



A Model Instrument for an Emergency Evacuation Visa

International Bar Association



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Table of abbreviations

AMIF	Asylum, Migration and Integration Fund
CFR	[EU] Charter of Fundamental Rights
CFSP	Common Foreign and Security Policy
CPA	Comprehensive Plan of Action
CRRF	Comprehensive Refugee Response Framework
DISERO	Disembarkation Resettlement Offers
DRC	Democratic Republic of Congo
EASO	European Asylum Support Office
EEV	emergency evacuation visa
EMN	European Migration Network
ERF	European Refugee Fund
ETC	Emergency Transit Centre
ETD	emergency travel document
ETF	Evacuation Transit Facility
ETM	Emergency Transit Mechanism
EUEXCOM	European Union Executive Committee [of UNHCR Programme]
FAP	[German] Family Assistance Programme
GCR	Global Compact on Refugees
GRSI	Global Refugee Sponsorship Initiative
HIV	human immunodeficiency viruses
IBA	International Bar Association
ICRC	International Committee of the Red Cross
IHAP	Irish Humanitarian Admission Programme
IOM	International Organization for Migration
LIBE	Committee on Civil Liberties, Justice and Home Affairs [of the European Parliament]
MSF	Médecins Sans Frontières
MENA	Middle East and North Africa
NGO	non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
PTA	Protection Transfer Agreement
RASRO	Rescue at Sea Resettlement Offers
RRF	Resettlement Registration Form
RSD	refugee status determination
SOPsTB	standardised operating procedures tuberculosis
UN	United Nations
UNGA	UN General Assembly
UNHCR	UN High Commissioner for Refugees
UNTSURF	UN Treaty Series Union Resettlement Framework
VCRS	Vulnerable Children's Resettlement Scheme
VHAS	Voluntary Humanitarian Admission Scheme
VPRS	Vulnerable Person Resettlement Scheme

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Executive summary

The **objective** of this study is to offer an overview of available ‘complementary pathways’ to international protection, taking stock of existing initiatives across the world, relying on contemporary and historical examples to distil best practices as a basis for an emergency evacuation visa (EEV) that can be used in situations of urgent need of international protection. The **background** is provided by programmes emerged particularly after the ‘refugee crisis’ broke out in 2015, complementing resettlement and facilitating access to ‘durable solutions’. The growing need for imaginative, bottom-up, solution-orientated approaches to cater for an **increasing global refugee population** and the **uneven distribution** of efforts to host displaced persons provides the baseline to the EEV. **State commitments** undertaken in the 2016 New York Declaration and the 2018 Global Compact on Refugees, to provide legal pathways for admission on a sizeable and meaningful scale, are also taken into account. The final aim is to **contribute to resolving the problem of safe and legal access to asylum**, providing for a channel of direct access to international protection, rather than via a first country of refuge, **creating an alternative to the reliance on smuggling and trafficking networks for particularly vulnerable groups**. The ambition is to **overcome the challenges and obstacles faced by existing schemes**, to ensure their **upscaling, streamlining and sustainability** through time on the basis of a **multi-stakeholder, collaborative effort** that can be replicated and adapted to new situations.

With this in mind, **Part I** of the study introduces the **central issues** to confront, offering an **overview of the main facts and figures** that provide the reference point, noting the need for solidarity and responsibility-sharing in the design and implementation of mechanisms that facilitate access to protection. **Key definitions and distinctions** are introduced, including: ‘complementary pathways for admission’; ‘direct’ and ‘indirect’ routes to refuge; and ‘refugee specific’ and ‘non-refugee specific’ channels. The **methodology** employed to carry out the study as well as its **structure** and the content of the different chapters are presented.

Part II maps out the **strategies developed to offer lines of access to asylum**, exploring four groups of measures. **Chapter 1** is devoted to **‘classic’ resettlement**, as designed by UNHCR and as adapted by the main countries that have developed a regular programme. The chapter also includes an overview of regional initiatives, including the Comprehensive Plan of Action for Indochinese refugees and the EU Resettlement Framework Regulation proposal. **Sponsorship schemes** that reinforce and add to resettlement schemes are explored in **chapter 2**. These two first types of measures are considered to generally provide what can be called **secondary means of access to refuge**, in that they are typically aimed at internationally displaced persons who have already been recognised as refugees, who are hosted by a first country of asylum, but are otherwise in need of effective protection. **Chapter 3** covers **humanitarian visas**, as emerged in national and regional practice, while **chapter 4** addresses **emergency evacuation** schemes. This second group of measures, in contrast to the first group explored in chapters 1 and 2, generally offers channels of direct or **primary access**

to international protection to displaced individuals in high-risk situations requiring asylum, whether still in their countries of origin or already in transit, and regardless of Refugee Convention status recognition.

Part III takes stock **of lessons and conclusions** from Part II chapters as the **basis of the EEV proposal**.

Resettlement, as scrutinised in chapter 1 of Part II, consists of the selection and transfer of already recognised refugees from a country of first asylum to a third state that agrees to admit them as refugees and eventually grants them permanent residence. The main reason for resettlement is the need for effective protection of particularly vulnerable refugees who have reached a country that cannot or will not provide it and where their situation is, therefore, precarious, undignified or unsafe, due to health, security or other reasons. UNHCR has developed a comprehensive set of standards and procedures that the main countries of resettlement, including the US, Canada and Australia, follow for the most part. The key precondition (and limitation) of resettlement is that it normally **only covers persons who qualify for refugee status and have undergone a formal procedure to establish it**. **On top of this**, potential beneficiaries must fall within one or more of the **submission categories** identified by UNHCR (as adapted in the country programme concerned), devised on **vulnerability criteria**. Then, the **priority level** of the case, whether 'normal', 'urgent' or 'emergency', will determine the length of processing times, although places and capacity to cater for the latter class are very limited. UNHCR distinguishes **six phases** in the procedure: (1) **identification** of candidates; (2) individual **assessment**; (3) case **preparation**; (4) internal submission decision and **referral**; (5) resettlement country **decision**; and (6) **pre-departure arrangements**, including cultural orientation, travel logistics and formalities, fit-for-travel screenings, escort and transit protocols. **Resettlement countries** may introduce an **additional interview** with candidates, **background checks** (for example, security, character and medical) and **additional matters for consideration**, such as integration potential, language proficiency, cultural and other ties with the country in question, which are **not protection-related** and may impair the fairness and non-arbitrariness of final decisions, **slowing down the process**. Most countries tend to rely on **expansive exclusion grounds** and deny access to resettlement, rarely providing a means to appeal or review negative decisions. Resettlement can also be rejected on the basis of health threats, as in the US, undue costs in care or community services, such as in Australia, or on broader migration control considerations, as in the EU programme proposal. It is **for these reasons** that **alternative pathways have developed**, relying on and expanding upon resettlement schemes.

As Chapter 2 shows, drawing on the Canadian example, community and private **sponsorship initiatives, have proliferated, making available resettlement places to a wider spectrum of potential beneficiaries**. These initiatives are characterised by a **transfer of responsibility** from state authorities **to non-state actors for all or part of the resettlement action**, including the identification and/or referral of candidates, pre-departure assistance, post-arrival reception and/or the integration process of beneficiaries in the country of destination. Nonetheless, **state authorities retain**

final responsibility for the scheme; they determine qualification criteria for sponsors and potential beneficiaries, may co-fund programmes and shall step in if the sponsorship relationship breaks down. Among the benefits of these initiatives, there is the **expansion of protection capacity** they entail, enabling legal admission to groups that would normally not qualify for resettlement, especially on family grounds; the **facilitation of integration** of beneficiaries in their host communities, particularly when sponsors are family members of the beneficiary, such as in the German Family Assistance Programme (FAP) or the Irish Humanitarian Admission Programme (IHAP); the increase in **societal support and acceptance** of refugees they muster; and the **private–public partnership** element that allows for cost-effectiveness and multi-stakeholder collaboration. Several of the schemes examined in the chapter adhere to the **principle of ‘additionality’**, thus adding to the government resettlement quotas and creating additional protection space, with some also catering for persons who may still be in their country of origin, thereby opening up a direct route of primary access to asylum. The negative side of the balance counts criticism for the **‘privatisation’**, if not ‘commodification’; the **effect on protection**; the **wide variation** that exists **from scheme to scheme** in terms of criteria, processing arrangements and final outcomes; and the **accessibility issues** that reliance on certain (especially private business and employer) partners (as in the Australian Community Support Programme) entails. **‘Blended schemes’**, whereby referrals by resettlement partners (normally UNHCR) are matched with a community sponsor (as in the UK Vulnerable Person Resettlement Programme (VPRS) and the Vulnerable Children Resettlement Scheme (VCRS)), **have come some way to address these problems.**

Humanitarian visas, especially the **‘humanitarian corridors’** variant – introduced in Italy, France, Belgium and Andorra by the religious Community of Sant’Egidio, in cooperation with other faith-based groups – constitute an **example of community sponsorship targeting non-recognised refugees and others in analogous situations** in need of international protection. **Chapter 3** examines the details of this as well as related initiatives at the regional level. Although the **numbers** catered for are typically **small**, and the schemes **geographically bound** to specific nationalities and **limited in time**, they provide a concrete example of **direct engagement with the problem of primary access to asylum**. The main difference from ‘classic’ resettlement and sponsorship initiatives is that humanitarian visas, in lieu of entailing a grant of a protective status directly on arrival, **provide a channel of safe and legal access to the territory** of the country concerned **for the purpose of beneficiaries lodging an asylum application** after entry. This allows for a ‘lighter’ procedure to be put in place, when compared to resettlement. Candidates are usually **evaluated on a prima facie basis**, screened for security risks, and assisted for travel to the country of destination. It is only once they reach the territory of the state issuing the humanitarian visa that they are admitted to the ordinary asylum system and their protection needs are assessed in the same way as those of ‘spontaneous arrivals’. This basic premise has bolstered recent efforts by the **European Parliament** to put together a harmonised procedure for the issuance of **EU humanitarian visas** to persons in need of international protection. This is different from the **Voluntary Humanitarian Admission Scheme (VHAS)** currently used to implement the EU-Turkey Statement of March 2016 and, in particular, the related 1:1 swap arrangement, according to which,

for every irregular migrant returned to Turkey from Greece, a Syrian national in Turkey is to be resettled in a EU country, which has been criticised as a **migration control tool**. The VHAS, which selects persons on a prima facie basis and issues temporary permits that (do not dis)allow candidates to submit full asylum applications on arrival, has served as a **basis for the proposed EU expedited resettlement procedure**, examined in chapter 4. By contrast, if ever adopted, **EU humanitarian visas** would constitute the first **streamlined, open-ended, grand-scale** attempt to provide for primary access to asylum. Its reliance on **self-referral, prima facie determination** of protection needs and **swift processing** times **would create a credible substitute for smuggling and trafficking routes**.

In situations in which needs are so urgent that they do not allow for detailed consideration of the circumstances and characteristics of potential refugees, several **emergency mechanisms** for their rapid transfer to safer locations have emerged. However, '**emergency resettlement**' requires compliance with all resettlement formalities and may take **too long to be effective**. **Country examples**, in the US, Canada and Australia, **demonstrate** that this route **is sub-optimal**. The **proposed EU 'expedited resettlement'** procedure, if adopted, would overcome some of the problems faced by country-based emergency resettlement, in that it is based on prima facie eligibility and cuts down processing times significantly. However, it would not do away with case-by-case security screening, which can take prolonged periods, as the US (chiefly among the country examples) demonstrates. Due to the ineptness of 'emergency resettlement', **Evacuation Transit Facilities (ETFs)** have **materialised to facilitate it**. They take either the form of **Emergency Transit Centres (ETCs)**, housing refugees in a central location as in the Romanian and Slovakian example, or **Emergency Transit Mechanisms (ETMs)**, accommodating them in different places as in the cases of the Philippines, Costa Rica and Niger. They are intended as points of transition between countries of displacement and countries of final destination, so resettlement processing can be undertaken or completed in a secure environment. **One key drawback** of these initiatives is the precondition for ETF transfer, **in the case of ETCs**, requiring **an offer by a potential resettlement country agreeing to pursue resettlement processing in the ETC concerned**. **In the case of ETMs**, the main problem is with the **slow 'turnover' of refugees**; without rapid acceptance by resettlement countries, new arrivals to the ETM are slowed down. This has proven impractical to the point that, in some instances, the risks to life they were supposed to spare have materialised – the bombing of the Tajoura detention centre in Libya in July 2019, without detainees having been relocated to the Nigerien ETM or otherwise having accessed an alternative pathway to reach safety offers a tragic illustration. Chapter 4 also examines **evacuation programmes**, focusing on the rapid transfer of persons at risk, typically without full screening, from within the country in which the emergency originates and directly to the country of final destination, on the basis of common arrangements and concerted action by different partners. The **Italian programme for humanitarian evacuation from Libya**, counting 710 evacuations since December 2017, and the (very small) **EU Bethlehem evacuation scheme** of 2002, rescuing 13 Palestinians during the Second Intifada, provide concrete examples.

