (30%) and Kazakhstani (38%). One of the ways to handle this situation was to develop an entire new legal system, bearing in mind that discriminatory legislation could have disastrous consequences[10]. There was a responsibility towards the international community to help prevent a massive outflow of refugees and displaced persons from this region. On more than one occasion the General Assembly of the UN has stressed that flows of refugees unleashed by one country can affect the entire international community. Therefore, persons having lost the protection of their home State must be given a place to stay and the basics for survival and protection. To assist national governments in performing these tasks, the UN has created the Office of the UNHCR in 1950[11] which must be financed by the members of the international community[12].

With its mandate in mind, UNHCR was called upon by the General Assembly to organize a regional conference, which resulted with the joining of the International Organization of Migration (IOM) and the Organization for Security and Cooperation in Europe (OSCE) in the CIS Conference which adopted the Program of Action in 1996. National policies and cooperation at the international level (through the United Nations) and at the regional level (OCSE) were examined. So ample information can be taken from the conference of May 1996 to address the problems of refugees, displaced persons, and other forms of involuntary displacement and returnees in the countries of the CIS and neighboring States. One of the key questions in the next century will be to know if through the CIS Plan of Action adopted in 1996, the efforts made within governmental and non governmental sectors States have allowed the building of sustainable national refugees capacities and institutions in the countries of the CIS, Central Asia and Kazakhstan. When the General Assembly called on the UN High Commissioner for Refugees to continue her efforts to promote, hand in hand with the concerned governments and other organizations, this was one of the underlying assumption. The contributions, specifically from the IOM and the OSCE together with UNHCR were made to address the problems of refugees, displaced persons and other forms of involuntary displacement and returnees in the countries of the Commonwealth of Independent States (CIS) and relevant neighboring States according to the Program of Action (POA) of May 1996, are to be evaluated in 2000 when the follow-up process is planned to be phased out, in order to decide the next steps.

The Program of Action of the CIS Conference on Refugees in 1996 is a legally non-binding document. A refugee is defined in accordance with the 1951

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10 *Ibid*. at 25-26.
11 *Supra* note 8.
12 A. Pellet, "State Responsibility and the Country of Origin" *in* V. Gowlland-Debbas, (ed.), *supra* note 9 at 25.

Convention. In addition, a new category of "persons in refugee-like situations" was introduced. Even though it is encouraging that the rights of this category of persons converge with those of refugees, there may however arise situations when the definition of their rights is unclear, as there is no legally binding international or regional instrument regulating the status of "persons in refugee-like situations"[13]. Therefore, it would be preferable to the extent possible that all asylum-seekers go through the refugee status determination procedure, which allows a clear definition of their status and their rights.

The general aim of the Consultations on Population Displacements in Central Asia, Southwest Asia and the Middle East (CASWAME) held in Amman, Jordan 12/13 March 1997, and of the Second Meeting of the Regional Consultations on Refugees & Displaced Populations (CASWAME Process) held in Ashgabat, Turkmenistan, 3/4 March 1998, as well as the Sub-Regional Meeting held in Bishkek 10/12 February 1998, has also been to enhance cooperation with States of the CASWAME Region by strengthening the refugee capacities and institutions and by developing regional approaches for preventive strategies. The UNHCR Report of January 1998 on the Executive Committee of the High Commissioner's Program highlighted that despite political difference between certain countries in the CASWAME region, all participants recognized the serious nature of population displacements and the need to find durable solutions, inter alia, through the building of national refugee capacities and institutions[14].

Thus, the disintegration of the former Soviet Union, led first to the establishment of the CIS and then to the CIS Conference on Refugees and Migrants, and prompted UNHCR to establish a presence in all CIS countries in order to assist States in developing their national refugee capacities and institutions to deal with these problems.

II. 1989: Beginning of the disintegration of the USSR with the fall of the Berlin Wall

The need to review the issue of the estimated 25 million people on the move became acute after the break up of the USSR in 1991 and the coming into existence of 15 newly independent States, including the three Baltic States. These 15 entities had been interdependent, were centrally governed and controlled, and before they were interrelated politically, socially and economically. Movements of persons between the regions were legally possible without asking questions about citizenship. Within a short time after the break up, and during the process of restructuring from centrally planned towards achieving market economies, disintegration released tensions between dominant and dominated people throughout the whole region.

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[13] P. Kourula, *Broadening the Edges, Refugee Definition and International Protection Revisited* (The Hague: Matinus Nijhoff Publishers, 1997) at 169.

[14] Executive Committee of the High Commissioner's Program, *Update on Regional Developments in Central Asia, Southwest Asia, North Africa and the Middle East,* Doc. EC/48/SC/CPR.3, Standing Committee, 10th Meeting, , January 7 1999.

It is from that time on that the UNHCR started to monitor the situation with emphasis placed on activities to helping to prevent large-scale population movements, providing humanitarian assistance to internally displaced persons and finding ways to make timely return to home areas possible and viable[15]. The absence of appropriate national capacities, institutions and laws in this region at that time revealed to be a lacuna in the process of finding solutions to the new problem of displacement. Since the early nineties, eight of the twelve CIS States[16] have ratified the 1951 Geneva Convention Relating to the Status of Refugees, or the 1967 New York Protocol (Belarus, Moldavia, Ukraine and Uzbekistan to follow). The UNHCR had launched, by the end of 1991, a program for the building of refugee capacities and institutions, for refugee law training in the framework of refugee and human rights law, legal principles on immigration, nationality and statelessness[17], which is starting to bear fruits[18].

As could also be seen in other regions, effective preventive activities can only work if they are part of a larger effort to address underlying causes of the conflicts and ensure respect for human rights[19]. Instead of focusing only on preventive activities, experience has shown that the concrete supportive action for establishing practices and administrative structures are indispensable ingredients to pave the way for the establishment of refugee capacities and institutions (pending the development of specific refugee legislation, the UNHCR encouraged and participated in1998 and 1999, along with a specially created NGO that provided legal advice for refugees in respect to the procedure for the determination of refugee status, in an advisory role in Kazakhstan which has been proved as an effective means for on the "job training", and also in respect to a fair and efficient decision making process for individual asylum applications)[20].

When the civil war erupted in Tajikistan in 1992, there were some 500 000 internally and externally displaced persons, some of whom fled into the neighboring countries of Afghanistan, Kazakhstan and Kyrgyzstan, which caused great regional and international concern, leading the High Commissioner for Refugees to take a proactive action in promoting early repatriation[21]. In addition, roughly 300 000 Russians left the country due to the conflict, causing instability and brain drain in the

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15 UNHCR, *The Activities of the United Nations High Commissioner for Refugees in the Newly Independent States*, UNHCR Geneva, July 1994 at 5.

16 Armenia, Azerbaijan, Kazakhstan, Kyrgystan, The Russian Federation, Tajikistan, Turkmenistan, Georgia.

17 UNHCR, *Les réfugiés dans le monde 1993* (Paris, Éditions la Découverte, 1993) at 123.

18 UNHCR, *Paper on results on capacity building in the Governmental and non-governmental sector, with special emphasis on countries in Central Asia*, Almaty, UNHCR, April 1999.

19 S. Ogata (UN High Commissioner for Refugees), *The Activities of the United Nations High Commissioner for Refugees in the Newly Independent States* (Geneva: UNHCR, July 1994) at 5.

20 UNHCR, *Factsheet on UNHCR in Kazakhstan 1997-1999*, Almaty, prepared by UNHCR, 27 March 1999.

21 This was one of those situations when refugee outflows and prolonged stay in asylum countries risk spreading conflict to neighbouring states. Policies aimed at early repatriation can be considered as serving prevention. This was an important rationale in the case of repatriation to Tajikistan in 1993. See: A. Roberts, "More Refugees, less Asylum: A Regime in Transformation" (1998) 11:4 *Journal of Refugee Studies* at 390.

areas of their residence as well as limbo for the persons concerned. In addition, the Russian Federation's 20 autonomous Republics are demanding greater economic and political powers from the central government. The arsenal of sophisticated weapons of mass destruction, is just one of the multipleflashpointswhich has been contributing to the region of the post Soviet Union's relative unstable and unpredictable situation.

Following the 1993/94 conflicts in the Caucasus, which forced almost a million persons to leave their homes in Azerbaijan and Georgia, the problem of internally displaced persons is only slowly coming under control. As is well-known, Russia was also host of an estimated 2 million forced migrants and refugees from other areas. Despite greatest efforts, availability and delivery of humanitarian aid could not nearly cover all needs. Many refugees and displaced persons still rely to this day on meager resources for daily subsistence. Medical supplies have been a scarce commodity leaving the people in desperate situations. In the light of difficulties encountered, Azerbaijan, when faced by the more recent wave of displaced persons, adopted a markedly different approach to that of earlier flows. According to the research carried out by the U.S. Committee for Refugees, officials were preventing displaced persons from traveling to the capital Baku, or other cities, with roadblocks being used in order to keep them close to the front lines, and thus preventing their dispersal throughout the country. The rational provided for such an attitude by the authorities was that it considered the return of these people to their places of origin as the only alternative[22].

Although no armed conflict arose after the breakup of the USSR in the Baltic States, their relationship with the centrally controlled ex-Soviet system has only slowly started to allow the development of independent policies, also covering issues relating to migration and to ethnic communities. The 1989 census in Lithuania, for example, showed that 20 percent of the 3.7 million population of Lithuania were not of Lithuanian origin, but mostly from the Republics of the former Soviet Union. In particular, they originated from Russia, the Ukraine and Belarus. Since that time, 70 % of these suddenly displaced persons are reported to have acquired Lithuanian nationality. The remaining are *de facto* stateless persons, many of whom are applying for citizenship in their countries of origin[23].

Although the Baltic States, are not part of the Commonwealth of Independent States (CIS), they signed in 1994 an agreement with the Russian Federation on matters concerning refugees. However, this 1994 Agreement neither refers to refugees from any non-former Soviet countries, nor defines a unified approach to the questions of how to legally treat a citizen of a non-CIS country, who, fleeing persecution or violence, crosses the border into the Russian Federation or any other country party to the Agreement. This instrument also remains silent about

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[22] T. Argent et al., *Europe - Country reports*, *in* United States, Committee for refugees, *World Refugees Survey*, Washington, 1994, at 115-119.

[23] L. Zabulioniene (Migration Service, Ministry of Social Affairs and Labour, Republic of Lithuania), "Special features of Lithuania's migration policy", *in* UNHCR Regional Bureau for Europe, *International Symposium on Protection of Refugees in Central and Eastern Europe. Report and Proceedings,* European Series, Geneva, UNHCR, March 1995, at 61.

procedures to determine refugee status for asylum-seekers from non-CIS countries and says nothing about how to accommodate them while awaiting a decision about the examination of their case. Under this Agreement, the Consultative Council for Labor, Migration and Social Defense was set up, in order to "offer practical assistance in the realization" of the various points of the Agreement[24].

As concerns refugee legislation in the Russian Federation, both the 1993 and the 1997 amended versions of the Russian law "on Refugees" and "on Forced Migration", for which the 1951 Geneva Convention served as a guide to the Federal Migration Service (FMS) of the Russian Federation in the law drafting and the determining of asylum applicants' eligibility for refugee status. In theory, these laws should provide two mutually exclusive definitions for the two statutes that Russia grants to asylum-seekers. In practice however, the terms of "refugees" and "forced migrants" have been applied in an inconsistent manner. Therefore, there have been concerns about the exclusive recognition of forced migration from the States comprising the former Soviet Union in connection with these Russian laws. The "Agreement on Aid to Refugees and Forced Migrants" between Russia and the other countries of the CIS, with the exception of Georgia, Moldavia, and Ukraine (that is, Armenia, Azerbajan, Belarus, Kazakhstan, Tajikistan, Turkmenistan, and Uzbekistan), was ratified as Russian Federation law in November 1994. In 1995, Russia began conducting negotiations with Georgia and the Ukraine with the goal of obtaining their participation in the Agreement, which foresees to maintain citizenship of the receiving country as the differentiating factor between refugees and forced migrants the Agreement defines "refugees" as non-citizens of the receiving country who have been forced to leave their place of permanent residence on the territory of another country that is party to the Agreement)[25].

A. Establishing the CIS and the CIS Refugee Conference Process

Without intending to trace exhaustively each event and step in the process of setting up the CIS and the CIS Refugee Conference Process, this section refers to the geographical area covered by the CIS Conference in accordance with the UN General Assembly resolution 49/173 of 1994[26]. The conference on refugees, returnees and displaced persons in the CIS countries and in certain neighboring states set a new stage for the policy development and treatment of this category of persons in this region. Unlike the 1951 Convention, *the* most important regional refugee instruments,

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[24] M. Haney, "Refugees, Forced Migrants, and Asylum-seekers in the Russian Federation", *in* United States, Commitee for Refugees, *World Refugees Survey*, Washington, 1995, at 158.

[25] UNHCR, *Rapport du Haut Commissaire des Nations Unies pour les réfugiés*. Doc. off. NU E/1995/52, 25 avril 1995. À l'Assemblée générale par l'entremise du Conseil économique et social, établi conformément à l'article II du *Statut du Haut Commissaire des Nations Unies pour les réfugiés,* adopté par l'Assemblée générale en application de la resolution 428 (V) (*supra* note 7 at 9).