Taking into account conclusions from the chapters in Part II, **Part III** systematises lessons learnt and produces a **detailed proposal for an EEV mechanism**. It draws on the UNHCR Three-Year Strategy (2019-2021) on Resettlement and Complementary Pathways and the UNHCR Strategic Directions 2017-2021 with the aim to contribute to the objective of facilitating the admission of two million persons in need of international protection via complementary pathways by the end of 2028. The EEV, accordingly, pursues **three main goals**: achieving concrete **solidarity and responsibility-sharing** vis-à-vis displaced populations and countries of first asylum; **expanding access to durable solutions in emergency situations**; and **fostering self-reliance and autonomy** on the part of beneficiaries. It **takes account of UNHCR minimum standards**, including respect and protection of refugee rights, non-discrimination, attention to vulnerability, objectivity of qualification/exclusion criteria, access to a legal status, family unity, due process and the best interests of the child. It constitutes an **evidence-based, bottom-up** innovation, relying on **multi-stakeholder/multi-sectoral** collaboration and articulating channels for **refugee participation**. It suggests that there be an **EEV Working Group**, chaired and coordinated by UNHCR, composed of state and non-state partners wishing to participate in EEV action, **for the identification of EEV priorities**. EEV priorities, it is proposed, are to be identified by consensus **following UNHCR emergency assessment tools**, according to which a humanitarian emergency is a situation wherein lives are threatened unless immediate action is taken – characterised by high levels of violence and insecurity, if not indiscriminate attacks on the civilian population, leading to vast numbers of persons being displaced and in dire need of protection. The **criteria for the determination of ‘effective protection’** are also to be taken into account (as applied in the context of ‘safe third country’ removals) so that the **presence of individuals in ‘unsafe’ countries or areas**, taking account of the degree and plausibility of harm, **determines (automatic) inclusion within the EEV scheme**. The EEV Working Group is tasked with identifying a way in which **EEV candidates** can **prove their presence within the EEV-designated area**, including via registration with UNHCR or other partner organisations present in the field. **Only** candidates representing an **‘active security threat’**, as defined by the EEV Working Group, **should be rejected EEVs**. To **facilitate access to the scheme**, arrangements should be **made public, self-referrals possible** and **applications** submitted **either in person, by proxy or through electronic means**. **Processing times** should be kept **as short as possible** and there should be an **opportunity** for unsuccessful applicants **to object and resubmit** rejected applications, **without** final rejections **impeding access to protection through other channels**. The **EEV** is, thus, proposed as a **context-sensitive tool, targeting a particular, finite group, solely intended to facilitate travel of beneficiaries to the EEV issuing country for the purpose of submitting an asylum application**. An **EEV fund**, with contributions from EEV partners, should be adopted to **cover related expenses** and **create incentives**, for example, in the form of ‘compensation’ for EEV-issuing countries. The **Annex** to Part III contains the **Model Convention for EEVs**, providing the main details in 12 provisions, proposed as a starting point to a discussion on EEVs.

Part I: Introducing the problem: 'mass' forced movements and access to asylum

1. Facts and figures

According to the latest statistics from the United Nations High Commissioner for Refugees (UNHCR), there are **70.8 million forcibly displaced persons worldwide**, including **25.9 million refugees** and **3.5 million asylum seekers**.¹ The number of refugees has almost doubled since 2012.² And nearly 60 per cent are coming from just three countries: 6.7 million from Syria, 2.7 million from Afghanistan and 2.3 million from South Sudan, with **80 per cent** of these populations remaining in countries **within their region of origin**. In fact, **beside Germany**, hosting 1.1 million refugees, **no other Global North country features among the top ten countries of asylum**. **Eighty-five per cent** are **hosted by developing countries**, with the least developed countries providing asylum to one-third of the global total of refugees, according to UNHCR.³ In the last five consecutive years, the **main hosting country** has been **Turkey**, with 3.7 million (mostly Syrian) refugees,⁴ followed by Pakistan, Uganda and Sudan, each with 1.4 million, 1.2 million and 1.1 million, respectively.⁵ Lebanon has continued to host the largest number of refugees per capita (ie, relative to its national population), on a one to six ratio, with every one in six people being a refugee. Jordan (one to 14) and Turkey (one to 22) rank second and third, respectively.⁶

Regarding solutions, it is worth noting that **78 per cent** of all refugees are **in a protracted refugee situation**, defined as 'one in which 25,000 or more refugees from the same nationality have been in exile for five consecutive years or more in a given host country'.⁷ **More than half** of this number are **Syrians in the Middle East** (in Egypt, Iraq, Jordan, Lebanon and Turkey). In 2018, nine situations were newly classed as protracted, including South Sudanese refugees in Kenya, Sudan and Uganda; Pakistani refugees in Afghanistan; Nigerians in Cameroon and Niger; refugees from Democratic Republic of Congo (DRC) and Somalia in South Africa; and Ukrainian refugees in the Russian Federation.⁸

1 UNHCR, *Figures at a Glance, 2018 Statistical Yearbook* www.unhcr.org/figures-at-a-glance.html accessed 26 July 2019.

2 UNHCR, *Global Trends: Forced Displacement in 2018* www.unhcr.org/globaltrends2018 accessed 26 July 2019.

3 *Ibid.*

4 *Ibid.*

5 See n 1 above.

6 See n 2 above.

7 *Ibid.*

8 *Ibid.*

Also in 2018, more than **three million Venezuelans** left the country, travelling mainly within Latin America and towards the Caribbean. This is **one of the biggest displacement crises in the world** and the biggest exodus in the region's recent history.⁹ The exodus from **South Sudan** and of **Rohingyas** out of Myanmar continues too. **Solutions**, however, have **not** been **forthcoming**. More asylum seekers have been rejected than accepted in potential host countries, and many remain stranded in precarious, dangerous and typically irregular situations, with a continued need for effective protection.

In recent years, by UNHCR's own admission, it has become more **difficult to rely on the traditional 'durable solutions'** of voluntary repatriation, local integration or resettlement to address existing needs. There is a growing number of refugee situations in which **repatriation** is simply **not an option** due to persisting risks to life and fundamental rights. **Local integration** opportunities are also **in decline** and/or have become inaccessible due to policies of *non-entrée* and obstacles to reach asylum imposed by countries of destination and, increasingly, by transit countries.¹⁰ Regarding resettlement, divisive national debates and heightened attention to security concerns have rendered the establishment or expansion of resettlement programmes difficult in many countries – Belgium, for example, has even decided to suspend resettlement activities for the time being.¹¹ The global landscape has, in fact, experienced a very significant shift since 2017. While state **resettlement quotas** grew significantly in the period 2012–2016 to respond to growing needs, with a 20-year record peak in 2016 of 163,200 submissions worldwide, there has been a **54 per cent fall** thereafter. Based on current efforts, at today's rates, it would take another 20 years for current resettlement needs to be fulfilled.¹²

In response, the new Comprehensive Refugee Response Framework (CRRF),¹³ which is part of the Global Compact on Refugees (GCR),¹⁴ includes additional measures, such as expanding access to resettlement, humanitarian programmes and other **complementary pathways**, which this study delves into. This is in line with state commitments, expressed in the New York Declaration, to 'provide resettlement places and other legal pathways for admission on a scale that would enable the annual resettlement needs identified by UNHCR to be met'.¹⁵

9 *Ibid.*

10 The distinction between countries of origin, transit and destination is equivocal because most countries can, or indeed are, all three at the same time. So, the differentiation can only be made with respect to a particular refugee or exodus at a time.

11 UNHCR, *Position on safe and legal pathways*, 8 February 2019, para 29 www.refworld.org/pdfid/5ce4f6d37.pdf accessed 26 July 2019.

12 *Ibid.*, para 7.

13 UNHCR, CRRF, para 14 www.unhcr.org/comprehensive-refugee-response-framework-crrf.html accessed 26 July 2019.

14 Global Compact on Refugees (GCR), 17 December 2018, UN Doc A/Res/73/12 (Part II), paras 94–96, www.unhcr.org/gcr/GCR_English.pdf accessed 26 July 2019.

15 UN General Assembly (UNGA), New York Declaration for Refugees and Migrants, UN Doc A/Res/71/L.1, para 78 <https://undocs.org/a/res/71/1> accessed 26 July 2019.

The urgency of resolving the **problem** of procuring (safe and legal) **access to asylum**,¹⁶ particularly in situations of mass forced movement beyond the immediate neighbourhood of a refugee crisis, constitutes the focus of the next sections. Because there are no ‘refugee visas’ or similar mechanisms that individuals can autonomously activate to reach safe haven in third countries, it has been estimated that **90 per cent of all asylum seekers, subsequently granted a protective status** in the European Union, had to **arrive irregularly** in the territories of the Member States.¹⁷ This number can easily be extrapolated to other situations in the Global North, considering that there are no general pathways for primary access to protection for those in need to arrive at the external borders of potential host countries from their countries of origin. As the next sections show in detail, **resettlement** provides an **indirect route to asylum** to those who have already been recognised as refugees according to the 1951 Convention Relating to the Status of Refugees (the ‘Refugee Convention’),¹⁸ so they can move from a country of first (unsuitable) refuge to a country of effective and durable protection – the transfer *directly* out of the country of origin to the country of destination not being, in principle, possible under UNHCR’s resettlement programme.¹⁹ However, **direct channels** to such effective and durable protection are **usually ad hoc**, if not one off, exercises, adopted by countries of destination in exceptional circumstances.

This is why **border deaths are on the rise**,²⁰ with an estimated 36,000 fatalities in Europe alone since the records began in 1993.²¹ The lack of safe and legal pathways to protection makes recourse to **smuggling and trafficking** ‘services’ a **structural** necessity. **Despite** the recognition of the ‘**right to asylum**’ in the EU Charter of Fundamental Rights (CFR),²² the African Charter on Human and Peoples’ Rights²³ and the American Convention on Human Rights,²⁴ translating the substance of Article 14 of the Universal Declaration on Human Rights and giving it legally binding form,²⁵ there are no systematic, well-established means for exiles to reach protection through legal and safe lines, leaving no option but for them to risk their lives in perilous journeys.

16 For a detailed elaboration, see Violeta Moreno-Lax, *Accessing Asylum in Europe* (Oxford University Press 2017). See also Maarten Den Heijer, *Europe and Extraterritorial Asylum* (Hart 2012) and Thomas Gammeltoft-Hansen, *Access to Asylum* (Cambridge University Press 2011).

17 European Parliament, Resolution of 11 December 2018 with recommendations to the Commission on Humanitarian Visas (2018/2271(INL)), para E. See also Italian Council for Refugees, *Exploring avenues for protected entry in Europe* (October 2012), p 17 www.fluechtlingshilfe.ch/assets/asyrecht/rechtsgrundlagen/exploring-avenues-for-protected-entry-in-europe.pdf accessed 26 July 2019; and European Council of Refugees and Exiles (ECRE), *Broken Promises – Forgotten Principles: ECRE Evaluation of the Development of EU Minimum Standards for Refugee Protection, Tampere 1999 – Brussels 2004* (June 2004), p 17 www.ecre.org/wp-content/uploads/2016/07/ECRE-Broken-Promises-%E2%80%93-Forgotten-Principles-An-ECRE-evaluation-of-the-development-of-EU-minimum-standards-for-refugee-protection_June-2004.pdf accessed 26 July 2019.

18 Convention Relating to the Status of Refugees (1951) 189 UNTS 150; and Protocol Relating to the Status of Refugees (1967) 606 UNTS 267.

19 See n 11 above, para 11.

20 For a comprehensive overview of worldwide border deaths through time, starting in 2014 with 1,658 fatalities registered across regions and up to 4,490 in 2016, the deadliest year on record so far, see IOM, *Missing Migrants Project* <https://missingmigrants.iom.int> accessed 26 July 2019.

21 UNITED, *List of 36,570 documented deaths of refugees and migrants due to the restrictive policies of Fortress Europe* (April 2019) <http://unitedagainstreugeedeaths.eu/wp-content/uploads/2014/06/ListofDeathsActual.pdf> accessed 26 July 2019.