[26] *Comprehensive consideration and review of the problems of refugees, returnees, displaced persons and related migratory movements*, GA Res. 49/173, UN GA Doc. A/49/173 (1995); en ligne: http://www.un.org/french/documents/ga/res/49/a49r173f.pdf (date d'accès : juin 2002). Adopted without a vote at Meeting 94 on the Third Commission report A/49/609.

the 1969 OAU Convention[27] and the 1984 Declaration of Cartagena, refer explicitly to voluntary repatriation[28]. In practice, voluntary repatriation has come to be regarded as the most suitable solution to refugee problems. Policies and practices, laws and procedures, in place in post Soviet Union countries also indicate that return and repatriation, as soon as conditions allow safe return, are preferred as the most desirable alternatives to large-scale refugee presence. The UN General Assembly, after having considered reports by the Secretary-General[29], and following the Resolution of the year before[30] and the concerns expressed therein about the magnitude of existing and potential refugee and related migratory movements in the countries of the CIS and relevant neighboring States, has been reaffirming the need for what the international community considers comprehensive approaches for the coordination of action with regard to assisting States in the building of national refugee capacities and institutions for persons in refugee-like situations, returnees, displaced persons and other migratory groups.

B. UNHCR's preventive plan of action following the break up of the USSR, analysis of the background of developments within and outside of the CIS countries

The General Assembly has been calling upon the UNHCR ever since, in its annual resolutions, in consultation with concerned States and in coordination with relevant intergovernmental, regional and non-governmental organizations, to continue building capacities and institutions that deal with problems of refugees and displaced persons. The UN High Commissioner for Refugees assumed a leadership role in convening sub regional and regional consultations before, during, and after 1996, in order address the problems of refugees, displaced persons, other forms of involuntary displacement and returnees in the countries of the CIS and relevant neighboring States. States as well as theintergovernmental, regional and non-governmental organizations concerned, were also called upon to support this effort. The General Assembly also requested the Secretary-General to report to it on the implementation[31].

Since the efficiency of implementing post conflict reconstruction strategies depends to a large extent on reintegration of returnees during overall peace efforts in an environment of changing nature of conflict and peace, the process started slowly, especially in regions in which conflict was ongoing, such as in Caucasus as well as in

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27 The *1969 OAU Refugee Convention* which adopted a two-part definition of refugee, including the *1951 Convention/UNHCR Statute* definition as the first part and adding: "The term refugee shall apply to every persons, who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or whole of the country or origin or nationality, is completed to seek refugee in another place outside his country of origin or nationality".

28 UNHCR, *Note on International Protection*, Doc. A/AC. 96/830, September 7th 1994, at 10. Which examines the fundamental concept of international protection and considers ways of meeting the needs of persons of concern to the Office, including those outside the scope of the 1951 Convention.

29 A/49/553 and 48/113 (20 December 1993).

30 *Ibid.* 48/113.

31 *Supra* note 26.

Tajikistan. Looking back to the Central American CIREFCA process, which is still considered as an example for effective regional plans of action and solution[32], as is the Cambodia UNTAC operation for example, the planning for reconstruction disposed of important resources, comparatively higher, considering the size of the CIS region[33].

In the CIS region, the reestablishing of confidence and stability through returnee reintegration programs in Tajikistan, despite some difficulties, are noteworthy. At the end of the brutal conflict, UNHCR deployed immediately a fully operational mobile team to set up programs inside the country, in order to help the International Committee of the Red Cross (ICRC) and other agencies with the providing of emergency assistance to a huge number of internally displaced persons, and where possible to prevent further displacement[34]. Also in other areas, a number of

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[32] The background goes back to August 1987, when the Central American leaders signed the "Esquipulas II" accords laying down plans for a "firm and lasting peace" in the region. In September 1988, the Governments of Mexico, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua met in San Salvador and - with the support of UNHCR - agreed to call the first CIREFCA meeting in June 1989 in Guatemala City, when these governments adopted what eventually become a five-year (1989-1994) plan, the CIREFCA "Concerted Plan of Action" for uprooted people in the strife torn region with the following objectives:

1. To identify solutions to problems of uprooted ness;
2. To respect the rights of refugees to return voluntarily to their countries;
3. To help refugees play a wider role, where voluntary repatriation was not yet possible;
4. To improve the situation of displaced persons in the regions;
5. To counteract the negative consequences which uprooted populations may cause on the employment, social services, economic conditions and the environment of the receiving communities, by also ensuring to foresee programs to benefit local populations. The target of CIREFCA was more than 1.9 million persons for a wide variety of projects from general infrastructure development and national reconstruction to meeting special needs of individual communities. More than US$ 420 was spent on CIREFCA projects, including nearly US$80 million channeled through UNHCR, benefiting humanitarian issues and the political peace process. Thus eventually the two processes became mutuality reinforcing. See: R. Redmond, *in* UNHCR*, Refugees*, UNHCR Publication, No. 99, 1-1995, at 16-17.

[33] By the end of 1994, UNHCR had invested over US$ 10 million in nearly 100 projects in ten sectors of assistance in all the 21 provinces of the country largely through the network of NGO operational partners. The work was, however, difficult, ongoing due to low intensity conflict, the slow pace of demining, of land even in peaceful areas, the lack of land for the returnees, and most importantly, UNTAC, despite its integrated response mechanism for transitional needs and to the lacking clear strategy for rehabilitation. In addition, the building of civil society and its institutions was slow, though it is a prerequisite for effective post-conflict reconstruction. S. Vieira de Mello, *Paper presented at the International Colloquium on Post-Conflict Reconstruction Strategies*, Stadt Schlaining/Austria, (23-24 June 1995), at 6 and schemes.

[34] In a situation where rule of law was negligible, initially, and the returnees were viewed as being on the opposite side, the conditions for organized and safe repatriation were far from easy. Eventually the establishing of rule of law and confidence among the returnees were among the key elements which helped to return stability to the country, that is:

1. to provide returnees with better protection with UNHCR's network for monitoring the situation of returnees extended to the smallest communities and villages;
2. to work together with the local authorities to bring together the conflicting parties at the local level by Negotiations rather than by violence;
3. to support, at the national level, the Tajik Government's adoption of international and national legislation, which contributed to the reconciliation and stabilization of the country. Already in

significant efforts have been implemented to help with the peaceful transition process in the CIS States. The activities of the Organization of Security and Cooperation in Europe (OCSE) are especially noteworthy. It integrated working for *refugees and displaced persons into its work program in the Helsinki Document, 1992.* The work both through the High Commissioner on National Minorities operating out of this basis in The Netherlands and the OSCE Offices on the spot (which since early 1999 is also present in all countries of Central Asia) has been a useful example of cooperation between a regional and an international organization, such as UNHCR.

For example, during his missions to Kazakhstan, Kyrgyzstan and Latvia, the High Commissioner has been discussing with the authorities and others involved in the transitional process. In the latter country, he welcomed the adoption of the Law on Former USSR Citizens (Law of Non-Citizens), noting his satisfaction that the text of law took into account his comments on an earlier draft[35].

Another important development that contributed towards enhancing the position of minorities, groups of persons potentially exposed to involuntary movement and the *raison d'être* of the OCSE High Commissioner, was the signing of a bilateral agreement for example between Hungary and Slovakia, within the framework of the OSCE conflict prevention mechanism[36]. The strengthening of the organization and the change of name to OSCE, effective from January 1st 1995, which had been decided at its Budapest Summit in December 1994, recorded in the "Budapest Decisions" introduced also for the post Soviet area "new era of security" in shaping common security[37].

In the chapter on migration, the *Budapest Document* mentions that the participating States expressed their concern at mass migratory movements in the CSCE region, including millions of refugees and displaced persons, mainly due to war, armed conflict, civil strife and grave human rights violations. They decided to expand their cooperation with appropriate international bodies working in this area and took

> [...] note of efforts undertaken by UNHCR to prepare a regional conference to address the problems of refugees, displaced persons, other forms of involuntary displacement *and* returnees in the countries of the CIS and other interested States.[38]

The regional developments outside of the CIS region helped to prepare the way

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November 1993, Tajikistan acceded to the *1951 Convention on the Status of Refugees and the 1967 Protocol*. S. Vieira de Mello, *Ibid* note 34 at 9 and 10.

35 *OSCE Newsletter*, (May 1995), Vol. 2, no. 5, at 2.

36 UNHCR, "Minorities, UNHCR and Central Europe", European Series, Volume I, No 2, (July 1995) at 17.

37 CSCE, *Towards a Genuine Partnership in a New Era,* Budapest Document 1994, DOC.RC/1/95, Corrected version 21 December 1995, at 1.

38 CSCE, *The human dimension,* Budapest Document 1994 DOC.RC/1/95, Corrected version 21 December 1995, at 26.

for cooperation with most countries of the CIS and of Central Asia.

For many observers the important number of Russians on the move within but especially outside Russia after 1991 was a serious concern and a driving force for preventive action. Over many centuries the history of Russia has been connected particularly closely to active settling of different peoples, namely Russians to the territories known today as Central Asia. Between 1897 and 1917 more than 2,5 million people migrated to areas of the Russian empire. Many of these movements were due to the need of skilled specialists in the Republics of Central Asia, many of whom upon completion of their work remained and became citizens. During the Second World War, some 2 to 2.5 million Russians migrated to Central Asia. Following the collapse of the Soviet Union in 1991, and the independence of the Republics, a mass exodus of the Russian population from Central Asia , where the total of this population amounted to some 9.5 million as compared to 25.3 million of Russians in CIS States outside Russia[39]. "Soft nationalism" and "forced migration" were among the causes of Russians leaving. According to Russian speakers, the leaving especially of Kazakhstan was not so much due to infringement of political and civil rights, but often also due to psychological discomfort arising from a feeling of uncertainty during economic and political chaos. Just between the years 1992 through 1995, 939 206 Russians left Kazakhstan[40] which caused problems on both sides of the border.

In addition to the 25 million Russians, there were some 6.7 million Ukrainians, 2.5 million Uzbeks and about a million each of Armenians and Tajiks, suddenly living abroad after 1991, which also caused problems related to nationality and statelessness. Though most of the newly independent States have already adopted their own citizenship laws, the citizenship laws in force in the mid-nineties in Azerbaijan, Kyrgystan and Tadjikistan were adopted under Soviet rule. For example, the Law of the Republic of Georgia "On Citizenship of Georgia", was adopted on March 25th 1993 and foresees in Article 1 that a citizen of Georgia cannot simultaneously be a citizen of another country[41]. Kazakhstan adopted the Law on Citizenship of the Republic of Kazakhstan on December 20th 1991, which was modified by the Decree of the President of the Republic of Kazakhstan which has the effect of law dated October 3rd 1995, according to which citizenship may be obtained after residing five years in the territory or due to marriage with a citizen of Kazakhstan (Article 16), and may be refused on grounds including "if an applicant is a citizen of another country"(no double nationality, Article 17.7).

The developments in the CIS countries over the past years since 1991 have either generated new and complex problems of statelessness or still have a potential to

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39 N. Kirabaev, "Repatriation or Integration: Russians Outside Russia, Russia and Central Asia: Problems of Migration", *in* CHRF/MCHR, *Refugees and Migration in Central and Eastern Europe, From Principles to Implementation: The Role of NGOs, Regional Program, Moscow,* November 11/15, 1996, jointly organised by the Canadian Human Rights Foundation and the Moscow Centre for Human Rights, at 91 and 92.

40 *Ibid.* at 93.

41 *Citizen*, UNHCR Newsletter No 7, March 1999, published by UNHCR FO Simferpool at 10.

do so. UNHCR's involvement in nationality issues[42], derives from United Nations General Assembly Resolutions 3274 (XXIX) of December 10th 1974 and 31/36 of November 30th 1976, to perform the functions foreseen under the Convention on the Reduction of Statelessness in accordance with its Article 11, after the Convention has come into force[43]. One year before the regional CIS Conference, the Executive Committee of the UN High Commissioner's Program (EXCOM) adopted Conclusion 78 (XLVI) /1995 on "The Prevention and Reduction of Statelessness and the Protection of Stateless Persons", which recognizes "the right of everyone to a nationality and the right not to be arbitrarily deprived of one's nationality" and that "statelessness, including the inability to establish one's nationality, may result in displacement" and stressed that "the prevention and reduction of statelessness and the protection of stateless persons are important in the prevention of potential refugee situations".

The Council of Europe's Committee of Ministers adopted the European Convention on Nationality and Explanatory Report, dated May 14th1997, which was opened for signature by member States of the Council of Europe on November 7th 1997. This Convention represents the most contemporary reference point for issues pertaining to nationality in the area under the Council of Europe. Figuring prominently in the provisions of the Convention is the reduction of statelessness and the right to nationality. As a member of the drafting group, in which participated forty States, UNHCR has provided information on the problem of statelessness and assisted in the drafting of suggestions intended to ensure that statelessness is avoided. The European Convention on Nationality and the 1961 Convention on the Reduction of Statelessness, the latter in respect of which UNHCR has an advisory role, are compatible instruments, each serving to promote the other. These instruments will have a global impact both on the nationality of persons originating from or moving to States concerned, as well as on the future course of nationality legislation, nationality capacity and institution building as well as practice.

The Standing Committee of the EXCOM during its Session from June 28th to July 1st 1999 considered, among other things, a Progress Report on UNHCR Activities in the Field of Statelessness. This report underlines that this issue is a problem of global concern and one that creates an ever growing workload for UNHCR. The report reviews activities during the past years, including work with UN bodies, the Organization for Security and Cooperation in Europe, NGOs, the Council of Europe and individual government. (Document EC/49/SC/CRP.15)[44].

The CIS Program of Action of May 1996, reiterates in Article 44, "in order to prevent situations of statelessness, existing legislation should be amended where necessary, to be brought into conformity with international standards. In addition the

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42 *Supra* note 9 at 31.

43 Article 11 provides for the following: "The Contracting States shall promote the establishment within the framework of the United Nations, as soon as may be after the deposit of the sixth instrument of ratification or accession, of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority"

44 *Prima facie, The Newsletter of UNHCR's Department of International Protection*, June 1999 at 4.

following criteria should be taken into account "States should grant their citizenship to any child born or foundling found on their territory who would otherwise be stateless, in accordance with national legislation and with the provisions of the Convention on the Reduction of Statelessness (1961). Legislation should provide simplified procedures for granting citizenship to persons who would otherwise be stateless." According to information available, as of May 1999 only two States, Armenia and Azerbaijan had ratified both the 1954 and the 1961 Conventions on Statelessness. UNHCR in fulfillment of its mandate to actively promote accession to the ratification of these two Conventions, and to provide relevant technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States[45], presented the ratification documents for both Conventions on July 19th 1999 to the Ministry of Foreign Affairs in Almaty/Astana, in order to launch the ratification process. In Kazakhstan this issue has a special relevance, since after March 31st 1999, passports of the former Soviet Union are no longer valid in Kazakhstan, which some persons of Russian origin in the Kazakhstani population carry. Those holders must chose to obtain either a Kazakhstani or Russian passport now. Since many people might not be aware of this deadline, a number of such persons in Kazakhstan are potentially de facto stateless since April 1st 1999, a fact to which special attention is given.

C. Previous regional initiatives as a "model" for the regional 1996 CIS Plan of Action (POA)

In light of pressing problems relating to refugees and persons in refugee-like situations, and their possible prevention, preparations for a regional approach through a conference, as done before to solve old and prevent new refugee situations in other regions, started in cooperation with the OSCE, and its participating States and through a working mechanism of direct contacts with different bodies and levels, including the OSCE Permanent Council and their rotating presidencies and the International Organization for Migration (IOM).

Previous regional initiatives have proven useful tools when settling old and prevent new refugee problems from arising, they include the International Conference on Assistance to Refugees in Africa (ICARA) (Geneva, April 1981), the International Conference on Assistance to Refugees in Africa (ICARA II) (Geneva, April 1984), the International Conference on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa (SARRED) (Oslo, August 1988), the International Conference on Central American Refugees (CIREFCA) (Guatemala, May 1989) and the Comprehensive Plan of Action of the International Conference on Indochinese Refugees (CPA) (Geneva, 1989)[46].

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[45] EXCOM Conclusion 78 of 1995 *The Prevention and Reduction of Statelessness and the Protection of Stateless Persons*, paragraph c.

[46] See details on these five previous regional initiatives in: Collection of Policy and Legal Texts on Refugees and Persons in Refugee-like Situations in Kazakhstan with comparative research and analyses on countries in Central Asia and the CIS, of some 500 pages in Russian and English and in 250 pages in the Kazakh language in a joint effort with the Government of Kazakhstan and the Kazakh

In order to prepare the CIS initiative, UNHCR started the consultations through the UN General Assembly which adopted resolutions for the regional conference on refugees, displaced persons and returnees (48/113 of December 20th 1993, 49/173 of December 23rd 1994, 50/151 of December 21st 1995 and 51/70 of February 10th 1997). One year after the conference, the Executive Committee of the High Commissioner's Program (EXCOM) adopted a Conclusion during the Annual Session from October 13th to 17th 1997, in which, among other things, the "UN High Commissioner was requested by Governments to enhance relationships with other key international actors such as the Council of Europe, the European Commission, and other human rights, development and financial institutions, in order to better address the wide ranging and complex issues in the Program of Action".

CIS Conference Follow-up Steering Group Meetings have been hosted by UNHCR, IOM and OSCE in Geneva each June since 1996 dealing with issues including: expert meetings in specific themes of common interests, such as the "Propiska" (registration of persons), and sub-regional meetings, such as on NGO Capacity Building and Government/NGO cooperation and relations. The objective of such expert and sub-regional meetings has been, inter alia, to reach a common understanding on the range of new issues, for which the legal and institutional systems needed to be adapted. These efforts have been initially regarded as an intergovernmental process, including NGO participation only in the Annual Steering Group Meetings.

In the penultimate of these Meetings in June 1999, 43 States attended, 3 observers, 17 intergovernmental organizations, 3 other entities and 87 non-governmental organizations (with a total number of participants of 347 persons). The 1999 Meeting was structured to accommodate a review of progress made since the 1998 Steering Group Meeting and to examine Government/NGO relations with a view of preparing activities after the completion of the institutionalized CIS Conference process in the year 2000[47].

It is in this context that the question of NGO participation has been developed and implemented as one of the most successful components of the CIS Conference Process Follow-up actions. A specific CIS NGO Fund was created[48]. UNHCR has been aiming to follow the main objectives set for its regional strategy in this part of the world, namely: greater integration of Central Europe with Western Europe through various political, economic and military fora; then to encourage economic assistance for the stabilization of the region and finally in addition to

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Red Cross, which is the result of a stocktaking of polices and laws both in Kazakhstan, Central Asia and the CIS, published by UNHCR in Kazakhstan, 1998 and in 1999, at 65 & 66 (English version).

47 CIS, *Report of the Meeting of the Steering Group in the Follow-up to the Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States*, CISCONF/1999/SG4/3, 8 July 1999.

48 Sixth meeting of the informal Steering Group to prepare for the regional conference to address the problems of refugees, returnees, displaced persons and related migratory movements in the Commonwealth of Independent States (CIS) and relevant neighboring States, Geneva, (28 June 1995), Summary of the Meeting, at I and 4.

playing a catalitical role, UNHCR's strategic approaches in this region have been aiming also, in developing an early warning and action facility, to contribute to diplomatic actions, to avert crises before they become irreversible and before they lead to the displacement of populations, and to provide technical assistance and training in order to s*trengthen partnership with NGOs.*

The analysis of international conflict prevention experience and the analysis of the regional conference process, has shown that there are elements useful in both an international and a regional setting. Whereas the first 50 years of the UN efforts in this area are not unanimously termed a "success story", the role of the UN High Commissioner for Refugees has come to be accepted as both useful and innovative, adapting to new challenges and realities. While nearing the 35th anniversary of the Helsinki Act, on August 1st 2000, the security map and perspectives have indeed changed substantially. Whether there is truly more security than before, will need to be seen. The lessons from the conflict in ex-Yugoslavia and Kosovo inspire nobody to be overly optimistic; neither do the Tajik civil war and the conflict in Caucasus. Still, the CIS Conference process, having been a joint venture of UNHCR, the OCSE and the IOM, has been able to make contributions, albeit in limited, and yet specific ways. The filed of Government and NGO relation/cooperation is one of the most significant developments which would not have been able to progress as they did without this framework.

One of the main objectives, which was to avert mass population movements in a still fragile region, has been an ambitious one and has been achieved. The US representative stated at the Steering Group Meeting in June 1999 that the areas of work in the coming years beyond 2000 might include: narrowing the gap between enacted legislation and its implementation; building the human and technical capacities of governments to develop human migration management systems; developing an enabling environment for local NGOs; strengthening local NGOs/Government partnerships, including financial assistance by the governments in the region; passing development assistance programs from UNHCR to the development organizations such as the World Bank and UND and encouraging countries in the region to incorporate funds for displaced persons, refugees and NGOs in loans from international lending institutions. The US Government proposed the establishment of a mechanism to evaluate achievements and provide concrete suggestions for post-2000, which would include such actors as the World Bank, EBRD, UNDP, the Council of Europe, the High Commissioner for National Minorities and NGOs, in cooperation with the EU and the OSCE[49].

At this Meeting , the representative of the Russian Federation, stating that despite enormous efforts and resources invested by the Government in both the development of a migration and refugee policy and needs of more than one million displaced persons, population movements to Russia from other CIS States and illegal migration remain a serious concern. Therefore, the establishment a group of experts to

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[49] CIS, Report of the Meeting of the Steering Group of 24/25 June 1999 in Geneva, CISCONF/1999/SG4/3, 8 July 1999 at 8.

prepare activities for the year 2000 and beyond was proposed[50]. The delegation of Kazakhstan highlighted the progress made in the country in the area of refugee and migration capacities and institutions as a basis for further development of asylum and migration systems, indicating however, of the need for international assistance for the strengthening of state refugee and migration capacities and bodies. On behalf of her country, Kyrgystan and Tajikistan, the Kazakhstani Head of Delegation listed common problems for Central Asian countries requiring a concerted action and international support, such as continuing influx from Afghanistan and weakness of national migration and border control services. She proposed the setting up of a working group to assess achievements and develop a new strategy; taking a sub regional approach to follow-up activities while maintaining and developing the cooperation on common issues with other CIS,European and OSCE States and institutions. The representative of Germany on behalf of the EU, highlighted the usefulness at the regional and the sub regional level and called for additional efforts in building national refugee and migration capacities and institutions. The EU Presidency suggested that all actors in the process pay more attention to what other agencies and actors, national, regional and international, contributed to the process, paying special tribute to the development of civil society, of which NGOs are the key element[51].

UNHCR had held consultations with Governments, NGO partners and UNHCR field staff in several regions of the CIS in preparation for the June 1999 Steering Group Meeting in order to coordinate policies and actions early on.

Even though the Plan of Action is not yet fully implemented, States and NGO alike attending the conference expressed an interest in the continuation of some appropriate regional framework. Therefore, good international co-operation with UNHCR, IOM, but also OSCE, is desirable and has been requested to continue beyond 2000 being considered as a transition period. With NGOs input, it is expected to measure the success of implementation with quantifiable indicators. Several countries want the OSCE to have a more active role and want to involve the Permanent Council of the OSCE in order to formulate longer term strategies and assist active countries in the areas where they may request support, which the OSCE/ODIHR may be in the best position to provide. Besides policy and institutional questions, funding situation will need to be discussed

In view of the EU Treaty II of Amsterdam (June 1997) which brought asylum and immigration policies into EU competence, the Plan of Action[52] and the possibilities to receive EU TACIS support in order to work in a preventive manner in Central Asia. In a meeting between UNHCR and the EU TACIS program in May 1999, the following observations were made: with the CIS Conference process coming to an end in 2000, it is envisaged that new partnerships will be developed,

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50 *Ibid.* at 8.

51 *Ibid.* at 7.

52 UE, Consul Justice et Affaires intérieures, *Plan d'Action du Conseil et de la Commission concernant les modalités de mise en oeuvre des dispositions du traité d'Amsterdam relatives à l'établissement d'un espace de Liberté, de Sécurité et de Justice (3 décembre 1998)*, J.O. 23 janvier 1999.

such as with TACIS, where the UNHCR will be able to identify and design TACIS funded projects in the area of Justice and Home Affairs (especially programs aimed at national refugee capacity and institution building, as well as promoting best practices among NGOs[53]. In this context, the UNHCR is assisting the NGO Kazakhstan Refugee Legal Support (KRELS) in Kazakhstan to elaborate a project submission for EU TACIS funding for legal support for asylum-seekers and refugees, as well as to facilitate the implementation the CASWAME Action Plan of Bishkek of February 1998 at the national and regional level.

Among issues relevant for the CIS region are the results of the EC/EU Harmonization of Asylum and Immigration Policies, including readmission Agreements. The EU Recommendation concerning a specimen bilateral readmission Agreement between a Member State of the European Union and a third country are among the documents under review in this region[54]. Any funding proposals in the refugee and migration field should be formulated in line with international protection standards, whether it is in the CIS framework or through sub regional consultations in the frame work of CASWAME, for example through the Inter-State Council, facilitated by the Bishkek Management Migration Centre (BMMC).

III. Refugee capacity and institution building in Central Asia and Kazakhstan

The process of national capacity building, which had started with the establishment of the UNHCR in Central Asia, gradually lead to national institutions building in the Member States of the 1951 Geneva Convention in chronological order: Tajikistan, Kyrgystan, Kazakhstan and Turkmenistan. Uzbekistan is yet to follow suit (where the UNHCR has been carrying out determination of refugee status under its mandate). Whereas in Tajikistan, Kyrgystan and Kazakhstan carry out registration and determination of refugee status under the migration authorities, in Kazakhstan, UNHCR and the Kazakhstan Refugee Legal Support NGO KRELS have been fully participating in the procedure in all stages since May 1998.