22 Art 18, EU CFR (2010) OJ C 83/2.

23 Art 12(3), African Charter on Human and Peoples’ Rights (1981) 1520 UNTS 217.

24 Art 22(7), American Convention on Human Rights (1969) 1144 UNTS 123.

25 Universal Declaration of Human Rights (1948) UNGA res. 217A (III), UN Doc A/810/71.

2. In search of solutions

With this in mind, the present study for the International Bar Association (IBA) aims to **identify the main features of complementary pathways** against the background of the continuously growing number of forcibly displaced persons – which has trebled since the beginning of the decade, going from 10.5 million refugees and 0.8 million asylum seekers worldwide in 2010, up to 25.9 million refugees and 3.5 million asylum seekers in the first half of 2019.²⁶ The objective is to **streamline rapid-reaction schemes** for countries of destination to be better equipped **to respond to urgent protection needs** in an effective way.

The research, accordingly, draws on instances of **best practice**, at the global and regional level, **of reactions to emergency situations** producing a massive exodus of persons fleeing in search of international protection. Both recent and historic examples are taken into account to distil the key elements that an **adequate evacuation mechanism** (different from, but complementary to, existing resettlement schemes) should comprise to be effective and attractive to states and other potential partners. The core of the paper, hence, focuses on an in-depth investigation of the characteristics that an **'emergency evacuation visa' (EEV)** should have, to guarantee feasibility and political purchase, on the understanding that the mechanism must **respect state sovereignty** and **human rights** (especially the principle of *non-refoulement*). Key definitions, processes and arrangements are discussed in detail, including in the accompanying annex that presents an article-by-article 'Model Convention' for universal adoption, in line with the UNHCR Three-Year Strategy (2019–2021) on Resettlement and Complementary Pathways²⁷ – adopted to give effect to the Global Compact provisions.²⁸

Countries in the Global North have all, at some point, opened procedures of **humanitarian admission** for different reasons, typically asylum-related, but also on medical, family-based, and, sometimes, purely compassionate grounds.²⁹ The term 'humanitarian admission' is used loosely in this context and can have different meanings.³⁰ According to one definition, it signifies 'an *ad hoc* initiative operated in response to a particular humanitarian need or displacement situation and limited to a specific group of beneficiaries... admitting persons for humanitarian reasons'.³¹ In this guise, it supplies **'complementary pathways for admission'**,

26 UNHCR, *Population Statistics* http://popstats.unhcr.org/en/overview#_ga=2.247348420.1732592435.1562525215-1084420301.1538336069 accessed 26 July 2019.

27 UNHCR, *Three-Year Strategy (2019–2021) on Resettlement and Complementary Pathways* (June 2019) www.unhcr.org/5d15db254.pdf accessed 26 July 2019.

28 See n 14 above, para 91.

29 See, eg, European Migration Network, *Resettlement and Humanitarian Admission Programmes in Europe – what works?* (November 2016) http://emn.ie/files/p_201611221258152016_emn-informs_resettlement.pdf accessed 26 July 2019, mapping out programmes developed by EU countries in response to the Syrian refugee crisis. See also, European Resettlement Network (ERN), *Expanding complementary pathways of admission for persons in need of international protection: Scoping paper* (March 2018) www.resettlement.eu/page/ern-publications accessed 26 July 2019.

30 Cf UNHCR, *Guidelines on Temporary Protection and Stay Arrangements*, February 2014 www.unhcr.org/5304b71c9.pdf accessed 26 July 2019. Para 4 defines temporary protection and stay arrangements as a form of temporary protection from *refoulement* in situations of mass influx including 'humanitarian admission' and provision for basic needs.

31 European Commission, *Study on the feasibility and added value of sponsorship schemes as a possible pathway to safe channels for admission to the EU, including resettlement* (October 2018), p 6 <https://publications.europa.eu/publication-detail/-/publication/1dbb0873-d349-11e8-9424-01aa75ed71a1> accessed 26 July 2019.

which in UNHCR language are defined as ‘safe and regulated avenues for refugees that complement resettlement by providing lawful stay in a third country where their international protection needs are met’.³² It does not substitute resettlement or replace the protection owed to ‘spontaneous arrivals’ but rather complements existing ‘solutions’ and creates means of access to durable protection in third countries (distinct from the country of origin and the country of the refugee’s first asylum, if there is one). The table below illustrates this relationship.

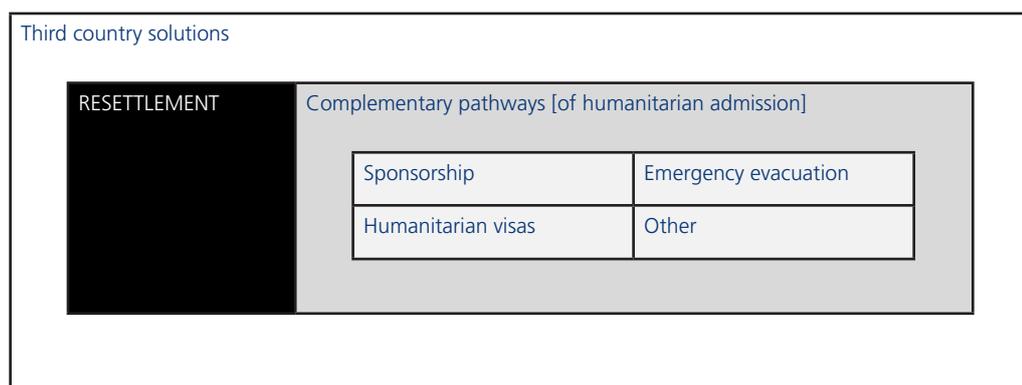


Table 1. Complementary pathways.³³

The typology of these mechanisms has been diverse, ranging from ‘classic’ **resettlement** programmes, **private sponsorship** mechanisms and ‘**humanitarian corridors**’ to **emergency transit** and **evacuation** schemes.³⁴ There are generally two types of complementary pathways: **refugee specific**, specifically intended for persons in need of international protection, and **non-refugee specific**, such as education or labour-related, as well as family reunification-based programmes, expanding access to legal migration routes by adapting the relevant criteria and processes to the needs of refugees.³⁵

The next sections focus particularly on the former, that is, the **refugee specific** ‘branch’ of **complementary pathways**, showing how, apart from established (yearly or otherwise regular) resettlement plans, these initiatives tend to be small scale, ad hoc and based on state discretion. Most of the programmes assign a key role to UNHCR for the identification and/or referral of potential beneficiaries, while the final decision on

³² See n 11 above, para 16.

³³ The table takes inspiration from the one included in UNHCR, *Complementary pathways for admission of refugees to third countries: Key considerations* (April 2019), p 5 www.refworld.org/pdfid/5cebf3fc4.pdf accessed 26 July 2019.

³⁴ For a recent exploration, mapping out schemes in the EU, see the Fundamental Rights Agency, *Legal entry channels to the EU for persons in need of international protection: a toolbox* (March 2015) <http://fra.europa.eu/en/publication/2015/legal-entry-channels-eu-persons-need-international-protection-toolbox> accessed 26 July 2019.

³⁵ See n 11 above, para 17. Regarding non-refugee specific programmes, see, eg, Elizabeth Collet, Paul Clewett and Susan Fratzke, ‘No Way Out? Making Additional Migration Channels Work for Refugees’, Migration Policy Institute (March 2016) www.migrationpolicy.org/research/no-way-out-making-additional-migration-channels-work-refugees accessed 26 July 2019. See also ‘IOM Releases Outcomes of Skills2Work Pilot Initiative Integrating Refugees into EU Labour Markets’, IOM Press Release, 3 March 2018 www.iom.int/news/iom-releases-outcomes-skills2work-pilot-initiative-integrating-refugees-eu-labour-markets accessed 26 July 2019; and OECD-UNHCR, ‘Safe Pathways for Refugees: Study on third country solutions for refugees – family reunification, study programmes and labour mobility’, December 2018 www.unhcr.org/protection/resettlement/5c07a2c84/safe%E2%80%90pathways%E2%80%90for%E2%80%90refugees.html accessed 26 July 2019. These, not being protection-specific, are not considered in this study.

admission remains solely in the hands of the state concerned. At the end of the process, recipients may be granted the same, or a similar, status to candidates processed through the 'normal' asylum procedure, typically carried out inland,³⁶ used for 'spontaneous arrivals'. However, qualification criteria, processing rules, pre-departure and post-arrival arrangements vary considerably from scheme to scheme, creating an obstacle to the accessibility, sustainability and scalability of these programmes.³⁷

3. Methodology and structure of the study

There is **no systematic data collection or global reporting mechanism** that enables the presentation of a clear and comprehensive picture **of the humanitarian admission programmes** that exist. To start overcoming this scarcity of global baseline data, UNHCR jointly with the Organisation for Economic Co-operation and Development (OECD) has undertaken a study focusing on non-refugee-specific pathways. The study tracks and records 566,900 'first entry permits' granted for study, work or family purposes by OECD destination countries, from 2010 to 2017, to nationals of the five main refugee-producing states in the reporting period: (in alphabetical order) Afghanistan, Eritrea, Iraq, Somalia and Syria. The study also notes that there are **gaps, data quality issues** and general **difficulties in accessing the relevant documentation**.³⁸

States have been slow in relaying information on their humanitarian admission programmes. This is **in spite of obligations to cooperate with UNHCR** in the fulfilment of its mandate, which includes a supervisory function; according to Article 35 of the Refugee Convention, the agency has the obligation to discharge 'its duty of *supervising* the application of the provisions of [the] Convention',³⁹ which is reaffirmed and expanded in its statute to cover also the duty of '*promoting* the conclusion and ratification of international conventions for the protection of refugees, *supervising* their application and proposing amendments thereto' [emphasis author's own].⁴⁰ However, states consider their humanitarian admission programmes to fall squarely within the remit of their sovereign prerogatives and, therefore, beyond the scope of their existing international legal commitments.

The same problems have been faced regarding the compilation of information on refugee-specific pathways, which are the focus of the following sections. Therefore, considering **accessibility restrictions, lack of good quality data** and the **absence of comprehensive statistical information**, the present study deploys a '**sampling method**' technique, selecting examples of good and bad practice from different countries and regions of the world for illustrative purposes.

36 Offshore processing schemes as developed in Australia and the US, in so far as they do not concern the facilitation of access to protection, whether through primary or secondary routes, are excluded from this exploration.

37 See n 11 above, para 20.

38 OECD-UNHCR, 'Safe Pathways for Refugees: Study on third country solutions for refugees – family reunification, study programmes and labour mobility', December 2018 www.unhcr.org/protection/resettlement/5c07a2c84/safe%E2%80%90pathways%E2%80%90for%E2%80%90refugees.html accessed 26 July 2019.

39 See also Art II of the Protocol relating to the Status of Refugees (1967) 606 UNTS 267.

40 UNGA, *Statute of the Office of the United Nations High Commissioner for Refugees*, A/RES/428(V), 14 December 1950, para 8(a) www.unhcr.org/4d944e589.pdf accessed 26 July 2019.

With the above considerations in mind, the next chapters within Part II of this study explore four groups of measures. The first is '**classic**' **resettlement**, scrutinised in chapter 1, as designed by UNHCR and as adapted by the main countries of resettlement, including an overview of past and current regional initiatives. The Comprehensive Plan of Action (CPA) for Indochinese refugees and the EU Joint Resettlement Programme are discussed in some detail. Then, 'private' resettlement initiatives, in the form of community and private **sponsorship schemes** are explored in chapter 2. These two first types of measures are considered to generally provide what can be called 'secondary' means of access to protection, offered typically to *already*-recognised refugees hosted in a first country of asylum, for them to reach 'effective' protection in a third country of (re-)settlement. Chapters 3 and 4 focus, in turn, on measures offering a channel of direct or 'primary' access to international protection to displaced individuals in need of asylum, in high-risk situations, including *yet-to-be-recognised* refugees and persons in analogous circumstances. **Humanitarian visas**, as recently experimented with in several countries, in response to the international protection needs of Syrian, Eritrean and other vulnerable nationality groups, are addressed in chapter 3. Proposals at regional (EU) level are also included. Finally, chapter 4 deals with **emergency evacuation programmes**. The recent UNHCR Emergency Transit Mechanism (ETM) for evacuations out of Libya are covered in some depth. Lessons and conclusions from the previous chapters are taken into account as the basis for the '**EEV**' initiative proposed in Part III. A series of recommendations closes the study in the form of an EEV Model Convention contained in the annex, with the objective of setting the ground for a conversation on an effective evacuation mechanism that bridges existing gaps and overcomes the obstacles encountered by existing 'complementary pathways'.