A. Kazakhstan: An example of development of national refugee institutions

The Governmental chaired first instance refugee commission hears 15 to 20 asylum applicants. With the financial support, an interpreter pool has been created and country of origin information is provided. In 1998, 74% (around 90% of the asylum applicants come from Afghanistan and the rest from other countries) have been recognised as refugees. In occasional second instance review sessions, appeal cases are heard in an administrative and thereupon judicial appeal procedure, in both

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53 Note for the File on UNHCR / TACIS relations, dated 10 June 1999, RO Brussels.

54 Adopted by he Council of Justice and Home Affairs on 30.11 and 1.12. 1994 SN 10339/94, see *in* Elspeth Guild, Introduction: Jan Niessen, *The Developing Immigration and Asylum Policies of the European Union, Adopted Conventions, Resolutions, Recommendations, Decisions and Conclusions, Compilation and Commentary* (The Hague: Kluwer Law International, 1996).

of which UNHCR and KRELS have been participating. Though initially the Agency of Migration and Demography (AMD) Almaty City Department which is the Kazakhstani central refugee authority has been reluctant to register asylum-seekers without documents, which obliged UNHCR in Almaty to issue temporary registration letters, it has been agreed in August 1999 that all, including undocumented asylum-seekers are to be centrally registered, in an interest of implementing the principle of access to the procedure (of which registration is a first necessary step, without necessarily implying an obligation on the State to give refugee status if not warranted after a fair and efficient procedure).

Looking back at 1997, there was no national institution to deal with the determination of asylum-seekers, and UNHCR Almaty merely kept records of those calling on the Office for protection, and issued a letter stating the case is under consideration. It was only when persons started to be recognised as refugees, from May 1998, under the competence of the national refugee authority that the State issued a Refugee Certificate, valid one year renewable, which provides effective protection from harassment, detention and deportation.

Now, that Kazakhstan has acceded to the 1951 Geneva Convention, the Convention Travel Document is being printed and issued in implementation of the Convention. This will strengthen the legal status of refugees in Kazakhstan for access to those rights as stipulated in the Convention, namely the application of its provisions without discrimination as to race, religion, or country of origin (Art. 3), right of association (Art. 15), access to courts (Art. 16). The contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country as regards to wage earning employment (Art. 17), and with respect to public elementary education and public relief, the State shall provided the same treatment as to nationals (Art. 22 and 23). The Contracting State shall issue identity papers to any refugee in their territory who does not possess a valid travel document, and travel documents for the purpose of travel outside the territory (Art. 27 and 28). The Contracting State shall not impose penalties, on account of illegal entry, provided the persons present themselves without delay to the authorities and show good cause for their illegal entry or presence (Art. 31), refugees lawfully staying in the territory shall not be expelled, save on grounds of national security (Art. 32) and no Contracting State shall expel or return ("refouler") a refugee to where life or liberty on account of race, religion, nationality, membership of a particular social group or political opinion (Art. 33).

Finally, in accordance with the provision of the Convention, Contracting States undertake to co-operate with the UNHCR in the exercise of its supervisory function of the application of the provisions of this Convention. In particular, they provide information and statistical data requested concerning the condition of refugees, the implementation of this Convention, laws, regulations and decrees which are, or may be hereafter, in force relating to refugees (Art. 35).

Anticipating ratification of the 1951 Geneva Convention, the Kazakhstani refugee authorities did invite the UNHCR from the beginning to participate in the review of the draft refugee law in July 1998. This draft, well advanced at the time of

writing this study and held up from being adopted by Parliament due to Parliamentary elections in September /October 1999, foresees the codification of the *ad hoc* refugee status determination procedure, described in the before mentioned paragraphs and as it stands, reflects the most important international standards. Thus, once adopted, and after successful capacity building, the national institution building it will be formalised, having been "tested" for more than a year in ensuring fair and efficient treatment of asylum-seekers in the procedure.

Effective refugee protection is possible once capacity and institution building on the part of the State has taken place in an appropriate form. Thus, there are reasons to believe, that soon, at the latest in the year 2000 the building of national refugee capacities and institutions will have reached the level that may permit the implementation of the principle of national responsibility and allow the UNHCR to limit its function as to its supervisory role without any further need to be directly involved in the day to day individual case work and refugee status determination and documentation.

Whereas these considerations reflect the approach "according to the book", the fact is that a number of persons use Central Asia and particularly Kazakhstan as stepping stones to Europe and North America. Just during the month of August 1999 a number of cases appeared, who knowingly or unintentionally fell into the hands of illegal immigration networks, which "damp" such persons as from Sri Lanka, Iraq, and other countries in Almaty. Other situations exist, in which persons from Afghanistan, especially, state or attempt quite openly to move on to Europe because things are better there. This has, at times, very complicated consequences both for the individuals, the States and the humanitarian organizations, which become aware of such cases. The co-operation with the International Migration Organization (IOM) has been proving helpful in order to find solutions for those not found to be falling under the 1951 Convention or a humanitarian category of concern to the UNHCR.

The UNHCR in Kazakhstan opened its office in August 1995 with the main objective to support the building of national refugee capacities and institutions at the governmental and non-governmental level as well as strengthening of the legal basis. After the May 1996 CIS Conference, the UNHCR worked together with the International Organization for Migration (IOM) and the Organization on Security and Co-operation in Europe (OSCE), on refugees and displaced persons in the Commonwealth of Independent States (CIS) to assist the national authorities and NGOs in the implantation of the CIS Program of Action[55]. In this framework UNHCR in Kazakhstan[56] has been carrying out directly, and through operational Governmental and NGO partners, about 40 projects in the territory of Kazakhstan, including projects on voluntary repatriation of refugees to Chechnya, limited emergency support for the most vulnerable persons in refugee-like situations through the National Society of the Red Crescent and Red Cross of the Republic of Kazakhstan and technical support to the Governmental refugee authorities (first Ministry of Labour and Social Protection

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[55] Doc. CISCONF/1996/11 June 1996, Geneva.

[56] The main parts include institutional and operational framework, prevention, co-operation, implementation and follow-up.

(MOL) and since December 1997, the Agency on Migration and Demography (AMD).

B. Institutional development in Kazakhstan

The main focus of the UNHCR's work in Kazakhstan as well as in the other Central Asian States has been on refugee law training and financial support to the authorities in the refugee field, including refugee status determination, refugee law drafting and the ratification of the 1951 Geneva Convention of December 9th 1998. For this purpose, the UNHCR has been hosting and/or co-hosting activities, including seminars and conferences in Almaty. Since mid-1998, the official opening of Astana as the new capital of the country, the UNHCR has also conducted seminars and workshops in Astana and other major cities. In support of the legal work promotion and dissemination, the UNHCR Almaty published in October 1998 the 500 pages *Collection of Documents on Refugees and Persons in Refugee-like Situations in Kazakhstan with comparative analyses on the countries of Central Asia and the CIS,* in co-operation with the AMD, the Presidency's Office and the Society of the Red Crescent and Red Cross of the Republic of Kazakhstan. It has been building up the Refugee Research Network between some 25 universities, research institutes and Law Schools in Kazakhstan.

In the framework of its refugee law training and teaching, the UNHCR has been co-organising seminars with the AMD for its officials, and non governmental organizations, including the Kazakhstan International Bureau on Human Rights and Rule of Law, the Southern Kazakhstan Association of Lawyers and Counterpart Consortium sessions throughout the country on refugee law, refugee status determination, interviewing techniques and assistance program matters in Almaty, Astana, Shymkent, Karaganda, Petropalovsk and Aktyubinsk. The purpose of these sessions has been training in international refugee law and UNHCR's activities for relevant governmental officials, NGO representatives, researchers, and members from the media and the public at large. In the framework of national capacity building, UNHCR Almaty assisted in creating the non governmental oorganization "Kazakhstan Refugee Legal Support" (KRELS), to grow into a partnership with the UNHCR and the refugee authorities with a view of supporting the governmental services in dealing with refugee matters. This refugee NGO is the only of this kind in Central Asia, participating along with the UNHCR in the refugee determination procedures with a consultative role in all stages of the procedure.

The development of a legislative basis on refugees has accelerated since 1997, and in Kazakhstan the term "refugee", was used for the first time in December 1997 in the law "On Population Migration", namely in Article 4, 16 and 34. At the same time, the authorities created the Agency on Migration and Demography (AMD) by the Presidential Decree of December 8th 1997, containing the refugee section as part of its structure. From the very beginning the AMD has been co-operating closely with the UNHCR and other international organizations, "taking into account the seriousness of the problems of possible refugees' influx mostly from Afghanistan and

Tajikistan and, therefore the danger of this destabilising factor"[57]. The AMD, assisted by the UNHCR, has been very active in developing refugee and refugee related activities throughout the vast country:

a) Since April/May 1998, the AMD has been *implementing the registration and the refugee status determination procedure* (the latter has been based on the law "On Population Migration" pending to the adoption of the refugee expected in late 1999) through the Almaty City Department on Migration and Demography ad hoc refugee commission in which the UNHCR participates in a consultative role as well as the NGO KRELS. As of July 1st 1999, some 1500 persons have been registered with applications for refugee status, of whom about 800 were recognised as refugees. Asylum applicants who were found not eligible for refugee status, and who wished to have their case reviewed, could do so initially in a second hearing of the Refugee Commission, and since December 1998 in the Administrative Appeal Board in which the UNHCR Almaty participates as an advisor.

b) Since July 1998, the AMD has been *chairing the drafting of the refugee law* with the co-operation of the Prime Minister's Working Group established according to the Prime Minister's Decree of June 18th 1998 on establishing a Working Group on drafting law "on refugees", to be ready for the Government's approval in early 1999 and later, Parliament's approval. In the process, most of the UNHCR official comments have been incorporated.

c) Since November 1998, the AMD has *developed the ad hoc Administrative Appeal Procedure* with the UNHCR and KRELS participating as advisors. Only in a few cases were there applications for administrative review.

d) Since December 1998, the Court system in Almaty has started with a judicial procedure, in which KRELS has been providing *free legal advice* to the asylum-seekers, in which the UNHCR served as experts to the court

e) Since January 1999 Kazakhstan has *acceded to the 1951 Convention and its 1967 Protocol* relating to the status of refugees[58]. This provides an international legal basis for the work in the area of the determination of refugee status, national refugee law drafting, and handling of the legal status of refugees. It is hoped that the accession will also facilitate international support to Kazakhstan in dealing with these questions, especially, if emergency situations arise and it faces difficulties in dealing with a refugee situation. Regulating the legal status of refugees also means that refugees' rights and obligations are clearly spelled out. Whereas a refugee is normally foreseen to enjoy a treatment in terms of access to health, economic activities and justice in national judicial systems, equal to that of other foreigners or foreign residents on the territory of the Member State of the Convention. The convention foresees also obligations to be fulfilled by refugees, such as obeying to national laws

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[57] Z. K. Turisbekov, "Speech of the Head of the Agency on Migration and Demography on the Preparatory Meeting of the Working Group on Refugees", Astana, 23 October, 1998) [unpublished].

[58] The fourth country in Central Asia to do so, after Tajikistan (1993), Kyrgyzstan (1996) and Turkmenistan (1998).

and order prevailing in the country. In the draft Refugee Law, the rights and obligations of the recognised refugees are foreseen.

Other legislative acts, which form the basis for foreigners and may be of relevance in certain situations include the following: Presidential Decrees "concerning legal status of foreign citizens in the Republic of Kazakhstan" (1995) and "on the procedure for granting political asylum to foreign citizens and stateless persons in the Republic of Kazakhstan" (1996). So far the registration is carried out only in Almaty, because this is the city where most of the refugees from different countries arrive. There is an arrangement between the AMD and OVIR in Almaty, where only recognised refugees will get their registration prolonged. Persons, who are recognised as refugees are granted a refugee certificate, usually obtain their registration with the OVIR for one year, after which their cases have to be reconsidered for extension as and when necessary. All other asylum-seekers, who do not qualify for refugee status, are usually unable to have their registration extended. A certain number of this category of persons may apply to extend their registration as foreigners. Some are not and enter into a legal limbo within the country. When rejected, asylum-seekers are usually notified to leave the country as in other countries. Persons, whose cases are under consideration at the Almaty City Department, have their registration extended by a letter from Almaty City Department to OVIR.