Part II: Mapping out the solutions

Chapter 1. Resettlement

1. Introduction

Together with repatriation and local integration, **resettlement** is **one of the ‘durable solutions’** for refugees promoted by UNHCR. It consists of the selection and transfer of already-recognised refugees from a country of first asylum to a third state that agrees to admit them as refugees and eventually grants them permanent residence. The main reason for resettlement is the need for ‘effective’ protection of particularly vulnerable refugees who have reached a country of asylum where their situation is precarious, undignified or unsafe, due to health, security, *refoulement* risks or other reasons.⁴¹ UNHCR has developed a set of standards and procedures for resettlement that are explored in section 2. These provide the **basis for the different** iterations of resettlement procedures at national level, as well as of other **complementary pathways analysed in the next chapters**, thus deserving close attention. Section 3, then, discusses the three major national resettlement programmes, as developed in the United States, Canada and Australia. Section 4 looks at regional experiences, examining the CPA for Indochinese Refugees (1989–1996) and considering the reasons for its success. Initiatives at EU level are included as well. Conclusions are summarised in section 5.

2. UNHCR resettlement programme

To be submitted for resettlement, individuals must meet the **preconditions** for resettlement consideration, defined by UNHCR, and fall under one or more of the UNHCR resettlement **submission categories**, as elaborated on in section 2.1. Then, the **priority level** of the case has an impact on the timing of the submission to a potential country of resettlement, which can be classified as ‘emergency’, ‘urgent’ or ‘normal’, as explained in section 2.2. Finally, accepted submissions, as section 2.3 elucidates, go through a number of **pre-departure arrangements** before travelling to the final resettlement destination.

2.1 Qualification: preconditions and criteria⁴²

There are two **preconditions for resettlement**. First, the applicant must be **determined to be a refugee** by UNHCR – although exceptions can be made for non-refugee dependent family members, to retain family unity, and with regard to non-refugee stateless persons for whom resettlement is deemed to be the most appropriate durable solution. Second, the **prospects for all durable solutions** were assessed and resettlement identified as the most appropriate in the particular case.

41 UNHCR, *Resettlement Handbook* (Geneva, 2011), 3 www.unhcr.org/46f7c0ee2.pdf accessed 26 July 2019.

42 Information in this section follows the *Resettlement Handbook* (*ibid*), and is based on UNHCR, *Resettlement Submission Categories* (undated) www.unhcr.org/558bff849.pdf accessed 26 July 2019.

If the preconditions are met, UNHCR looks for **vulnerability indicators** that translate the **resettlement submission categories**. Applicants must fall within one or more of these categories, having legal and/or physical protection needs; being torture or violence survivors; having particular medical needs; being minors or women or girls at risk; requiring family reunification; and/or lacking any other alternative durable solutions in the foreseeable future. These categories should be broadly understood, taking account of possible overlaps and complementarity between them. They should be interpreted inclusively, in favour of the applicant, rather than narrowly construed.

Refugees facing **legal and/or physical protection needs** are those considered at risk of an immediate or long-term threat of (direct or indirect) *refoulement* (whether directly to the country of origin or via expulsion to an intermediary state, from where the refugee may be expelled). In addition, refugees at risk of arbitrary arrest, detention or imprisonment, or at risk of a violation of their physical integrity or human rights in the country of refuge also qualify. These risks/threats must be real and direct rather than accidental or collateral. They may target either the individual refugee or an entire group and the risk/threat must continue to exist at the time the decision to resettle is being taken.⁴³

Regarding **torture and violence**, UNHCR encourages a broad interpretation of both terms. Accordingly, torture and/or violence survivors, for the purposes of refugee resettlement, are those who may have been subjected to, experienced or witnessed physical harm or severe mistreatment, including sexual and gender-based violence; severe humiliation, debasement or intimidation; substantial non-criminal detention, including abduction and kidnapping; the violent killing or severe ill-treatment, including rape, of close family members; and similarly grave violations. A resettlement candidate submitted under this category will have experienced torture and/or violence either in the country of origin or the country of asylum; may be suffering from post-traumatic physical or psychological effects (that may or may not be visible or immediately apparent through physical signs or psychological symptoms); could face further traumatisation and/or a heightened risk of re-victimisation due to the unsuitable conditions in the country of asylum; and may require medical or psychological care, including specific support, therapy or counselling, which is not available in the country of asylum, requiring resettlement to meet their needs. In these circumstances, the ideal submission will include an expert assessment by a psychologist/psychiatrist and a medical report, certifying any physical injuries or bodily symptoms.⁴⁴

Resettlement spaces for those with special **medical needs** are very limited. The resettlement decision, in these situations, is to be taken as soon as possible upon the identification of medical conditions warranting resettlement and be based on an independent medical assessment undertaken by a qualified medical doctor completing a medical assessment form, specifying the diagnosis and prognosis of the patient. Supporting evidence, in the form of X-rays, ultrasounds or specialised medical reports, must also be included in the file. Four cumulative conditions must be met to proceed with

43 See n 41 above, 247 ff.

44 See n 41 above, 250 ff.

resettlement. First, in terms of diagnosis, there needs to be a life-threatening condition, irreversible loss of vital functions or some other obstacle to normal life. Second, the treatment necessary must not be available or otherwise accessible in the country of asylum, with a medical evacuation not being feasible or sufficient. Third, there must be a favourable prognosis for cure or substantial improvement in the resettlement country, with a stay in the country of first asylum being deemed a liability, as either aggravating the condition of the resettlement candidate and/or worsening their quality of life and/or life expectancy. Finally, the informed consent of the individual is required, with resettlement being executed only if it is the expressed wish of the candidate.⁴⁵

The rationale for the special resettlement category of **women and girls at risk** is found in the Executive Committee of the UNHCR Programme (EXCOM) Conclusion 105/2006.⁴⁶ The objective here is to provide international protection and assistance through resettlement to refugee women and girls facing particular protection issues due to their gender; to establish priority processing and expedited departure for women and girl refugees considered 'at risk'; to ensure that refugee women and girls at risk receive the specialised care and appropriate support they require upon arrival in the country of resettlement, so as to facilitate their integration and achieve self-sufficiency; and to highlight the need for other (short-term) protection interventions pending resettlement. Women and girls at risk are defined by UNHCR as those who encounter protection deficits due to their gender. They may be single mothers, heads of families, and/or unaccompanied or separated women or girls. Resettlement should be considered as the most appropriate solution when the woman or girl in question finds herself in a precarious security situation or is the target of a physical protection threat resulting from her gender; when she has specific protection needs arising from past trauma and/or persecution; when she faces severe hardship potentially leading to exploitation and abuse; or when she lacks access to other traditional protection and support mechanisms. Concrete examples of women and girls 'at risk' in countries of first asylum are women and girls exposed to the risk of being trafficked, raped, abused or forced into prostitution; who may be subjected to domestic or sexual violence, sexual harassment or exploitation; or who may be stigmatised by their families or the wider community and face threats of violence as a result.⁴⁷

Resettlement can, and does, provide a means for **family reunification** to refugees. UNHCR fosters an inclusive and culturally sensitive interpretation of 'family', including, at a minimum, spouses and children, and focuses on the concept of (economic/social/emotional) dependency. The principle of family unity is the justification for this resettlement category,⁴⁸ which, according to UNHCR, should be supported and promoted at all times when dealing with refugees and other persons of concern. As a result, the main objective is to keep all family members together when being resettled, or to use resettlement to achieve family

45 *Ibid* 256 ff.

46 *Conclusion on Women and Girls at Risk*, Conclusion No 105 (LVII) – 2006, UNHCR Executive Committee (EXCOM) 56th session, UN Doc A/AC.96/1035 (2006).

47 See n 41 above, 261 ff.

48 *Conclusion on Family Reunification*, Conclusion No 24 (XXXII) – 1981, UNHCR EXCOM 32nd session, UN Doc 12A (A/36/12/Add.1) (1981).

unity in the resettlement country, when the separation was involuntary and related to the refugee situation. There are four conditions to be met for resettlement under this category: at least one person within the family unit to be reunited must be a refugee or otherwise a person of concern to UNHCR (including asylum seekers, internally displaced persons, stateless persons and others in need of international protection); the individuals to be reunited are family members under UNHCR's (dependency-based) definition; the individuals are reuniting with a member of the family already present in the resettlement country concerned; and the availability and accessibility of other family reunification or migration options are inadequate and/or not available in the circumstances, given the resettlement needs and protection implications for the family member.⁴⁹

The resettlement category of **children and adolescents at risk** comprises minors (under the age of 18) with compelling protection needs, who are not (and cannot be) addressed in the country of first asylum, and who may or may not be unaccompanied or separated from their families. In regard to them, a Best Interests Determination, based on the 'best interests of the child' principle,⁵⁰ must be carried out to identify whether resettlement is the most appropriate solution in their individual circumstances. The assessment must also seek to establish any family relations and evaluate the services and support offered in both the country of first asylum and the potential resettlement country. To facilitate family tracing and potential reunification at a later stage, in cases of unaccompanied and separated children, detailed records must be kept. If candidates are also victims of violence, torture survivors or otherwise fit another of the resettlement categories, they should also be considered under them. The rationale is to maximise the protection of minors who are refugees, attending to their particular protection needs.⁵¹

The final resettlement category is composed of those **refugees who lack any foreseeable alternative durable solution**. These are refugees who have an ongoing (and otherwise non-urgent) need for resettlement to bring their refugee situation to an end. These are refugees who are unable to return to their countries of origin due to a persisting need for international protection, but who can also not integrate locally within the country of first asylum for different motives. Resettlement in these cases is used to tackle long-term, protracted refugee situations. It is, for this reason, most commonly used as a group measure – although it may also apply to specific individuals – and implemented upon consultation and in coordination with national or regional strategies, to address the needs of specific populations. When considering submission under this category, the priorities of resettlement countries and any possible adverse effects are to be assessed on account of a number of indicators, including: the quality of protection and conditions of asylum in the country of refuge; the general socio-economic and psycho-social situation of the targeted group and wider population; and any (real) prospects of voluntary repatriation or local integration in the foreseeable future.⁵²

49 See n 41 above, 269 ff.

50 Art 3(1), Convention on the Rights of the Child, (1989) 1577 UNTS 3: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.' In this regard, see UNHCR, *Guidelines on Determining the Best Interests of the Child* (May 2008) www.unhcr.org/refworld/docid/48480c342.html accessed 26 July 2019.

51 *Conclusion on Children at Risk*, Conclusion No 107 (LVIII) – 2007, UNHCR EXCOM 56th session, UN Doc A/AC.96/1048 (2007). See also n 41 above, 283 ff.

52 See n 41 above, 287 ff.

2.2 Priority levels and procedures⁵³

Once it has been established by UNHCR that the preconditions for resettlement and the resettlement submission categories have been satisfied, **priority levels** are decided according to both protection and operational considerations on the ground. The vast majority of cases are processed as **'normal'**, where there are no immediate medical, social or security concerns, which would otherwise justify expedited processing. In these situations there are no specific timelines but a general target of minimisation of waiting times between identification, submission and departure, so cases do not transform into urgent or emergency situations. **'Urgent'** cases are those classified as such when serious medical risks or other vulnerabilities require expedited resettlement within six weeks from the date of submission, which, ideally, should take place within two weeks from the date of identification – so that the total waiting time does not exceed two months. Finally, **'emergency'** cases are those warranting immediate removal due to exceptional security and/or medical concerns. In these situations, the target is for a one-week interval between the submission and departure of the refugee to their country of resettlement.

Although there are three possible categorisations, 'urgent' and 'emergency' places are very limited, and submissions are deemed to require very careful assessment to determine refugee qualification criteria, establish credibility, and assess the asylum and resettlement conditions in the countries of first refuge and potential destination. The table below exemplifies how priority levels are decided for medical cases:

Priority level	Severity of condition	Time frame for medical intervention	Time frame for resettlement
Emergency	Immediately life threatening (ie, life-saving surgery)	Less than one month	Within one week
Urgent	Requires life-saving interventions, but condition is not immediately life threatening At risk of major progression or complication without further intervention (eg, many cancers)	One to six months	Within six weeks
Normal	Not life threatening or at risk of major progression/ complication, but requires intervention in order to ensure reduction of risk of progression/ complications and to improve the person's quality of life and overall functioning	Up to six months	Within 52 weeks

Table 2. Resettlement priority levels for medical cases.⁵⁴

Procedural standards regarding resettlement generally include the 'correct and consistent' application of the resettlement submission categories and the processing of each individual file, on the understanding that 'a coherent and transparent approach will strengthen the credibility of UNHCR and widen the confidence of refugees, resettlement

⁵³ See n 42 above.

⁵⁴ *Ibid.*

countries and other partners'.⁵⁵ Documentation of every step taken and of every piece of information relevant to the case inserted in the *proGres* database supports this endeavour,⁵⁶ as do several other checks and quality assurance filters introduced at different stages of the process.⁵⁷ Yet, the process, at the end of the day, runs on a non-legal basis, **without binding safeguards**, and with no subjection to judicial review or any other form of *external* oversight that can deliver an effective remedy in cases of rejection of an application on the part of UNHCR or a resettlement partner.

Nonetheless, the UNHCR *Resettlement Handbook* (the '*Handbook*') details the best practice standards to be followed in the **six stages of the resettlement procedure**: (1) **identification** of refugees in need of resettlement; (2) **assessment** of individual resettlement needs; (3) **preparation** of a resettlement submission; (4) UNHCR **submission decision**; (5) **resettlement country decision**; and (6) **pre-departure** arrangements, counselling and monitoring.⁵⁸

The **identification** of cases can happen through different routes. It can be at the point of registration by UNHCR, through mapping exercises or via data analysis that resettlement needs become apparent on consideration of particular individual or family situations or other details of the refugees' specific profile.⁵⁹ Otherwise, it can happen through consultation with internal staff or external partners.⁶⁰ Alternatively, a referral system is the most effective way. **Referrals** may be made internally by UNHCR staff (eg, by field officers in direct contact with refugees), by external resettlement partners (eg, non-governmental organisation (NGO) partners assisting UNHCR with implementation) or directly by the concerned refugee themselves, a family member or a friend, as a 'self-referral'.⁶¹ The latter type of referral is approached with caution, however, on account of potential bias, credibility issues, lack of control on the information supplied and the possibility of fraud.⁶² In these cases, the *Handbook* requires that there be clear and standardised procedures, including a process to verify the details provided, whether through an interview, home-visit or file study, exercising extra care to maintain confidentiality and properly managing any expectations raised. All unsolicited submissions are to be responded to and possibly redirected to partner organisations, if appropriate. In addition it is considered that '[a] resettlement programme's heavy reliance on self-referrals as a means to identify resettlement needs may indicate systemic problems or gaps in the protection framework of the operation' – thereby making clear that resettlement should

55 *Ibid.* See also n 41 above, 120–121 and 125–127; and UNHCR, *Baseline Standard Operating Procedures on Resettlement*, revised version 2011 (Internal) <http://swigea56.hcrnet.ch/refworld/docid/48b6997d2.html> accessed 26 July 2019.

56 See n 41 above, 120, 222, and 151–159, generally on records management and file security.

57 For example, on the designation of an 'accountable officer', see n 42 above, pp 122–123.

58 See n 41 above, pp 299 ff.

59 *Ibid.* 220 ff.

60 *Ibid.* 226–228.

61 *Ibid.* 228–233.

62 *Ibid.* 232. See also UNHCR, *Policy and Procedural Guidelines: Addressing Resettlement Fraud Perpetrated by Refugees* (March 2008) www.refworld.org/pdfid/47d7d7372.pdf; and *Strategic Framework for the Prevention of Fraud and Corruption* (July 2013) www.refworld.org/pdfid/5433a4e54.pdf accessed 26 July 2019.

not be considered a channel for direct and individual access to (effective) protection.⁶³ On the contrary, in the design of resettlement intervention plans, strategic priorities, as identified in the Global Resettlement Needs (by country of origin and by country of asylum),⁶⁴ should normally be taken into account alongside the resettlement submission categories (by vulnerability) and time-urgency levels identified above.

With regard to the **verification** (upon identification) and assessment of an individual case, the *Handbook* specifies that when cases are referred internally, as a safeguard, ‘the staff member who conducts [the] verification and assessment should be different from the person who referred the case’. The objective with this is ‘to strengthen objectivity, bridge gaps in quality assurance, reduce perceptions of individual bias and safeguard against fraud’.⁶⁵ Then, each refugee being considered for resettlement should be interviewed independently from any family members or other contacts to ensure that information is ‘accurate and not biased by resettlement considerations’ and that ‘it does not raise premature resettlement expectations on the part of the refugee’.⁶⁶

The **refugee status determination** (RSD) procedure, underpinning any resettlement decision, will have been taken by RSD-trained staff and ‘fully documented, including the decision, the grounds on which the individual has been recognized, a credibility assessment and any exclusion considerations as applicable’.⁶⁷ In fact, the role of the resettlement interview is not to rehearse RSD or examine the underpinning claims in detail. The interviewer should rather focus on clarifying any missing information and address inconsistencies that may give rise to questions by resettlement states, filling chronology gaps and/or verifying the accuracy of UNHCR records. In cases where the resettlement submission is based on prima facie recognition, it suffices for the interviewer to corroborate that there are no evident exclusion elements precluding such recognition.⁶⁸

Decision-making in the subsequent stage is assisted by a standard Resettlement Needs Assessment Form, which may be adapted to the specific local context.⁶⁹ This form can be used for the ‘**preliminary resettlement needs assessment**’, whereby the responsible staff shall verify that there is sufficient information available to make a proper assessment of the need for resettlement (such as medical assessments or Best Interests Determination in cases involving children); identify any problems with the file (including fraud indicators); review the protection environment and appropriateness of resettlement as the preferred solution; assess resettlement need and identify

63 See n 41 above, 233.

64 UNHCR, *Projected Global Resettlement Needs 2019* www.unhcr.org/5d1384047.pdf accessed 26 July 2019.

65 Fraud can be internal, if committed by UNHCR staff or those under a contractual relationship with them, or external, if committed by others, including the resettlement candidate. Fraud can relate to identity, family composition, documentation, bribery, etc. See further n 41 above, p 304 and pp 127–141; and UNHCR, *Policy and Procedural Guidelines: Addressing Resettlement Fraud Perpetrated by Refugees*, March 2008 www.unhcr.org/refworld/docid/47d7d7372.html accessed 26 July 2019. An internal complaint mechanism is foreseen in n 41 above, 133–134.

66 See n 41 above, 305.

67 *Ibid* 309.

68 *Ibid* 321.

69 *Ibid*, Annex of the Baseline SOPs.

resettlement submission categories; check for family links; and evaluate the priority of the case. On the basis of this, a written summary is to be produced, including a recommendation for: (1) **additional information**; (2) a recommendation to consider the case **founded**; or (3) a recommendation to consider it **unfounded**. If the latter, the referral source (whether internal to UNHCR, external or unsolicited, including self-referrals) must be notified that the refugee will not be considered for resettlement referral to a potential resettlement country.⁷⁰

At that point, the refugee file, including the **assessment** and recommendation, must be reviewed by a (different) '**supervising officer**', who will request further information from the referral source and/or interview the refugee, if this is necessary to complete the assessment; schedule a 'resettlement interview' with the candidate⁷¹ in an age-appropriate, gender and diversity-sensitive manner, assisted by an interpreter when necessary,⁷² and with sufficient background knowledge of the conditions in both the country of origin and country of first asylum of the candidate,⁷³ if the recommendation was to deem the case founded; or, if the resettlement intervention appears, conversely, to be unfounded, notify the referral source 'preferably... in writing' and 'outlin[ing] the basis of this assessment'.⁷⁴ No further review is to be undertaken and no appeal or other way to challenge a negative decision is available at that point. Nonetheless, '[t]he referral source may request UNHCR [in writing] to reconsider this assessment [in future] if circumstances change or new elements arise'.⁷⁵

In founded cases, a **Resettlement Registration Form** (RRF) will be generated and attached to all available documentation.⁷⁶ The RRF is essential.⁷⁷ It is the primary tool to represent the need for resettlement of individual refugees to potential resettlement countries. Actually, states may base their decisions to accept resettlement solely on 'dossier submissions' submitted via RRFs.⁷⁸ This is why the *Handbook* contains section-by-section guidance on how to complete the RRF, including case-related information; individual bio-data; details on relatives; details on the refugee claim of the principal applicant, spouse and any dependents included in the case (drawing from the relevant sections of the RSD Assessment Form, including a summary of the facts and their legal assessment substantiating qualification as a refugee, as well as details on the exclusion evaluation); considerations on the need for resettlement, especially the lack of prospects for voluntary repatriation or local integration, an indication of the specific resettlement

70 *Ibid.*

71 On the preparation and conduct of the interview, see n 41 above, 316–319. There are also family-specific (319–320, 323–325 on polygamous families, 330–335 on case composition), age-specific (325–327) and gender-specific (328–329 on home visits) guidelines.

72 On the tasks, profile and selection of interpreters, see n 41 above, 314–316. See further, UNHCR, *Guidelines for the recruitment, training, supervision and conditions of service for interpreters in a refugee context*, IOM/005-FOM/005/2009 (Internal) <http://swigea57.hcrnet.ch/refworld/pdfid/497f147c2.pdf> accessed 26 July 2019.

73 See n 41 above, 313.

74 *Ibid.* 310.

75 *Ibid.*

76 On the attachments, see n 41 above, 348–349.

77 There are country-specific guides to correctly complete RRFs, see n 41 above, 349.

78 *Ibid.* 335.

submission category and prioritisation level, and, if the priority level is ‘emergency’ or ‘urgent’, a statement of reasons for prioritisation; a specific needs assessment, considering individual requirements to ensure effective post-resettlement, on-arrival services; any other relevant information (such as extended explanations on family links, reasons for inconsistencies and discrepancies in the information provided); and a final **declaration** by the candidate, countersigned by UNHCR and any interpreter that may have intervened, to affirm and guarantee that the information is correct and complete.⁷⁹ The declaration is important because it authorises UNHCR to share the information contained in the RRF with resettlement countries and allows for an appropriate resettlement destination to be found.⁸⁰ However, case files are not shared with the refugees themselves. They are only entitled to copies of the sections of their RRFs containing information that *they* provided, but not information obtained or generated by UNHCR, including ‘interview transcripts, case assessments, instructions or legal opinions from UNHCR offices, correspondence with UNHCR offices and external parties, medical and social counselling records’.⁸¹ ‘Staff safety considerations’ underpin this decision to maintain confidentiality,⁸² which, on the other hand, impedes early detection of repairable mistakes by referral sources and resettlement candidates, and undermines the perception of fairness, impartiality and transparency of the process.

As an assurance of **quality control**, once the RRF has been completed, a different staff member from the one who produced the RRF file, acting as an ‘**accountable officer**’, should conduct a review before referring the case to a regional office or to UNHCR headquarters, and prior to submission to a resettlement country.⁸³ On completion of the review, resettlement submissions must be routed through the regional resettlement office to guarantee the integrity and uniformity of the resettlement process. At that point, an **additional review** is to be conducted by a ‘**reviewing officer**’ of the RRF and all attachments to check refugee status; resettlement need; completeness of the file and adequacy of the evidentiary base; clarity, readability and consistency (both internally and with other cases); and any indication of fraud, malfeasance, corruption or disregard of the applicable procedures.⁸⁴ If things go well, the **regional office or UNHCR headquarters** will proceed with the decision to resettle. But the result of this exercise can also be that, on review of the RRF and the case file, it is concluded that the refugee is ineligible for resettlement. In such case, the *Handbook* foresees that ‘all members of the case should be scheduled for counselling as soon as possible’,⁸⁵ but it does not specify further outcomes or possibilities for the candidate or the referral

79 *Ibid* 336–346; UNHCR, *RRF for proGres Users: User Guide*, revised 2011 (Internal) <http://swigea56.hcrnet.ch/refworld/docid/4ad303552.html>; and UNHCR, *RRF for Non-proGres Users: User Guide*, revised 2011 (Internal) <http://swigea56.hcrnet.ch/refworld/docid/4ae579692.html> accessed 26 July 2019.

80 See n 41 above, 346–348.

81 *Ibid* 352.

82 *Ibid* 352 and 123–125. See further UNHCR, *Confidentiality Guidelines*, 1 August 2001, IOM/071/2001 – FOM/068/2001 (Internal) <http://swigea56.hcrnet.ch/refworld/docid/3be17dfd4.html> accessed 26 July 2019; and UNHCR, *Policy on the Protection of Personal Data of Persons of Concern* (May 2015) at www.refworld.org/pdfid/55643c1d4.pdf. On safety and security measures during resettlement operations, see n 41 above, 147–151.

83 See n 41 above, 350.

84 *Ibid* 351.

85 *Ibid* 352.

partner to request a review and reconsideration of the case, which, again, undermines the perception of fairness, impartiality and transparency of the process.