About 95% of the male refugee population work in bazaars or "barakholka" (buying-selling). Many refugee women take care of their children; however, some of those with professional backgrounds and/or language abilities carry out income generating activities. The families, that are usually quite large - an average family consists of five members - have to rent a 2-3-room apartment for sometimes more than $100 per month. Some 130 refugee children attend public primary schools (in fulfilment of Article 22 of the 1951 Geneva Convention, which foresees that refugee children should have access to public primary education)- Some attend private Afghan or Sunday schools, partly supported by the UNHCR. NGO's dealing with refugees are just emerging. Developing skills as well as promoting government-NGO relations and sensitizing governments to the useful role of NGOs are the important aspects of the UNHCR's work. In Kazakhstan, the UNHCR works with seven NGO partners under co-operation agreements, which work directly or indirectly with refugees. They are the following: NSRCRC, ARWA, KRELS, the Children's Fund of Kazakhstan, BHR, SKAL and CC. The activities of four of these NGO's are presented in the following summary:

1. Society of Red Crescent and Red Cross (SRCRC)[59]

According to the agreement of the UNHCR with the Society of Red Crescent and Red Cross of the Republic of Kazakhstan, the Society has been collecting data since beginning its operation with the UNHCR in 1994 for the purpose of providing

[59] SRCRC, *Report on the work in 1998 of the refugee sector*, Geneva, Society of the Red Cross and Red Crescent (SRCRC), 1999.

emergency support and medical aid, as well as social counselling for refugees and persons in refugee-like situations, who have approached its services in Almaty. For example, in 1998, 711 new persons (220 families) requested the assistance who are from the following countries: Tajikistan - 327 persons (93 families), Afghanistan - 229 persons (84), Chechnya - 77 persons (21), Osetia - 51 persons (13), Mongolia - 10 persons (2), Somalia - 3 persons (1), Georgia - 5 persons (4), Turkmenistan - 8 persons (1), Palestine - 1 person. Throughout 1998, a total of 1327 refugees and persons in refugee-like situations, some of who had arrived prior to 1998, receive support. The emergency support, $100 or sometimes less per family per year and $20 per member of a family, is only given to the most vulnerable families (families with many children, the eldest, the poorest, etc.) for survival and for essential items. Under the same agreement, UNHCR provides medical aid to these categories of persons through the Screech's Medical Centre where 2 doctors - a physician and a dentist - have reception hours. In cases of an emergency, refugees or persons in refugee-like situations may be sent to hospitals. The SRCRC arranges collection of clothes from the diplomatic missions and provide people in need with them (79 families were provided with such clothes). Also in 1998, the SRCRC opened a place for free of charge distribution of clothes and footwear coming from the Red Cross Societies of Finland, Germany, Norway, as a humanitarian aid. 214 pairs of footwear, 204 blankets, 49 pairs of socks, 124 kg of new winter clothes for children and 265 kg of second-hand clothes were distributed among the people in need.

2. CHILDREN'S FUND OF KAZAKHSTAN (CFK)

CFK has been assisting the refugee children in need in Almaty by providing clothes and food and by organizing a "Sunday school" for refugee children and children of returning ethnic Kazakhs, especially from Mongolia.

3. AFGHAN REFUGEE WOMEN ASSOCIATION (ARWA)

ARWA has been running a tailoring and sewing workshop to generate income for Afghan women in 1999, in addition to operating its very successful catering service for delicious home made food. In 1999 ARWA will also be involved with the Children Fund in a number of small projects for Sunday school for Afghan refugee children.

4. KAZAKHSTAN REFUGEE LEGAL SUPPORT (KRELS)

KRELS, which started to operate in the summer of 1998 under the initial umbrella and as the UNHCR's only operational partner for legal support for refugees, has defined its main objective, is to provide free legal assistance to refugees and other persons in refugee-like situations. So far, along side UNHCR, KRELS participated in the determination of refugee status as a consultant, and has been publishing a legal journal since early 1999. Having supported the UNHCR in the preparation of the

Collection of Documents on Refugees in Kazakhstan, Central Asia and the CIS (published by UNHCR Almaty in 1998 in English and Russian), it has prepared a reduced version in the Kazakh language. KRELS's input into the drafting of national refugee law has been another important contribution.

In addition to these partners, several others are working directly and indirectly with refugees, and have acquired substantial expertise and experience in this field, which has enabled the institutional developments to make progress, which however, must still be consolidated in the years to come.

C. Central Asia: A stepping stone for transit to countries of the European Union?

Just as the Universal Declaration of Human Rights underlines that "Everyone has the right to seek and to enjoy in other countries asylum from persecution" (Article 14), this principle has been applied in Central Asia in its historical traditions and values before and after the break-up of the USSR, even though the latter resulted in major population movements. In this region about 4,2 million people have been moving within, between or from the five Central Asian Republics since 1989. Departure of large numbers of skilled Russians and Germans made a severe economic impact and brain drain on these countries. As the UN High Commissioner for Refugees, Mrs. Ogata stated when she visited Kazakhstan and Central Asia in May 1997; I am "pleased that the Governments of Central Asia put issues of migration and refugees higher on their political agenda"[60]. While the protection gains in the region are significant, there remains a great deal of follow-up to be undertaken.

In line with the UNHCR's experience and statements at the CASWAME Sub-Regional Meeting in Bishkek in February 1998 and at the CIS Steering Meeting in Geneva in June 1999 the continuation of the building of national refugee and migration capacities and institutions will require continuing financial and technical assistance to the governments, partly from the UNHCR, but mostly from the development agencies, international financial institutions (WB, IMF) and donor countries through the intermediary of the OSCE, the EU Presidency, TACIS, etc. Taking into account that these issues retain sufficient priority on national agendas, donor countries should realise that such issues are also in their own interests (control of irregular movements etc.) and thus suitable areas for continued bilateral and multilateral aid. Thus, the presence of refugees and displaced persons in the countries of Central Asia and in the CIS represent a challenge in several ways both for Asia and Europe.

In early 1999 in Bonn, during a meeting between the German EU President Schroder and the UN High Commissioner for Refugees, Mrs. Sadako Ogata, it was agreed that the UNHCR would make a contribution in the framework of the EU High

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[60] S. Ogata (United Nations High Commissioner for Refugees), "Averting Forced Displacement: Humanitarian Contributions", Bishkek : at the Kyrgyz Slavic University (May 28th 1997).

Level Working Group on Asylum and Migration (HLWG), which is analyzing the seven most significant refugee producing situations, including the situation in Afghanistan[61]. In recognition of the fact that neighbouring regions of refugee producing countries are affected as much as countries of asylum-seekers destination, a number of countries were selected for the development of a Plan of Action. Considering that more that 75% of the asylum-seekers in Central Asia are from Afghanistan, leads to conclude that a certain percentage of Afghan asylum-seekers arriving in the EU countries and North America use Kazakhstan as a stepping stone for their onwards travel. According to statistics available to UNHCR in 1997, 16 100 Afghan nationals applied for asylum in the 19 European countries. Germany alone received 64% of all Afghan asylum applications submitted in Europe during 1990-1997. Together, Germany and the Netherlands received 84% of all Afghan asylum application submitted in Europe during 1990-1997[62]. At the initiative of the Netherlands, the EU HLWG is working on a Plan of Action, which is of direct relevance to Central Asia.

While protection gains are significant there remains a great deal of work to be done to ensure sustainability of protection capacities, which have now been put into place. Meetings at high level of Central Asian Governments indicate that Governments in the region, though open to co-operation in stemming the flow of people to transit to EU countries, are unable to cover on their own the full financial burden that this entails. Even though, many of the Afghan asylum-seekers would be finding obstacles when arriving and accessing Europe (due to the Schengen requirements for a passport and/or visa, not figuring on the common "black" list and not having enough funds to support themselves), an unidentified number of persons in this category is moving from/through Central Asia westwards (some abandoning the refugee status procedure prior decisions and/or other without even depositing an asylum request)[63]. Progress made in assisting States in Central Asia to manage "refugees" and "migrants" does not mean that it allows withdrawing from the scene. There is more, much more work to be done in order to identify appropriate means and ways for more fully stabilizing people on the move in Central Asia.

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61 See also chapter 4 below.

62 Regarding the recognition rate: During 1990-1997, 22% of all Afghan asylum-seekers were granted refugee status under the 1951 Convention. When the granting of humanitarian status is included, the recognition rate for Afghan nationals in Europe amounts to an avarage of 40%. See "UNHCR CDR Background Paper on Refugees and Asylum-seekers from Afghanistan", January 1999, paras 1.1 ff.

63 *Convention Applying the Schengen Agreement of 14 June 1985 Between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, on the Gradual Abolition of Checks at their Common Borders*, Done at Schengen the 19 June 1990, *in* H. Meijers et al., *Schengen Internationalisation of central chapters of the law on aliens, refugees, privacy, security and the police*, second rev., Boekerij, Leiden, Stichting NJNM, 1992.

IV. New Challenges and opportunities: The European Union, OSCE/ODIHR and the CIS

A co-ordinated and harmonised approach in Central Asia would be of direct relevance to the region and the EU countries, considering that only the Russian Federation lies between the EU and Central Asia. Central Asia is considered by many as a stepping stone from Afghanistan to Europe. Taken also into consideration the recent progress made in Central Asia, it may be possible to convincingly demonstrate not only to protection minded donors, but also to budget cutting West European governments that it would actually be worthwhile to invest in projects in Central Asia in order to stabilize Afghan asylum-seekers and migrants. It is now, that some first procedures and legal references are in place in four of the countries in this region. It is now, that the UNHCR has developed the means and built capacities to strengthen its support to governments in Central Asia with this strategy in mind. Given the increasingly restrictive asylum policy trends and the saturation of intake in Western Europe, it is more likely that the UNHCR will find allies in the EU region for financial support. As the UNHCR in Central Asia attains its objectives, efforts should be made to liaise more closely with the CIS, Eastern, Central and Western Europe with a view of harmonizing our approaches and sharing best practices.

There are similarities of priorities and core functions in the refugee work in Western Europe (that is strengthening national structures, laws and approaches), Central Europe (meaning capacity building, asylum-management system, asylum-seekers in transit), Eastern Europe (protection, solution, legislation) and Central Asia (protection through national legislation and status determination procedures, solution and preventive activities, capacity building, strengthening in the 1999 UNHCR Global Appeal for raising funds to finance refugee operations around the world shows NGO's). Therefore, the advantages for the EU to link and co-operate with this region in general and with refugees, and population movements specifically in Central Asia, which have a potential to bring an important contribution, namely that:

> a) Asylum-seekers/refugees benefit as their cases are heard, appropriate status conferred and are able to enjoy the benefits of protection or alternative status,
>
> b) governments are served through developing the capacity to address issues of population movements according to international standards, and
>
> c) addressing population movements through competent legal/administrative frameworks should diminish irregular movements and/or make it easier to manage such movements. This in turn benefits States in the EU, which is the main destination of such movements.[64]

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[64] J. McCallin, *Contribution by the Regional Co-ordinator*, (5 February 1999).

Considering that between 1990 and 1998, almost 100 000 Afghan asylum-seekers applied for asylum in Europe who according to on the spot assessments have travelled through Central Asia, this region is included in the EU Action Plan on Asylum and Migration developed by the EU High Level Working Group in co-operation with the UNHCR for the October 15th and 16th 1999 Summit of the European Union in Tampare, Finland. Providing support for refugee related activities from the preventive perspective, including effective protection for asylum-seekers in this asylum region, in particular Kazakhstan, to help limit onward movements to Europe. This, of course, does cost some money and will need to be financed bearing in mind that the work in this transit area is only a percentage of what expenditures are in the West.

A. EEC/EU Harmonization of asylum: Central Asia and the CIS

The EEC/EU harmonisation process of asylum policies and laws, which started in 1985 with the Schengen Agreement, has resulted so far in a body of texts, some of which are already incorporated into national laws, either as transpositions or reflected in national asylum and immigration laws with relevance for and impact on the CIS. One of the most recent text include the European Commission Working Document "Towards common standards on asylum procedures", of March 3rd 1999, in addition to the EUHLWG Action Plan of the EU on Asylum and Migration planned to be adopted on October 15th/16th 1999 by the EU Summit in Finland. Whereas, the first looks at common standards to be applied within the European Union, the second is meant to address the most important refugee situations outside of the European Union, including Central Asia with regard to refugees from Afghanistan.

Going back to the beginning of refugee related text developments in Western Europe, the signing in June 1990 of the Schengen Implementation Agreement foreseeing the end of border controls and free movements between member states, and of the Dublin Convention, were the first main instruments. Whereas the Dublin Convention entered into force in 1997, the Schengen had entered into force in 1996. Dublin's main purpose is to establish the State responsible for examining asylum requests. The Treaty on the European Union of Maastricht was signed in February 1992, which established the "Third Pillar" empowering Justice and Home Affairs Ministers to set up a framework for an EU wide asylum policy. In view of large numbers of asylum-seekers, the EC Ministers adopted in December 1992 the two Resolutions on: "Manifestly Unfounded Applications for Asylum" and on "Harmonized Approach to Questions Concerning Host Third Countries as well as the Conclusion on "Countries in which there is Generally no Serious Risk of Persecution". Most of the EU States incorporated these texts into their national legislation since then. In November 1994, a model "Readmission Agreement" was adopted by the EU Member States by which they can conclude with non-member states making it possible to send asylum-seekers back to countries they had come en

route to EU States, which resulted in many signing of bilateral readmission Agreements, especially with Central and Eastern European (CIS) countries[65].