In the case of a final positive decision to resettle, the next step is the **determination of a country of submission**.⁸⁶ Such determination must take account of several protection-related and non-protection-related considerations. Among the protection-related factors, the *Handbook* specifies 'resettlement submission priority, vulnerability, and the resettlement country's average processing time and capacity for urgent processing' alongside 'family configuration' and 'health requirements and the availability of treatment'. But there are also post-arrival integration factors, such as family links and support networks in the potential resettlement country, language proficiency of the candidate and other (unspecified) 'cultural aspects' to be taken into account. Finally, a third group of elements has only to do with resettlement states' discretion, as articulated in their selection criteria and admission priorities, annual quotas and nationality preferences. By contrast, because resettlement is based on voluntary, sovereignty-based, goodwill decisions by states, the 'refugee's expressed preference for a resettlement country' is to be taken into account only 'if possible'.⁸⁷ Normally, cases are submitted to one resettlement country only and, if resettlement decisions deadlines pass without a final decision on the submission, consideration may be given to a possible withdrawal of the case and resubmission to another state with capacity to take an expedited decision.⁸⁸ Whatever the situation, UNHCR retains the responsibility to communicate any supervening changes that come to its attention to the resettlement country in question.⁸⁹ Multiple, simultaneous submissions to two or more potential hosts are reserved for 'emergency' cases only, upon consultation with the countries concerned and in agreement with the Resettlement Service at UNHCR headquarters.⁹⁰

In reality, UNHCR cannot guarantee resettlement. It may submit cases for the consideration of **resettlement countries**, but cannot ensure that they will be accepted. Some resettlement countries may reserve places to 'dossier submissions', relying on UNHCR's selection, rather than conducting (additional) interviews with candidates themselves, specifying the populations they wish to resettle, whether from specific nationalities or from groups with particular vulnerabilities. In other cases, resettlement countries may require an individual interview with potential beneficiaries, undertaken during 'selection missions' to the country of first asylum. These interviews are conducted outside of UNHCR's control, according to criteria under national law/policy, which may or may not follow *Handbook* guidelines. In both scenarios, final decisions lie with the resettlement country concerned.

The end result may be **acceptance**, in which case the next step is preparation for pre-departure processing in close collaboration with governments, the International Organization for Migration (IOM) and relevant NGO staff. In case of a **rejection**, UNHCR

86 *Ibid* 361 ff.

87 *Ibid* 354.

88 On withdrawals and responses to delays in processing, see n 41 above, 369–370.

89 See n 41 above, 365.

90 *Ibid* 358.

is to review the decision and re-evaluate the case to establish whether resubmission to a different resettlement country may be appropriate.⁹¹ One difficulty is that rejections can be tacit and manifested in a state's lack of action, its refusal to even consider the case, its invitation to UNHCR to withdraw the submission or its return of the submission without having taken any decision. States can also provide a formal rejection, in writing, on any grounds they see fit – with some of them potentially amounting to discrimination, for example, based on human immunodeficiency virus (HIV) status.⁹² In such cases, UNHCR may request a **reconsideration** of the case by the same country, especially where 'the factors that led to the state's decision to reject... are subsequently addressed or no longer exist'.⁹³ In addition, it can also be that refugees are entitled under domestic regulations of the resettlement country concerned to request a formal reconsideration of their case through judicial appeal or a similar channel. Alternatively, the case may be **resubmitted** to a different state, especially if no reasons for the rejection by the first country of submission were given or where the reasons provided are not relevant to UNHCR's resettlement considerations (eg, related to 'integration potential', family size or indeed, HIV status). On the other hand, security concerns, concerns regarding credibility and similar issues will be considered to call for 'prejudicial decisions' and plead against resubmission.⁹⁴

2.3 Pre-departure arrangements⁹⁵

Upon acceptance by a resettlement country, a number of pre-departure arrangements are organised by UNHCR in cooperation with states, the IOM and NGO staff. These include cultural and pre-departure **counselling and orientation**; travel logistics and formalities, including visas; medical screening and follow-up; and escort and transit arrangements, especially in medical cases. Each resettlement country may fix its own pre-departure and post-arrival requirements, which can take varying amounts of time from the acceptance of a resettlement case. Each country is responsible for covering related costs and deciding whether they also offer related services directly or via a partner organisation. UNHCR oversees procedures, coordinating the different actors involved and making sure that any protection-related matters are taken into account during the pre-departure phase.

Some countries require mandatory **medical screening** of every candidate considered for resettlement – and use the screening, precisely, to exclude refugees with significant medical needs, who may pose a financial burden, strain national health services or introduce communicable diseases. The IOM is given responsibility, in many situations, to ensure the processing and treatment of refugees prior to departure and determine fitness to travel, and the need for escorts during transit, according to the applicable rules and protocols defined by the individual resettlement country.⁹⁶

91 *Ibid* 366.

92 *Ibid* 367.

93 *Ibid* 368.

94 *Ibid* 370–371 and, regarding resubmission, see 372–374 on the different steps. See also, UNHCR, *Guidelines on the Resubmission of Resettlement Cases*, June 2011 (Internal) <http://swigea56.hcrnet.ch/refworld/docid/49818ae73a6.html> accessed 26 July 2019.

95 See n 41 above, 376 ff. See also UNHCR, *Refugee Resettlement. An International Handbook to Guide Reception and Integration*, September 2002 www.unhcr.org/refworld/docid/405189284.html accessed 26 July 2019.

96 See n 41 above, 377–378.

Cultural orientation sessions are used to provide refugees with basic information on the country of resettlement, manage expectations and maximise rapid integration upon arrival. Other related benefits of these sessions are preventive. Early interventions are believed to relieve pressure from social services in the host communities and, thereby, increase public support for resettlement in receiving countries. In many situations, it is the IOM and partner organisations that deliver multi-day courses tailored specifically to the individual refugee population and resettlement country concerned, covering the resettlement process; available settlement programmes upon arrival; basic facts about the climate, history and geography of the resettlement country; and information on employment, housing, education and other public and social services. Attention is also paid to cultural mores and practices regarding rights and treatment of children; women; lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ people); and other minorities, and any traditional customs of the accepted refugees that could be misunderstood or be at odds with the receiving community.⁹⁷

As far as visas and **travel documents** are concerned, countries of destination are requested to be flexible. Particularly where the refugee concerned has no passport, resettlement countries are encouraged to issue travel documents themselves, according to 1951 Refugee Convention provisions,⁹⁸ or accept the International Committee of the Red Cross (ICRC) emergency travel document (ETD),⁹⁹ pursuant to the 1949 Geneva Conventions and 1977 Additional Protocol I.¹⁰⁰ But, it is only on very rare occasions that, as the *Handbook* reports, 'a letter in lieu of visa from the authorities of the destination country may suffice'.¹⁰¹ On conclusion of travel formalities and related pre-arrival preparations, transportation is then arranged, normally via the IOM on behalf of UNHCR or the resettlement country of destination on a suitable date, and agreed with the relevant national authorities.

3. National programmes: the US, Canada and Australia

Despite the benefits of resettlement as a 'life-changing experience', **less than one per cent of the total 19.9 million refugees of concern to UNHCR worldwide** were resettled by the end of 2017. In addition, **only a small number of states participate in UNHCR's resettlement programme**, with the US championing global efforts, followed by Australia, Canada and the Nordic countries (particularly Sweden) in recent times.¹⁰²

97 *Ibid* 378–379.

98 Art 28 1951 Refugee Convention and Schedule.

99 The ICRC issues its ETD as a last resort, for humanitarian purposes, to people who do not possess any other recognised travel document and find themselves unable to return to their country of origin or residence, or to proceed to a country offering temporary or permanent refuge or asylum. On the new version of the template, in force since 1 January 2019, and further information, see ICRC, *Emergency Travel Document* (September 2018) https://docs.wixstatic.com/ugd/3e03e6_3969d78a7f814930a519d70b07b6c6e8.pdf accessed 26 July 2019. For examples of cases in which the ETD was used, see, eg, ICRC, *Journey – Travel Documents: Lifeline for Refugees* (December 2013) www.icrc.org/en/doc/resources/documents/field-newsletter/2013/india-e-newsletter/journey-winter-2013.htm; and ICRC, 'Syria to Ireland: Journey to save a young life' (undated) <https://familylinks.icrc.org/en/Pages/NewsAndResources/News/Syria-to-Ireland-Journey-to-save-a-young-life.aspx> accessed 26 July 2019.

100 Common Arts 3, 9 and 10 of the Geneva Conventions; Art 81(1) of Additional Protocol I; and Art 5(3) of the Statutes of the International Red Cross and Red Crescent Movement.

101 See n 41 above, 379.

102 UNHCR, *Resettlement* www.unhcr.org/resettlement.html accessed 26 July 2019.

In 2018, UNHCR submitted over 81,300 refugees' files for consideration by resettlement countries. By nationality, the **main beneficiaries** were **Syrian** refugees (28,200), followed by refugees from the **DRC** (21,800), **Eritrea** (4,300) and **Afghanistan** (4,000). The largest number of refugees left from Lebanon (9,800), followed by Turkey (9,000), Jordan (5,100) and Uganda (4,000), as countries of first asylum.¹⁰³ In 2019, the figures are similar so far. Up to July, there were 35,868 referrals by UNHCR. The top submissions came from Turkey (8,389), Lebanon (5,201), Jordan (2,428), Egypt (2,313) and Uganda (2,065). The main nationalities of refugees were, again, Syrian (14,631), Congolese from DRC (6,869), Afghani (2,498), Somali (2,008) and South Sudanese (1,341).¹⁰⁴ These coincide with the top nationalities of refugees in protracted situations, which should make planning by resettlement countries more predictable.¹⁰⁵ Among the **main countries of resettlement**, the **US** has received 9,789 out of the 9,817 persons submitted for resettlement by UNHCR. In turn, **Canada** and **Sweden** have received more than half the 5,279 and 2,768 cases referred by UNHCR, respectively, with 3,207 refugees having departed for Canada and 1,949 for Sweden. **Australia**, however, is lagging behind, with 2,467 resettlement requests unmet thus far.¹⁰⁶

The unevenness of the distribution of refugees across countries of resettlement, and the disparate rhythm of resettlement processing and acceptance is due to the **different national regulations** and policy idiosyncrasies applicable in each case. The next subsections summarise arrangements in the US, Canada and Australia as the major resettlement providers.

3.1 The US¹⁰⁷

The US **first established** its resettlement programme in 1975. It does not accept 'dossier submissions' and, instead, undertakes 'selection missions' itself. The annual quota has steadily increased over the years, reaching 85,000 in the period 2017–2018, without making any specific sub-quota reservations for particular case profiles.

Eligibility criteria include compliance with the US definition of a **refugee** found in section 101(a)(42) of the Immigration and Nationality Act (INA),¹⁰⁸ which closely follows the Refugee Convention definition, but also defines as refugees **other categories** of persons in need of protection who **may still be within their country of origin**, nationality or habitual residence if they are stateless. For resettlement qualification, applicants need to show they meet that definition and be among the **priority groups designated by the President** as being of 'special humanitarian concern' to the US in the 'processing priorities' of the current fiscal year. They must **not be resettled in any**

103 *Ibid.*

104 UNHCR, *Resettlement Factsheet May 2019* www.unhcr.org/protection/resettlement/5d10e6a57/resettlement-factsheet-may-2019.html accessed 26 July 2019.

105 See n 2 above.

106 See n 104 above.

107 This section is based on the information contained in UNHCR, *Resettlement Country Chapter: US*, October 2014 (revised May 2018) www.unhcr.org/3c5e5a764.html accessed 26 July 2019.

108 1952 Immigration and Nationality Act www.uscis.gov/legal-resources/immigration-and-nationality-act accessed 26 July 2019.

other country and must **be otherwise admissible to the US** under domestic law. The priorities for the year 2018 included: **Priority 1: UNHCR resettlement categories** from any nationality; **Priority 2: specific groups from certain nationalities**, distinguishing between those still in their countries of origin (including former Soviet Union Jews, Evangelical Christians, and Ukrainian Catholic and Orthodox religious activists; Cubans who are human rights activists, members of persecuted religious minorities, former political prisoners, persons deprived of their professional credentials, forced-labour conscripts (1965–1968), or subjected to other disproportionately harsh or discriminatory treatment, or the relatives of any of the above; and Iraqis associated with the US) and those outside (including persons belonging to ethnic minorities from Burma in camps in Thailand or Malaysia; Bhutanese in Nepal; Iranian members of religious minorities; Congolese in Rwanda and Tanzania; Sudanese Darfuris in Eastern Chad; and Iraqis associated with the US); and **Priority 3: family members of persons admitted to the US as refugees or granted asylum of selected nationalities** (including the top refugee-producing countries).

There are, however, **exclusion grounds** to be taken into account. These can be **health-related** (including some communicable diseases, grave medical conditions, and substance abuse or addiction), due to past **criminal activity** (including drug trafficking, crimes of moral turpitude, prostitution, aggravated felonies, acts involving persecution or torture, or lesser crimes but leading to multiple criminal convictions), or **security-based** (regarding terrorism, spying, communist activity, links to Nazi persecution or otherwise presenting an undetermined ‘serious security threat’). In all cases, applicants must clear several biometric and biographic checks before final approval and **waivers** may be available only in special cases, for humanitarian purposes, to ensure family unity or when it is otherwise considered to be in the public interest. The government has sole authority to decide on such waivers, and its **decisions cannot be appealed**.