In June 1995, the EU Ministers adopted the Resolution on "Minimum Guarantees for Asylum Procedures", which contain certain safeguards, but allowing States also to set some of these aside in certain circumstances. The EU Joint Position on the "Harmonized Application of the Definition of the Term "Refugee" in the Geneva Convention addressed the interpretation of the Convention and allows States to follow a restrictive approach favoured by some countries (Germany and France) which could bar victims of "non state persecution" from being granted asylum. The EU Treaty II (Amsterdam, in June 1997, envisages bringing asylum and immigration policies under the EU competence and preparing binding instruments in those areas. This includes the "codification" of earlier above mentioned Resolutions, Conclusions, and Joint Positions as European Law[66]. In order to assist especially the NGOs working in the field of refugees, to handle the increasing pressure on the asylum systems, the UNHCR published in January 1998, the NGO Manual on International Regional Instruments Concerning Refugees, which is designed primarily for the use of NGO and practitioners in the countries of the CIS as a practical guide to existing international and (increasingly restrictive, note by the author) European standards and mechanisms for the protection of human rights, particularly as these relate to refugees and displaced persons[67].

The implementation of EU activities devised by the HLWG on Asylum and Migration can be a start of significance for Central Asia and vice versa. Experiences of the past few years, of operating in the CIS and the Central Asian Countries, since the existence of the UNHCR Offices in this region proves, that there is an interlinkage between Western European countries with the Eastern neighbours, including Central Asia. The EU Plan of Action prepared for the EU Summit under the Finnish Presidency on October 15th and 16th 1999 in Tampere, is hoped to make a difference for Central Asia and by implication the Russian Federation in the CIS, taking account that Finland has been sharing a common border with the CIS and the interest of Russia in Afghan refugees, following its intervention there in 1979. The UNHCR

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65 The objective of readmission agreements is usually to allow country A to speedily send back an alien to country B who has entered irregularly the territory of country A. Moreover, such agreements can make sure that, fearing that a given country will be flooded with returnees, country B will adopt the same immigration and police standards and mechanisms at its borders with country C, thus preventing aliens from even entering its territory and indirectly protecting country A. This in turn will force country C to do the same at its own border with country D, and so on. The Schengen-Poland readmission agreement is the best example of such a scheme. In terms of effective return from Germany to Poland, the agreement is a complete failure, but all Central European states have now signed readmission agreements with their neighbours. In effect, Western States have created a buffer zone, where their protection duties are being implemented upon foreign territories by foreign authorities. See F. Crépeau, "International Co-operation on the Interdiction of Asylum-seekers: A Global Perspective", *in Refugees and Migration in Central and Eastern Europe*, *supra* note 39 at 14-15.

66 L. Druke, "Europe, The Debate over Asylum" (1998) 113:2 *Refugees* at 12.

67 UNHCR, *The NGO Manual on International Regional Instruments Concerning Refugees*, UNHCR Regional Bureau for Europe, Ed. team Kirsti Floor and Isabelle Franck, January 1998, pi.

provided an input as scheduled in March 1999[68], in the framework of the EU initiative to conduct activities, such as: joint analysis of the causes of migratory/refugee movements, possibility for strengthening development aid and economic co-operation, identification of the needs for humanitarian aid and rehabilitation assistance, overview as of the existence of or possibility for concluding readmission agreements or readmission clauses in co-operation agreements, establishing/maintaining and strengthening reception and protection in the region, make proposals for joint measures, including information campaigns, and indicate measures aimed at encouraging voluntary return/repatriation.

After five years of the UNHCR's operations in most of the CIS countries and Central Asia the close co-operation between Western Europe, Central and Eastern Europe and Central Asia is clear: the similarities of origin, of beneficiaries, of priorities and of core functions. While main objectives of opening the offices in this region are being achieved, which should be encouraging for concerned asylum-seekers and States in the region alike, there is still much to be done and perhaps the time is not quite ripe to develop a comprehensive regional approach to refugee problems specifically concerning Afghan refugees and migrants[69]. The initiative, besides exploring possibilities for protection elsewhere, is expected also to uphold application of international Protection Standards despite restrictive asylum trends in regimes of transitions. The countries of the CIS and Central Asia with a relative short asylum tradition, such as known in Western countries are struggling with a number of phenomena which regimes in transitions do bring along. The change from centralise controlled towards market economy, the only slowly developing understanding for the need of competitive thinking and acting, for the need of integrating into a globalized communication and economical framework.

Initial proposals of the UNHCR are directed at measures to improve the socio economic conditions in Afghanistan, for adequate financial support to repatriation programs and for assistance to Afghan refugees in the neighbouring asylum countries, namely Iran, Pakistan and Central Asia.

Thus, there are new challenges, stemming from the European Harmonization with restrictive trends within the territory of the Member States and new opportunities through the EU HLWG Action plan on Asylum and Migration outside of the EU, namely addressing refugee situations within countries of origin and neighbouring countries of asylum, such as Central Asia and Kazakhstan.

Precisely, how the effective measures are attempted will be examined in the following section, through the review of national refugee capacities and institutions, from the legal and procedural perspective, the solution of problems of specific groups, the contribution through civil society and through a number of preventive activities many of which are implemented already in countries of the CIS and Central Asia in a

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68 Paper prepared by UNHCR Headquarters CDR on Afghan Refugees for the EUHLWG, dated 31 March 1999.

69 Note for the File by L. Druke, Head of LO Almaty/ J. McCallin Regional Co-ordinator in Central Asia, 5 March 1999.

more or less intensive manner, which operate hand in hand with the policies that are being developed by the EU and CIS Member States in co-operation with the UNHCR.

B. National refugee capacities and institutions for stabilizing old and preventing new refugee problems

The process of building national refugee capacities and institutions in this region has been slow but there are some specific results, which are encouraging. Out of the 12 CIS countries, so far only 8 have ratified the 1951 Geneva Convention, namely, Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Russian Federation, Tajikistan and Turkmenistan. Most of them have or are in the process of setting up the implementation mechanisms. Experience has shown that the prognosis made in the early eighties of three to five million displaced persons coming to Europe has not come through. Though the situation of many people in the different countries in this region are still, and probably increasing difficult socio-economic conditions with the slow transformation from central to market economies, there has been some stabilizing of old, and preventing of new refugee and population movements achieved. Only in the past year since the 1998 Steering Group Meeting the following examples[70] may serve as indicators of the progress made :

1. LEGAL BASIS AND REFUGEE STATUS DETERMINATION PROCEDURE (RSDP)

Kazakhstan and Georgia have acceded to the 1951 Convention, Ukraine and Moldavia are reviewing ratification at Parliament, Armenia adopted national refugee legislation, Azerbaijan passed a new citizenship law offering the opportunity to persons of concern under the CIS Program of Action to acquire the nationality.

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[70] "Written Statement by the Assistant High Commissioner, Soren Jessen Petersen, at the Fourth CIS Conference Steering Group Meeting", (24/25 June 1999), at. 1-7.

(a) For indicative purposes in 8 of the 12 CIS States the recognition rate on applications by Afghan

Asylum-seekers in 1998 may be demonstrated as follows:[71]

Country	Gov/UNHCR procedure	No of applications in 1998	Decision	%Recognition
Azerbaijan	UNHCR	94	19	10.5
Kazakhstan	Government	1010	581	74.5
Kyrgystan	Government	442	752	54.5
Russia	Government	1291	2442	5.1
Tajikistan	Government	2026	1884	78.6
Turkmenistan	UNHCR	400	244	47.1
Ukraine	Government	803	825	43.2
Uzbekistan	UNHCR	515	244	98.5
Total		**6880**	**6311**	**51.5**

(b) For indicative purposes, in 8 of the 15 EU States the recognition rate on applications by Afghan

Asylum-seekers during the period from 1990 to 1998 may be demonstrated as follows:[72]

Country	Gov/UNHCR procedure	No of applications 1990/98	Decision	%Recognition
Austria	Government	2700	N/A	8.9
Belgium	Government	700	N/A	24.3
Denmark	Government	1700	950	55.9
France	Government	1000	760	76.0
Germany	Government	56200	15190	27.0
Netherlands	Government	23200	15870	68.4

[71] Intended to be indicative, based on available data without necessarily being fully comparative: in Global Asylum Application and Refugee Status Determination Statistics, 1998: Totals by Country of Asylum and by Origin and 20 Main Countries of Origin, by the Statistical Unit, UNHCR, Geneva, June 1999.

[72] *Ibid.* note 72.

Sweden	Government	1700	1300	76.5
UK	Government	5100	3340	67.8
Total		93300	37410	50.6

2. SOLUTION FOR FORMERLY DEPORTED PEOPLE (FDP IN CRIMEA)

The problem of de jure statelessness of this category of persons has been solved with the full support of Ukraine. All 25 190 FDPs have acquired the citizenship of Ukraine, thus since 1997 the number of FDPs who have obtained Ukrainian citizenship total some 32 000 persons. The success of the case of the Crimean Tatars lead to the search for solving the problems of the last FDPs, the Mesketians. The Presidential Decree issued ann order to establish a Governmental Commission to examine the return of Meshketians currently living in Georgia is expected to produce results in the near future. In addition, the Russian authorities have agreed to ease the conditions of Meshkitians living in Krasnodar Krai, through measures such as registration, attending to social needs and providing assistance to those wishing to leave Russia for a permanent residence with the agreement of the host country.

3. REDUCTION OF STATELESSNESS AND MATTERS RELATING TO CITIZENSHIP

Under a simplified procedure agreed between Ukraine and Uzbekistan, FDPs acquired citizenship. Displaced persons in Azerbaijan are now in a position to apply for citizenship in this country on the basis of new citizenship legislation, while by May 1999 over 6 300 refugees in Armenia have acquired Armenian citizenship.

4. NGOS AND DEVELOPMENT OF CIVIL SOCIETY

Since 1998 the co-ordination of the NGO involvement in the CIS Conference Follow-up has been handled more and more by the NGOs themselves through five specific NGO working groups under the guidance of lead agencies in the following areas:

i.	Refugee Protection and Legislation:	Lead agency, the Danish Refugee Council/ ECRE
ii.	Repatriation, Integration and Resettlement:	Lead agency, Counterpart International
iii.	Humanitarian/Emergency Assistance:	Lead agency, Norwegian Refugee Council
iv.	Institutional Framework and NGO Legislation:	Lead agency, Open Society Institute/Intl. Non Governmental Partnership on Migration (INPM)
v.	Conflict Management and Prevention:	Lead agency, International Alert and Centre of Conflict Management, Almaty Kazakhstan.
vi.	Issues of Formerly Deported Peoples:	Lead agency, the Lituanian Red Cross.[73]

[73] B. Nahajlo, *Report on the NGO Consultations* held in Geneva on 23-24 June 1999 in conjunction with the Fourth Steering Group Meeting of the CIS Conference, Geneva, UNHCR, (27 August 1999).

These significant NGO efforts strengthened during the CIS Conference process since May 1996 were focussed on capacity building of NGO representatives and institutions, which is slowly starting to bear fruits. It had been made clear from the outset that the international and regional organizations would be able to assist the new States in these areas and that after 2000 these tasks would need to be continued within the framework of national responsibility. Considering an intermediary measuring of progress made, it is encouraging to see that in most States there are now at least a hand full of experienced and well familiarized people in both the Governmental and the NGO sectors to handle refugee and refugee related matters. The institutions exist in most countries either as independent agencies for refugees and migration or as an integrated body within the government. The same applies to the Universities where refugee, and human rights law as well as humanitarian law (with the involvement of the International Committee of the Red Cross ICRC) is taught and studied. In Kazakhstan, for example, the UNHCR has established a Refugees Research Network throughout the country, which aims at connecting with 25 universities, and in a number of cases fruitful co-operation is developing for teaching and research[74].

Despite the short period since the beginning of the 1990s in which work started in the CIS and Central Asia, the national capacities and institutions created following that time have been contributing to preventing new refugee problems. Whereas the existence of refugee status determination can be illustrated in statistics, this is not so when measuring to what extend the UNHCR's activities and those of governmental and NGO partners have helped the implementation of preventive activities regarding refugee-producing situations. Preventive activities consist of initiatives, which are directed at averting the occurrence and recurrence of those conditions, which forced people to leave their usual place of residence. Of course, these activities should not lead to obstructing the possibilities of flight if that is the only means of survival. The legal justification for preventive activities has increasingly become stronger as a consensus among an increasing number of Sates is emerging that there is a need for international co-operation to avert refugee flows and that there is an erosion of domestic jurisdiction over massive human rights violations[75]. The importance of partnerships is of special relevance to the "Examining", a 1998 UNHCR Policy Series Paper on Prevention, many of the activities which can contribute to the prevention of refugees situations are in fact in progress in one way or another in this region, such as:

1. Undertaking international advocacy on behalf of the purposes and principles of the United Nations Charter;
2. Engaging in "preventive diplomacy" at the national, regional and international levels;

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74 Activities of UNHCR in Kazakhstan (1997/1999), March 31st 1999.

75 L. Druke, *Preventive Action for Refugee Producing Situations*, 2nd ed. (Frankfurt: Peter Lang, 1993).

3. Disseminating international refugee, human rights and humanitarian law;
4. Undertaking the data collection and analysis required to identify those countries and populations which are most at risk;
5. Legal and judicial capacity building in actual and potential refugee producing countries;
6. Encouraging social and political tolerance by means of educational, cultural and mass media activities;
7. Advocacy and capacity building activities with regard to regional and sub regional organizations;
8. Strengthening national NGOs and other institutions of civil society;
9. Promoting comprehensive and regional approaches to refugee problems;
10. Providing an international presence in areas of actual or potential displacement;
11. Establishing humanitarian assistance programs on behalf of war affected populations;
12. Providing educational, training and recreational activities for refugees in countries of asylum; and
13. Consolidating peace in war-torn societies by means of voluntary repatriation operations and community based reintegration programs[76].