‘Resettlement Support Centres’ prepare cases and schedule interviews with applicants within their regions of competence. To substantiate their claims, applicants may submit all relevant **documentation** specified in the *UNHCR Resettlement Handbook*, plus any affidavits of, or letters from, government officials, friends or family members, and union, political party or organisation membership cards. Where available, documents will be reviewed for content and authenticity by the interviewing officer. When not available, **assessments** will be based solely on the credibility of the testimony of the applicant. Interviews are to be conducted on a non-adversarial, face-to-face basis. There is **no formal procedure for appealing** a rejection decision, although a ‘Request for Review’ form may be filed at any time on the basis of additional evidence or information that was not available at the time of the first interview. In total, **processing times** can take between two and four years. Emergency cases may be expedited, but the capacity for such actions is very limited due to the stringent security clearance procedures all applicants must undergo, the non-derogable regulatory requirement for a face-to-face interview, and enhanced medical protocols for detecting and treating tuberculosis (TB). Therefore, it is only in very exceptional cases that processing times can be shortened to a minimum of six months.

Successful applicants may still have to wait two to four years to enter the US upon approval. In the meantime, they are delivered a five-day cultural orientation programme **prior to departure** and distributed *Welcome to the United States* guidebooks at their Refugee Support Centre of reference. The centre also provides travel documentation and prepares candidates for resettlement. Travel is then coordinated by the IOM, which generally furnishes interest-free loans for the cost of transportation to the US. Resettled refugees are expected to begin the incremental repayment of this loan six months after arriving in the US. In very exceptional cases of heightened humanitarian concern, the government may cover the cost on behalf of the resettled refugee. This is different from other national programmes, as seen below.

3.2 Canada¹⁰⁹

The Canadian resettlement programme dates from 1978. Among its **objectives**, it is understood that the programme was set up, explicitly, ‘to meet Canada’s international legal obligations with respect to refugees’.¹¹⁰ Unlike the US, it does accept ‘dossier submissions’, if appropriate, on a case-by-case consideration, although it is generally based on ‘selection missions’ conducted abroad. The yearly quota has been revised through time and stood at 27,000 for 2018 (between government supported, privately sponsored and blended visa refugees¹¹¹), following a regional allocation, reserving specific sub-quotas for Africa, Asia/Oceania, the Middle East, the Americas, and other, with the Middle East getting more than half the total annual target. Since 2002, the emphasis has shifted from ‘ability to successfully establish’ in the country to a squarely protection-based focus.¹¹²

Regarding **qualification criteria**, priority groups generally match UNHCR resettlement categories, except for unaccompanied minors, which Canada does not accept, unless they have certified extended family links in the country. Beyond UNHCR preconditions, Canada uses resettlement to protect not only Refugee Convention **refugees, but also others in refugee-like situations** and in need of protection, whether they are in a third country or **still within their own country of nationality**. On the other hand, resettlement candidates, on top of demonstrating protection need, must show ‘potential to become self-sufficient’ and to ‘successfully establish’ in Canada within a short period of time, from three to five years upon arrival. The requirement can be waived or relaxed on a case-by-case basis, on consideration of ‘urgent’ or particularly vulnerable profiles, including with regard to ‘women at risk’, elderly refugees, traumatised applicants and applicants with disabilities. Applicants must also demonstrate that they have no reasonable prospect of finding a durable solution in a country other than Canada within a reasonable period of time. These two criteria do not apply to inland asylum seekers – which raises doubts of compatibility with Article 3 of the Refugee Convention, forbidding

109 This section is based on the information contained in UNHCR, *Resettlement Country Chapter: Canada*, 2017 (revised February 2018) www.unhcr.org/3c5e55594.html accessed 26 July 2019.

110 *Ibid*, 3.

111 The private sponsorship and blended visa routes are discussed in Ch 2.

112 *Immigration and Refugee Protection Act* (SC 2001, c 27), as amended since 2002 <https://laws-lois.justice.gc.ca/eng/acts/I-2.5> accessed 26 July 2019.

discrimination among refugees regardless of mode of arrival. Finally, applicants must undergo **medical, criminal** and **security** screening for clearance.

Ineligibility conditions are tailored around Articles 1F and 1E of the Refugee Convention, but are more expansive. Candidates can be excluded on **grounds of criminal activity** or human rights violations, if they come from the US (which has been designated a '**safe third country**' in the Immigration and Refugee Protection Act), if they have been recognised as refugees in another country to which they can safely return or if they have **already submitted an application** to the Canadian authorities, which was deemed unfounded, rejected, withdrawn or declared abandoned. There are also **medical conditions**: successful applicants must be clear of any disease likely to constitute a danger to public health or public safety (eg, active TB or untreated syphilis), but unlike the US and Australian systems (explored below), they cannot be excluded on the basis of them representing an 'excessive demand' on the healthcare system. A local physician, designated by the Canadian government as an 'immigration medical examiner', carries out the screening. Candidates can receive treatment and be approved when further testing indicates they no longer pose a danger. Applicants must also undergo **security screening**. Canada does not accept persons linked to terrorism, espionage, subversion or organised criminal rings involved in trafficking, smuggling or money laundering. Ineligibility grounds can be **waived at discretion** in exceptional situations if justified by humanitarian and compassionate considerations.

On top of their UNHCR RRF, resettlement candidates must also include with their **applications** any other relevant documentation that may be available (eg, birth, marriage, divorce and death certificates, identity (ID) cards, education and employment records, and medical reports) and a cover letter, explaining why they require resettlement and whether they are at risk or fall within an 'urgent' category in UNHCR terminology.

While the **determination** of inland asylum seekers is undertaken in a quasi-judicial process, for resettlement claims, the process is purely administrative in nature, and carried out by migration officers overseas. Interviews are conducted in most cases to verify identity and eligibility, elicit information regarding family composition, as well as biographic and biometric data. But in urgent cases the requirement for an interview can be waived. Processing times vary depending on location and other factors, and there are no specific target deadlines for decisions, although an effort is made to expedite the processing of urgent cases. Rejected applicants are informed of the negative decision in writing and, different from the US and Australian systems, they have a right to seek leave for **judicial review** before the Federal Court of Canada. Otherwise, there is no formal appeal system. When UNHCR requests the reconsideration of a case, the migration programme manager at the responsible migration office is contacted for consultation, and further advice may be requested from the UNHCR office in Ottawa, and, if there are compelling reasons to believe that Canadian resettlement policy objectives have not been properly implemented, the case may be reconsidered.

Successful applicants are **prepared for travel** to Canada. They receive three to five days of Canadian Orientation Abroad sessions to introduce them to the country, covering the settling-in period, study and employment opportunities, rights and

responsibilities, geography and climate, housing, multicultural values, and so on. Participation is voluntary and free of charge. There is also a specific Youth Refugee Curriculum targeting young refugees and their needs. Travel arrangements are usually coordinated by the IOM. Those without means can be granted an 'immigration loan' to cover the costs. The candidate will be asked to demonstrate the need for, and the potential to eventually repay, it within the first year following their arrival in Canada, at no interest and in monthly instalments. However, the government may cover the fees in cases of particular vulnerability, where refugees with special needs are unlikely to ever be able to repay the sum. All candidates are then **issued a permanent resident visa**. Those who are stateless or can otherwise not obtain passports from their own countries on which to affix the visa, receive a Single Journey Document for Resettlement to Canada (SJTD).¹¹³ This is for travel identification purposes and can only be used for the transfer to Canada.

3.3 Australia¹¹⁴

Australia has been running a resettlement programme since 1977. Like the US, the Australian government does not accept 'dossier submissions' by UNHCR and, instead, carries out resettlement interviews directly with individual candidates. The annual quota changes year on year. For 2018, the government pledged 14,800 places, reserving 1,550 places for vulnerable women and children, targeting three priority regions: Middle East, Asia (including Southwest Asia) and Africa, giving preference to refugees from protracted situations.

Beneficiaries include refugees, identified by UNHCR and referred by UNHCR to Australia, who, *in addition*, establish 'compelling reasons for giving special consideration to granting them a visa'. Those 'compelling reasons' are to be determined according to the 'degree of persecution' the applicant faces in their home country; the extent of the applicant's 'connection to Australia'; whether there is any other suitable country, different from Australia, willing and able to resettle the claimant; and Australia's resettlement capacity.¹¹⁵

Applications are to be submitted using a prescribed form,¹¹⁶ including a detailed written statement by the applicant, explaining the reasons why they left and cannot return to their country of origin. This must be accompanied by a series of certified copies of documents, if available/applicable, including photographs; proof of identity; evidence of registration with UNHCR; travel documents; visas and/or residence permits; child custody and/or adoption papers; certificates of previous marriage, divorce or death; and any discharge papers and/or medical reports. The entire application must be sent to the relevant Australian authorities in the relevant overseas mission, acting as

113 Single Journey Document for Resettlement to Canada (SJTD) (IMM 5485) www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/refugee-protection/resettlement/processing-destining-travel-arrangements/issuing-visas-travel-documents.html accessed 26 July 2019.

114 This section is based on the information contained in UNHCR, *Resettlement Country Chapter: Australia*, July 2011 (revised April 2016 and 2018) www.unhcr.org/3c5e542d4.html accessed 26 July 2019.

115 *Ibid*, 4.

116 Form 842, Application for an Offshore Humanitarian Visa www.ua-au.net/files/842.pdf accessed 26 July 2019.

a 'humanitarian post', either directly by the applicant or via UNHCR or an NGO. That same 'humanitarian post' then undertakes the processing of the application.

Processing follows the criteria set down in the Migration Regulations 1994,¹¹⁷ according to which applications are to be considered on a case-by-case basis and in line with due process standards. The UNHCR resettlement submission categories are normally followed. If applicants appear to fulfil the requirements, they are then invited to an interview to determine their claims and verify their family composition. **Unsuccessful** claimants are sent a letter indicating the criterion that was deemed not to be satisfied. There is no provision for merits review, but applicants **may reapply at any time**. Processing times and visa grant times differ from region to region, but waiting periods can be long – they are 47.6 weeks on average. **Successful** applicants must undergo **mandatory health, character and national security checks**, and, if they meet them, be issued a visa for travel to Australia.

On top of qualification criteria and unless express provision is made to waive them, every applicant must satisfy pre-determined **medical requirements**, tested by Australian approved doctors overseas, at the government's cost. Applicants need to show they are free from TB and HIV, as well as any other communicable disease that may pose a threat to public health and public safety. Applicants can also be excluded on the basis of 'undue costs' in healthcare or community services and/or if they are deemed to excessively impair Australians' access to healthcare or community services that are in short supply. Health criteria may be waived only if and after applicants have been certified to satisfy all other criteria. These other 'public interest' criteria – in addition to RSD and resettlement submission categories – include safety and national security verifications and character checks. Applications may, indeed, be refused where there is evidence of prior **criminal conduct** or if the applicant is considered to otherwise represent a **security threat or danger to the Australian community** – according to undefined criteria beyond, and in addition to, the exclusion grounds in Article 1F of the Refugee Convention.

Prior to departure, beneficiaries can take the Australian Cultural Orientation, five-day course on a voluntary basis. In preparation for travel, the government issues International Civil Aviation Organization-compliant, machine-readable Australian Migration Status ImmiCards to enable their transfer to Australia, prove their visa status and help them to enrol for government services upon arrival. Those without passports are issued a Refugee Convention travel document and a certificate of identity from the government to facilitate further travel.

117 Migration Regulations 1994, Statutory Rules No 268 made under the Migration Act 1958,(last compiled 1 July 2017) www.legislation.gov.au/Details/F2017C00582 accessed 26 July 2019.

4. Regional initiatives: the Vietnamese CPA and the Union Resettlement Framework

Several regional initiatives, both past and future, have incorporated resettlement as their key component to facilitate access to international protection, address protracted refugee situations, and/or tackle complex mixed migration flows. On the one hand, the CPA for Indochinese Refugees provides a historical example with pointers and indicators of what may and may not be worth replicating in future schemes.¹¹⁸ On the other hand, the European Commission has incorporated similar elements in its proposal for a Union Resettlement Framework (URF) Regulation.¹¹⁹ These two regional mechanisms provide **useful insights** to be taken into account **when designing entry channels for refugees**. Each of them is examined in turn in the following subsections.