The importance of partnerships is of special relevance to the prevention and mitigation of refugee producing situations. While the UNHCR's direct role in prevention is a limited one, it can contribute in the building of national capacities and institutions which are more suitably equipped to act swiftly and directly in case when refugee producing situations occur. The annual theme of the UNHCR of 1999, focuses on partnerships for protection both in the governmental but also in the NGO sector.

C. Strengthening the NGO sector in Post Soviet realities and creating an enabling environment

In recognition of the important role the NGO sector can play in refugee and refugee related affairs, several donors and supporters have been providing considerable input into the development and strengthening of civil society in the different countries in the CIS and Central Asia. A stocktaking, both from the perspective of donors as well as from the point of view of what NGOs have been able to achieve since these States assumed independence in 1991 shows that the difficulties are still enormous in enabling civil society to play a role without fearing obstacles and threats. As a component of the CIS Plan of Action, the UNHCR, together with the IOM and the OSCE have been co-operating with States to support this process. Of the more than 3 000 national non-governmental organizations in mid-

[76] S. J. Petersen (Assistant High Commissioner for Refugees), "Policy Series Paper on Prevention", AHC/98/302, 28 September 1998.

1999, many operate in minimal conditions often without registration and sufficient funding with few people actually doing the work.

For example, the number of accredited NGOs registered in the framework of the CIS Conference amounted to 142 (with 43 new 1999 accreditations), of whom almost 100 were represented at the CIS Meeting in June 1999, 77 being from the CIS and the others located in mainly Western Europe and North America. It is noteworthy that especially the USA and Finland have provided 1999 funding for the CIS NGO work. The fact that the above mentioned 6 thematic working group are now in operation, has brought a new dimension and created fresh synergies between international, national, and regional NGOs. In addition, the close co-operation between the Council of Europe, the Office for Democratic Institutions and Human Rights of the OSCE, the International Migration Organization and UNHCR in the interest of NGO development have contributed to overcoming post Soviet realities and to create an enabling environment.

As discussed before, the UNHCR reiterated that the emphasis of its strategy for the period 1999-2000 would be placed on the consolidation of the process and further devolution within it to the Lead Agencies of the Working Groups. At the same time, the specificity of NGO in the CIS region was recognized as well as the specific problems they are facing. Most CIS countries seemed to confirm their commitment to par. 149 of the POA, namely that there should be a follow-up beyond 2000. Though there is evidence that the role of civil society has been strengthened by the several efforts in the individual countries, post Soviet realities are still if not increasingly difficult for NGOs in this part of the world, where transparency, open discussion and constructive criticism is still viewed with scepticism and suspicion. NGO legislation is a special point in this regard. Governments, even though showing certain openness to this subject, are still weary of affording NGOs the place in society where they belong. In several speeches of Presidents of different CIS countries, the word NGO is mentioned, also that they should play a certain role, however, these words are often accompanied with a warning that NGOs with ambitions contrary to the ruling power would not be supported[77]. This shows that there is still a long way to go in order to overcome past and post Soviet realities in the contemporaneous world.

V. 1999: A NEW EU APPROACH TOWARDS REFUGEE AND MIGRATION POLICY

EU partnership and co-operation agreements with Kazakhstan, besides, Kyrgystan, Uzbekistan and Turkmenistan, are ready in order to advance in this process. Pending the entering into force, interim agreements on trade related matters entered into force with Kazakhstan (1.4.1997)[78]. The European Parliament is also

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77 United States, *US State Department Report on the Situation of Human Rights in Kazakhstan for 1997*, Washington, March 1999.

78 Peter Truscott (Rapporteur for the European Parliament), *Report on the Communication from the Commission: Towards a European Union Strategy for relations with the Independent States of Central*

taking a proactive position in advocating support for the UN and OSCE initiatives in the field of conflict prevention, especially what concerns Afghanistan, and invites the Commission to continue its co-operation with the countries of the region on third pillar issues (including asylum and immigration questions). Furthermore, it calls for more support through the TACIS Democracy Program for non-governmental organizations (NGOs), so that they can monitor more effectively democracy developments and human rights, and obtain a suitable increase in the appropriations for the democratisation process for the NIS, in particular for the partnership programs which are of crucial importance in developing civil society[79].

The EEC/European Union and Schengen States have been developing harmonized approaches towards asylum and migration matters since 1985[80]. Following the Treaty of Amsterdam of October 2nd 1997, both asylum and migration policy were planned to be brought within the competence of the European Union in the next few years[81]. As one of the ways to help to accomplish this complex task, the Netherlands initiated in 1998 the so-called High Level Working Group on Asylum and Migration (HLWG). The goal of the EU HLWG is to curtail the influx of asylum-seekers and migrant to Europe. Depending on the analysis of the situation in the country of origin, the HLWG will determine the policy instruments for this purpose. There may be political, or development co-operation or even economic assistance. The Netherlands are aiming for a European official report on the countries of origin in the future, and the HLWG can be seen as a cautious preliminary step in that direction in regard to six countries of origin, including Afghanistan. The HLWG is working on a Plan of Action expected to be prepared according to the EU Council decision of December 3rd 1998[82]. This Plan of Action is of direct relevance to Central Asia. Among other matters (such as the improvement of the application of the Dublin Convention), the EU December 1998 Plan of Action foresees several major topics in the field of asylum and immigration policy, three of which are of particular significance for Central Asia.

Firstly, a joint policy on readmission should be developed. Secondly, according to paragraph 36 of the December 1998 EU Plan of Action, a specific approach towards different countries of origin and transit, and thirdly, illegal

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Asia, Doc. (COM(95)0206/C4/0256/96, dated 19 February 1999 by the Committee on Foreign Affairs, Security and Defence Policy.

79 Resolution on the Communication from the Commission: Towards a European Union strategy for relations with the Independent States of Central Asia, 12 March 1999.

80 *Schengen Agreement* signed in Schengen in 1985 for the gradual abolition of internal border controls and compensatory measures, which were defined in the Schengen Implementation Agreements signed also in Schengen in 1990, en ligne: http://www.personvern.uio.no/regler/schengen_e.html (date of access : juin 2002).

81 *Treaty of Amsterdam:* Title IV ex Title III Third Pillar foresees in a) within 5 years after entry into force of the Treaty of Amsterdam, measures in area of asylum, immigration and protection of nationals of other countries according to Art. 63.

82 UE, *Plan d'action du conseil et de la commission concernant les modalités optimales de mise en oeuvre des dispositions du traité d'Amsterdam relatives à l'établissement d'un espace de liberté, de sécurité et de justice*, [1999] O.J. D. C 19/1 (23 January 1999).

immigration is planned to be kept under check by joint information campaigns in countries of origin and transit.

Central Asia is one of the seven selected areas for these information campaigns. Mainly because of the large number of persons who leave Afghanistan travelling through and first seek protection in the region, before attempting to travel to one of the countries of the European Union, (see also the Appendix about the human rights situation 1997-1999 in Afghanistan and UNHCR activities in respect of asylum-seekers and refugees from Afghanistan in the UNHCR Paper for the HLWG dated March 31st 1999).

A. Readmission Agreements for rejected asylum-seekers and others: An example of the new EU Policy

If asylum-seekers do reach Europe, apply for asylum and their application is denied, they as well as irregularly moving persons are not allowed to stay (illegal) in the European Union. In order to prevent persons from staying illegally in the EU, the instrument of readmission is used more and more often. In 1994 the Recommendation concerning a specimen bilateral readmission agreement between a Member State of the European Union and a third country was adopted in Brussels[83]. This specimen readmission agreement has twelve articles and is designed to create an obligation on a bilateral, or possibly multilateral, basis for state parties to expel persons assumed to be (former) nationals of the other party and any other nationals who are assumed to have entered one State after passing through the other contracting State with minimal formalities. The transport costs shall be borne by the requesting party (Member State of the European Union). The Recommendation regarding practices followed by Member States on expulsion[84] already encouraged States to enter into such Readmission Agreements, preferably on a mullet-lateral basis. The EU Member States have already concluded Readmission Agreements with almost all central and Eastern European Countries.

There is a clause in Art. 11 of the Expulsion Recommendation stipulating that international agreements/conventions, such as the UN Convention (and Protocol) on the Status of Refugees, shall not be affected by the readmission Agreement. But there isunfortunately no requirement (on either contracting State) to give effect to the Convention. This means that the agreement permits the return of asylum-seekers to third countries where they may not be able to seek and enjoy effective protection. This may lead to situations of persecution and/or violation of basic human rights. The specimen Readmission Agreement also does not require both parties intending to be party to the 1951 UN Convention.

The preamble to the Recommendation of the Specimen Readmission Agreement says that the Readmission Agreement is to be used flexibly and may be

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83 30 November and 1 December 1994, *in* E. Guild and J. Niessen (eds.), *The developing Immigration and Asylum policies of the European Union* (The Hague: Kluwer Law International: 1996) at 393-403.

84 Adopted on 30 November 1992, Doc. SN 4678/92 WG11266. See *Ibid.* at 219-225.

adapted to the particular needs of contracting parties. Therefore it would be desirable to put in an extra clause concerning asylum-seekers, making it possible for asylum applicants to turn to a safe third country which can and will consider the asylum application.

The governmental participants at a regional conference on migration have discussed European developments on Migration on March 31st and April 1st 1998 in Bishkek. Already then they recognised the need to also conclude Readmission Agreements between Central Asian countries in an attempt to limit the level of irregular movements. Point 8 of the Action Plan of the Countries of the Central Asian Region of February 1998[85] is attempting to solve the problems of asylum-seekers and refugees from Afghanistan saying that countries will begin to work on creating a legal basis for organizing (voluntary) return to Afghanistan, their country of origin. Governments need to be encouraged in upholding protection standards when concluding Readmission Agreements between Central Asian countries. In the field of voluntary repatriation, co-operation should be established between authorities from the country of origin and the country of asylum/protection. Also should be considered to give asylum-seekers a so called "turn back guarantee" to the country of asylum/protection, under certain conditions. This could induce spontaneous voluntary return and make voluntary repatriation to the country of origin more conducive in view of the safeguards that could be envisaged.

B. Specific approaches to countries of origin and transit

Instead of waiting that people cross international borders and thus become refugees, this approach aims at addressing the cause of potential refugee and population outflows from home and neighbouring transit countries. Final drafts of the various action plans prepared by the EU High Level Working Group, which will recommend that the EU Foreign Ministers meeting in the General Affairs Council on October 11th-12th 1999 formally approve, for example the plans on Afghanistan and neighbouring region (as well as Iraq, Morocco, Somalia and Sri Lanka), and that the plans be transmitted to the Tampere Summit on October 15th-16th 1999. The conclusions of which are expected to include a chapter on the need to further develop the comprehensive, integrated "cross-pillar" approach, the application of instruments of the three pillars of the European Union, meaning foreign and security policy, justice and internal affairs and means under the Community policy. In practice, this could entail both economic assistance in countries of origin and transit provided with a preventive perspective and stricter application of regulations and treatment of asylum-seekers in the European Union. In this connection the provisions of the Treaty of Amsterdam and the work program on asylum requires the Council to adopt measures in a number of specific areas of asylum and protection policy, mostly within

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[85] UNHCR, *Collection of Documents on Refugees and persons in refugee-like situation in the Republic of Kazakhstan with comparative research and analysis on countries in Central Asia and the CIS*, UNHCR, Almaty, 1998, at 74.

five years of its entry into force[86]. As large parts of the EUHLWG action plans contain an assessment of the situation in the selected countries by the EU HLWG itoutlines a chapter with a series of operational measures according to three categories: foreign policy, development and economic assistance, migration and asylum policy. Information available so far indicates that the plan of action, once approved, would provide fresh understanding and new funding opportunities for protection and assistance activities in neighbouring reception countries of Afghanistan, Pakistan, Central Asia and Iran[87].

C. Information campaign in countries of origin in order to stem illegal immigration

The combating of the abusing of the asylum system and of illegal immigration are some of the most important objectives in the field of asylum and immigration in the European Union at the moment. The present EU strategy is mainly to prevent illegal immigrants from coming to Europe at all. The aforementioned 1998 Plan of Action foresees information campaigns in countries of origin and transit, proposed as a new preventive instrument. The EU appears to be keen that the world knows about the rather restrictive system towards immigration in the EU. Because if potential illegal immigrants know that their chances in Europe are not very good they may decide not to go to Europe at all, and stay in the region were they are instead. If the information campaigns would have this impact it would looks very promising for Europe, but there are to be expected many consequences for the (transit) countries in the region.

First of all, the (transit) countries in the region must inform the potential immigrants and asylum-seekers about the restrictive system in Europe. Therefore an inventory and update of the existing information has to be made, and if necessary the information has to be adapted for the purpose. Especially the Afghan communities and self help organizations in the region must be identified and informed about the strict asylum regulations in Europe, (e.g., leaflets in languages spoken in Afghanistan, lectures, training etc.). There already exists an *"Action Plan of the Countries of the Central Asian Region in solving the problems of asylum-seekers and refugees from Afghanistan"* on this subject[88].

Furthermore by giving this information (e.g. through the above mentioned information campaigns) one should be careful. It should not create a situation in which the reception, in the region from the human rights points of view and humanitarian standards, is motivating immigrants and asylum-seekers to yet move on to Europe, and still use Central Asia only as a stepping stone. Immigrants and asylum-seekers can only be protected in the region, if it can provide basic human rights standards and humanitarian support as well as a fair and efficient legal procedure for

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86 Commission Working Document,"Towards common standards on asylum procedures", Brussels, March 3rd 1999, SEC (1999), provisional version at 414.

87 Update 7 September 1999 on the EU High Level Working Group by UNHCR Brussels.

88 Adopted at the First Regional Meeting on Afghan Refugees in Central Asia, Bishkek, February 1998.

this category of persons. Therefore one should not only organize information campaigns but also, at the same time make sure the current situation of protection in these countries continues to be improved. It is, therefore, important that the governments of the countries in the region work together, also being able to "share the burden" and try to prevent that asylum-seekers turn to one particular country in the region. The countries in the region can adopt similar protection standards, share their specific knowledge, and develop information campaigns together. That is why, first the existing initiatives from different groups in the region need to be identified, measured by the protection standards, co-ordinated and increased. There also is a need to develop an accessible information network about regional asylum matters. Governments should be encouraged to initiate and support local activities in the field of legal and humanitarian aid for asylum-seekers and immigrants. The EU could support new projects in this field and also offer help by the development of legal instruments. At the moment laws and regulations on asylum-seekers and immigrants are being developed by States in Central Asia.

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The building of national refugee capacities and institutions in the CIS, Central Asia and Kazakhstan has made measurable progress since the fall of the Berlin Wall in 1989, and the forming of the Commonwealth of Independent States after the disintegration of the USSR in 1991, and the CIS Regional Conference on Refugees and Displaced Persons in 1996. The first period was marked by standard setting at the national levels of citizenship laws, the succession and ratification of international conventions in the fields of humanitarian law, human rights law, and refugee related matters.

Of the eight CIS States which have ratified the 1951 Geneva Convention, all have or are in the process of establishing national asylum procedures and institutions, with administrative and/or judicial appeal procedures in place. Four out of the five Central Asian States have made progress in setting legal standards and establishing national refugee institutions.

Progress made in Kazakhstan has been recognized by many as significant, as it has been able to move into a leadership position in Central Asia in matters relating to the treatment of refugees. This was possible due to the fact that the UNHCR has been invited by the authorities to participate in the hearing and decision making in the first instance Refugee Commission, usually held on a weekly basis in an advisory role in both the first and second instance Refugee Commissions, along with the specially for this purpose created NGO Kazakhstan Refugee Legal Support (KRELS). In addition, the UNHCR has been participating in the refugee law drafting process with direct involvement of KRELS. This co-operation mechanism allowed for constructive, fair and efficient decisions to be decisions on individual asylum applications or on provisions to be included in the refugee law and relevant administrative instructions.

Voluntary contributions to UNHCR for the CIS countries since the 1996 CIS Conference were requested at an amount about US$ 95 million for implementing operations and assisting civil society through the NGO Fund[89]. Despite generous contributions, the funding situation in 1999 is serious, with a shortfall of more than US$ 10 million as of August 25th 1999. The most important donors being the USA, Japan, Sweden, Finland, the Netherlands, Switzerland, Germany and the European Commission. On the basis of also significant direct financial support, from the European Union and North America (US and Canada), to projects in the region, including in the human rights and refugee field, most CIS countries have greatly contributed to building national refugee capacities and institutions in most countries of the CIS, particularly in Central Asia.

Training and capacity building activities have been active. Considering that with the legal regional input in Central Asia some 45-refugee law training sessions have been taking place in 1998 and some 42 only in Kazakhstan. About 200 sessions took place in 1998 only in Central Asia, and a proportional number of such activities in other CIS countries with which a substantial amount of capacity building has been accomplished. Thus a critical mass of persons with expertise in refugee and refugee related questions has been supported and are expected to be able to further build and strengthen national refugee institutions.

The EU High Level Working Group, which among seven refugee situations analysed, Afghanistan has developed, in consultation with UNHCR an action plan, with focus on preventive activities for adoption at the Tampere Summit in October 1999 under the Finnish EU Presidency, after which the HLWG is expected to adopt an agenda for implementation of the plans of action, that is also to help ensure the coherence of activities, i.e. Foreign Policy Council working groups are to give sufficient attention to development/economic assistance and migration and asylum issues, and the Home and Justice Council working groups are planned to take into due account the external dimension of migration and asylum. In regard to Central Asia and the Afghan refugee situation, significant changes have to be brought about within the country of origin in order to work more effectively from a prevention and solution oriented perspective. Outside actors, such as the EU or sub-regional initiatives, may contribute to ease the situation, including the computerized database system on country of origin information and on refugee relevant information, which is being set up in the regional Bishkek Management Migration Centre (BMMC). These initiatives are geared to promote solution orientation thinking and acting, however they cannot substitute political actions, neither can humanitarian actions alone for considering the developing of a regional strategy. The financing of the plans of action, categorised in three groups: a) measures which do not cost money, b) measures which cost money

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[89] Budget of 1997 (trust fund, not necessarily all for the CIS) was US$ 32,691,734 with US$ 19,925,734 disbursed (rest carried over). Budget of 1988 was US$ 30,435,190 of which US$ 25, 022,337 disbursed (balance carried over). Budget of 1999 is 30,690,072 of which as of 25.8.1999 US$ 10,640,238 disbursed, US$ 17,859,383 obligated, with a total income of only US$ 18,106.481 and a shortfall of approx. US$ 12,583,591 on 25.8.99. Source: FMIS/HQ Report XEP, Project Listing, Run 25/08/99 kindly provided by Mr. Dennis Blair, Resource Manager, Regional Bureau Europe, UNHCR Headquarters on 25 August 1999.

but can be financed out of the existing Community sources, and c) measures which cost money, but cannot be financed out of the available funds. Whereas the Community funding is planned to cover operations outside of the EU, the determination of financial resources from member States' budgets (for instance in Justice and Home Affairs) is yet to follow. All together, this is an important initiative of the European Union, and its integrated approach is a new one, which offers fresh impetus for prevention and solution of refugee problems.

The progress has been made by most Governments in Central Asia, and by other actors, including UNHCR in co-ordination with the Organization of International Migration and the Organization of Co-operation and Security in Europe as well as many contributors through the US AID, the EU Tacis Democracy Program, support by Canada, Japan, Germany, the Netherlands and many others. However, on the eve of Parliamentary and other elections in Kazakhstan and other countries in the region, the relative stability is yet to be consolidated.

The Executive Committee of the High Commissioner's Program drew the attention in its General Conclusion on International Protection[90] to the fact that a comprehensive approach to refugee protection comprises, inter alia, respect for all human rights. It also underlined the obligation of States to treat asylum-seekers and refugees in accordance with applicable human rights and refugee law standards, as set out in relevant international instruments[91]. The examination of the recognition rates of Afghan asylum applications, conducted on the basis of data available on 8 CIS States and 8 EU States demonstrated that in both regions there is an average recognition rate of about 50 %. Of course, there were great differences between certain countries: whereas in 1998 in Russia only 5.1 % were recognized, in Tajikistan 78.6% and in Kazakhstan 74.5% were recognized; whereas during the period of 1990 to 1998 in Austria only 8.9% were recognized, it was 76.6% in Sweden and 27% in Germany (with Germany having had the majority of the EU States of 56 200 number of Afghan applications).

Refugee law and protection, being a part of human right protection**,** the application of human rights principles of international conventions ratified by a given State could be used as an inspiration for the implementation of the 1951 Geneva Convention. The UN Commission on Human Rights, in its resolution 1998/55, reaffirmed the importance of developing effective, independent and pluralistic national institutions for the promotion and protection of human rights. The Chairman of the 52nd session of the Commission of Human Rights, decided that national institutions could speak from the seat of their Government's delegation, but in their own right and with separate speaking time, during the consideration of the item of the agenda at the 53rd Session of the Commission. At the 54th Session of the Commission, the Chairman decided that national institutions addressing the Commission could do so from a special section from the floor, set aside specifically for this purpose, under the nameplate "National Institutions", when 18 national institutions from all regions

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90 See A/AC.96/895 at para. 18.

91 Note on International Protection, EXCOM, 49th session, A/AC. Doc. 96/898 (3 July 1998).

each received speaking time during consideration of the item on national institutions[92].

The promotion of national governmental and non-governmental human rights and refugees institutions has brought initial results worldwide. These institutions, be it existing national Human Rights Commissions or the establishing of independent ombudsman institutions are featuring now also much higher on the political agenda of at least three of the five Central Asian Governments, and on several of the other CIS Governments, after independence in 1991 and the ensuing years of transition. For example, in the conferences on the establishing of an ombudsman institution, that took place in Astana, Kazakhstan on September 2nd-3rd 1999, and in Bishkek, Kyrgystan on September 6th-7th 1999, this proposal of establishing an ombudsman institution, in addition to the National Commissions on Human Rights under the President, was openly discussed and supported, including by concerned high level Government officials[93]. Clearly, the implementation of these proposals would be in line with UNHCR's preventive strategy, if there is an institution to supervise the public administration and persons working in its service to assure that no injustice is done against individual citizens in their home countries as in more than 90 countries where such institutions are in operation. Then, in principle these citizens would not need to seek protection across international borders as refugees. The examination of the legislation of 27 countries concerning the institution of the National Ombudsman shows that the Constitution of the Kingdom of Norway laid down on May 17th 1814 (amended on July 23rd 1995), article 75 foreseeing to: "appoint a person… to supervise the public administration and all who work in its service, to assure that no injustice is done against the individual citizen"[94].

In the same spirit, the close co-operation between Ministries of Foreign Affairs and National Governmental Refugee Institutions, often acting under or in close co-operation with the Ministries of Interior, as refugee matters are viewed in many countries in the domain of national security, has proved very useful in the sense that both the internal security and international obligations issues can be kept in view in a co-ordinated manner. Thus, participation of both diplomats and refugee institution officials in international refugee conferences, along with non governmental refugee organizations, which assist States in handling refugee matters, such at the Executive Committee of the UN High Commissioner's Program (EXCOM), CIS, CASWANAME, allow for joined exchange views with their homologues from other

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92 *Effective Functioning of Human Rights Mechanisms: National Institutions for the Promotion and protection of Human Rights*, in Report of the Secretary General submitted in accordance with Commission on Human Rights resolution 1998/55, E/CN.4/1999/95, of 3 February 1999 at 1 and 12.

93 "Ombudsman Legislative Resource Document", Occasional paper prepared by Dean Gottehrer, a past President of the United States Ombudsman Association, working as an international consultant in the field of Ombudsmanship, for the International Ombudsman Institution (IOI) at its annual meeting, October 13/15, 1997, Copenhagen (Denmark), received from the author on 3 September 1999 in electronic form.

94 *National Ombudsmen, Collection of legislation from 27 countries*, Published by the Commissioner for Civil Rights protection of Poland, in cooperation with the European Ombudsman Institute and the Organization for Security and Cooperation in Europe / Offcie for Democratic Institutions abd Human Rights (OSCE/ODIHR) at 199.

countries and organizations. That way, the concept of national responsibility in refugee matters is enhanced, and allows in due course that a UNHCR office in a given country may close operations, because the main objectives are achieved, and because national refugee capacities and institutions are in place. If necessary, efforts for continued support from international and regional organizations, including, OSCE, the European Union, and relevant financial institutions must continue providing relevant support so that these young national institutions become self-sustaining over time[95].

Of course, much depends on the overall direction countries will take in the CIS and in Central Asia. Relative stability enabled some positive progress to be made. However, some of the major countries such as the Russian Federation and Kazakhstan for example, are facing significant challenges. Other researchers have analysed and published about the steady and rapid "Kazakhification" in Kazakhstan of political and economic elites, which appears to increasingly antagonise Slavic segments of the population, and raises the question of dual citizenship, under which ethnic Russians would have citizenship of both Russia and Kazakhstan as one of the aspects of these complex developments[96].

The future of the CIS, Central Asia and Kazakhstan may well depend upon achieving a sense of moderation in overcoming the legacies of the Soviet regime and achieving more relative stability. It is in the context of moderation and relative stability in which also the further building of national refugee capacity and institutions is likely to have a chance in the long term and even contribute to preventing new refugee situations. This would mean achieving some of the goals set ten years ago, namely stabilising old and preventing new refugee movements and population displacements.

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[95] For this purpose, UNHCR has been facilitating participation of both high level representatives from Foreign Affairs and from the competent refugee authorities as well as from refugee and refugee related NGOs in international and regional sessions in Geneva and elsewhere, namely in the 1999 CIS Steering Group 22/25 June 1999.

[96] A. Dixon, *Kazakhstan: Political Reform And Economic Development, Russian and CIS Program: The Royal Institute of International Affairs,* (Westview Press, Borden, 1994) at 8.