4.1 The CPA for Indochinese refugees

A massive exodus followed from the end of the Vietnam War and the reunification of the two ideologically opposed halves of Vietnam in 1975. Insecurity, poverty and persecution drew one million Vietnamese into exile. The first countries of asylum in the region, overwhelmed by the sheer number of boat arrivals, started implementing policies of *non-entrée*, disregarding the principle of *non-refoulement*, and many lost their lives at sea – by some estimates, as many as six out of ten ‘boat people’ undertaking the voyage did not survive.¹²⁰ Against this background, UNHCR, with decisive US backing, pursued two sets of policies in search of a solution. Two policy periods can, therefore, be distinguished: *before* the newly founded Socialist Republic of Vietnam’s agreement to accept and facilitate the peaceful return of non-refugees and *after* it did.

The first period begins with the 1979 International Conference held in Geneva, with the participation of 65 states, where Vietnam agreed, by means of a memorandum of understanding signed with UNHCR, to cooperate in the orderly management of departures from the country of persons with close family links abroad. Under the **Orderly Departure Programme (ODP)**, third countries prepared lists of kin, and those identified were transferred directly from Vietnam on to the resettlement state concerned to reunite with them.¹²¹ In parallel, countries in the region and further afar agreed to the **Disembarkation Resettlement Offers (DISERO)** and **Rescue at Sea Resettlement Offers (RASRO)** programmes.¹²² Under the DISERO programme, ‘boat people’ from

118 UNGA, *Declaration and Comprehensive Plan of Action of the International Conference on Indo-Chinese Refugees, Report of the Secretary-General*, UN Doc. A/44/523 (1989) www.refworld.org/docid/3dda17d84.html accessed 26 July 2019.

119 Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework, COM(2016) 468, 13 July 2016.

120 Meltem Ineli-Ciger, ‘An Examination of the Comprehensive Plan of Action as a Response to Mass Influx of “Boat People”: Lessons Learnt for a Comprehensive Approach to Migration at Sea’ in Violeta Moreno-Lax and Efthymios Papastavridis (eds), *‘Boat Refugees’ and Migrants at Sea* (Brill 2016) 408 citing Cong Hoan, *Vietnam: Under Two Regimes*, Dept St Bull (September 1985).

121 *Meeting on Refugees and Displaced Persons in South-East Asia, convened by the Secretary-General of the United Nations at Geneva, on 20 and 21 July 1979, and subsequent developments: Report of the Secretary-General*, UN Doc. A/34/627 (1979) www.refworld.org/docid/3ae68f420.html accessed 26 July 2019.

122 UNHCR, ‘Problems Related to the Rescue of Asylum-Seekers at Sea’, EC/SCP/42, 8 July 1985 www.unhcr.org/3ae68cbc20.html accessed 26 July 2019.

Vietnam were allowed to disembark in a coastal country of first asylum and considered to immediately qualify, on a prima facie basis, for extra-regional resettlement in one of the participating third countries, including Australia, Canada, France, Germany, Sweden and the US. This was deemed necessary to end push-backs and non-disembarkation practices in the region. The second programme, RASRO, was introduced later, in 1985, to encourage seafarers to undertake rescue, and bring abandonment at sea and left-to-die practices to an end. Under the scheme, whenever possible, the flag state of the vessel performing the rescue would resettle the survivors, again on a prima facie basis. Otherwise, survivors would be disembarked in the closest coastal state and put on the DISERO list.¹²³

After ten years, the prima facie recognition system, however, ended up being perceived as a 'blank cheque' by resettlement countries. As a result, both the DISERO and RASRO initiatives were brought to an end in 1989 and replaced with the CPA, which, instead, foresaw that 'boat people' be screened in countries of first asylum prior to being resettled, with those 'screened out' as not meeting the refugee definition being expected to return to Vietnam.¹²⁴ While countries of first asylum were required to continue to provide temporary refuge and introduce status determination procedures, with UNHCR support, Vietnam was asked to repatriate persons not deemed in need of international protection without reprisals. The government proceeded accordingly and signed **Orderly Return Programme** agreements with countries in the region to that effect, issuing travel documents to returnees and committing not to persecute, arbitrarily prosecute or otherwise maltreat them on arrival. UNHCR engaged to monitor the process to ensure compatibility with dignified standards.¹²⁵

The CPA was terminated on 30 June 1996, having met its objective of 'emptying the camps' and finding a solution to the plight of the Vietnamese 'boat people'.¹²⁶ It has been celebrated as a success from many perspectives, in spite of the legal pitfalls it suffered from. Indeed, determination procedures were hugely substandard, reception and detention conditions in camps appalling and the whole process rife with fraud and corruption.¹²⁷ But, looking at the 'responsibility-sharing' and international cooperation aspects, several key lessons can be learnt because the CPA process did manage to broker a 'new solutions-oriented consensus involving the co-operation of countries of origin, first asylum, and resettlement'.¹²⁸

123 UNHCR, 'Problems Related to the Rescue of Asylum-Seekers in Distress at Sea', EC/SCP/18, 26 August 1981 www.unhcr.org/excom/scip/3ae68ccc8/problems-related-rescue-asylum-seekers-distress-sea.html accessed 26 July 2019.

124 See n 118 above.

125 Courtland Robinson, 'The Comprehensive Plan of Action for Indochinese Refugees, 1989–1997: Sharing the Burden and Passing the Buck' (2004) 7 *Journal of Refugee Studies* 319.

126 EXCOM, 4th Meeting of the Standing Committee, *Update on regional developments in Asia and Oceania*, EC/46/SC/CRP.44, 19 August 1996 www.unhcr.org/3ae68cf94.pdf accessed 26 July 2019.

127 See further Violeta Moreno-Lax, 'External Dimension', in Steve Peers, Violeta Moreno-Lax, Madeline Garlick and Elspeth Guild (eds), *EU Immigration and Asylum Law*, Vol 3 (Brill, 2nd edn, 2015) 617, 648 and references therein.

128 Sergio Vieira de Mello, quoted in Alexander Betts, 'Comprehensive Plans of Action: Insights from CIREFCA and the Indochinese CAP', UNHCR Evaluation and Policy Analysis Unit, *New Issues in Refugee Research No 120* (January 2006), 32 www.unhcr.org/research/working/43eb6a152/comprehensive-plans-action-insights-cirefca-indochinese-cpa-alexander-betts.html accessed 26 July 2019.

Several elements have been underlined as contributing to the success of the CPA.¹²⁹ First, the sense of **ownership** it managed to generate in relation to participants, with each bringing to the table their own views and contribution. **UNHCR** led the way, **as initiator, facilitator and coordinator**, identifying key principles (eg, temporary asylum, repatriation without punishment and peaceful post-return coexistence). But it did not prefix the agenda, and instead purposefully conducted exploratory, open-ended meetings to identify state interests as the basis for the relevant commitments. The drafting of the Declaration and Action Plan was also a cooperative exercise, involving all key stakeholders from the very beginning.

Second, the **resettlement component** was the cornerstone of the entire programme and the main key to its success. Without an opportunity for first countries of asylum to share the responsibility of protecting refugees with other (wealthier) countries outside the region, they would probably have persisted in their unilateral strategies of rejection of disembarkation, deterrence and *refoulement*. The priority sequence for resettlement and the three principles pivoting the programme were also important. Countries of destination agreed to first resettle refugees to whom they had close ties (family-based, cultural or otherwise), then 'long-stayers' languishing in camps (to address the backlog) and finally the rest, who would be distributed on an equitable basis. Most countries did not contribute to resettlement efforts out of altruistic reasons, but on account of broader strategic, economic, political and security interests, past colonial ties and their direct or indirect participation in the Vietnam War. The **US leadership-by-example strategy**, translating in the country alone taking 40 per cent of the total share, played a determinant role in enticing other resettlement states to participate in the scheme.

Third, the fact that the 'caseload' was more or less defined and circumscribed to one **specific national group** also helped to leverage support for the initiative, generating a sense of finiteness and achievability of the main objective. UNHCR, alongside partner countries, considered that this would focalise attention, attract financial aid and incentivise participants to comply with their respective commitments.

Finally, the overall **perception that a (safe and legal) channel to protection**, better than smuggling routes, was available **for those engaging in the process**, convinced many Vietnamese refugees to use the CPA rather than alternative (unsafe and illegal) options. The existence of direct evacuation pathways out of Vietnam, combined with clear transit and relocation prospects through countries of first asylum to countries of final destination was the main element accounting for their trust in the CPA. Without long-term protection prospects, the practice of clandestine departures and unauthorised arrivals in neighbouring countries would have continued.

One controversial component of the CPA was the **involvement of the country of origin** in the programme. Many have considered this aspect to be peculiar to the specific context of post-war Vietnam and the dynamics of Cold War-era politics.¹³⁰ In situations

129 *Ibid* 41 ff; see also n 120 above, Meltem Ineli-Ciger, 431 ff.

130 For analysis and further references, see Judith Kumin, 'Orderly Departure from Vietnam: Cold War Anomaly or Humanitarian Innovation?' (2008) 27 *Refugee Survey Quarterly* 104.

in which return is not (yet) an option, due to continued instability, insecurity, violence or persecution, this part of the scheme will not be immediately transposable to similar initiatives. It is of note that Vietnam's commitment to repatriation without punishment came only after ten years of the DISERO and RASRO schemes, during which time very significant results had been achieved – in terms of addressing the protection needs of exiles, stabilising the region, and attaining a sufficient (and sustainable) degree of peace and development of post-war Vietnam allowing for returns. It is also noteworthy that during this period (1979–1989) the system worked on the basis of **prima facie determination**, substantiated by a presumption of need of international protection for all those leaving Vietnam. This was considered the only viable option to maintaining compliance with the principle of *non-refoulement*. In addition, it may well form the basis for similar action in relation to indisputably unsafe situations (eg, Libya), with regard to countries to which return is not (yet) possible (eg, Syria or Yemen), or with a view to resolving long-protracted refugee situations (eg, Somalis in Kenya).

4.2 Towards a European URF

The EU offers another context in which multilateral resettlement efforts have been tested with varying degrees of success. In fact, the EU's contribution to global resettlement needs has been modest until now.¹³¹ So far, only ad hoc initiatives have been implemented. But, these are understood to be paving the way for a more permanent scheme that, if adopted, would harmonise national efforts within an EU-wide framework. The two types of initiatives are explored below, paying particular attention to the **objectives** pursued, **priorities** established, **criteria** for inclusion and exclusion in the scheme, and **processes** implemented in practice.

4.2.1 AD HOC INITIATIVES

The first attempt at harmonising resettlement practices between Member States was with the **Joint Resettlement Programme** in 2009.¹³² At the time, only ten EU countries had established annual schemes with very limited capacity and no common planning or coordination mechanism between them.¹³³ The programme was intended to provide a framework for the development of a common approach, seeking to involve as many Member States as possible. On the one hand, it was expected that the global humanitarian profile of the EU would rise, and access to asylum would be organised in an orderly way. On the other hand, the idea was to match the programme with the Global Approach to Migration and Mobility¹³⁴ through the identification of common priorities not only on protection grounds, but also on the basis of broader migration

131 See n 11 above, para 19.

132 European Commission, *The establishment of a Joint EU Resettlement Programme*, COM(2009) 447. Underpinning the proposal, see Joanne van Selm, Erin Patrick and Tamara Woroby, *Study on the Feasibility of Setting Up Resettlement Schemes in EU Member States or at EU Level* (European Commission, 2004) <https://publications.europa.eu/en/publication-detail/-/publication/6e6c8328-cf2f-4a63-819a-71c11917a065> accessed 26 July 2019.

133 European Commission, *Commission Staff Working Document accompanying the Communication of the Commission on the establishment of a Joint EU Resettlement Programme (Impact Assessment)*, SEC(2009) 1127, 2 September 2009.

134 European Commission, *The Global Approach to Migration and Mobility*, COM(2011) 743, 18 November 2011.

policy considerations, using resettlement in a ‘strategic’ way to curtail unauthorised entry into the EU, ‘reducing irregular migration’, ‘disrupt[ing] migrant smuggling networks’ and ‘better[ing] [the] overall management of the migratory situation’.¹³⁵

The **European Refugee Fund (ERF)** was **amended** in 2012 to support resettlement efforts.¹³⁶ However, the results achieved were minimal. During the Arab Spring, only 700 resettlement places were offered EU-wide, while the need estimated by UNHCR was for at least 11,000.¹³⁷ The replacement of the ERF with the current Asylum, Migration and Integration Fund (AMIF) 2014–2020,¹³⁸ with increased monetary provisions per resettled refugee, was expected to significantly attract additional pledges. Nonetheless, despite individual efforts at domestic level having improved in some countries,¹³⁹ this has yet to fully materialise.

In **June 2015**, the **European Commission** proposed an ad hoc **plan for a 20,000-place** scheme to respond to the Syrian crisis, submitted as part of the European Agenda on Migration.¹⁴⁰ The European Council endorsed it and raised the target number to 22,504.¹⁴¹ Within the two-year period envisaged for completion, 19,432 people were brought to safety in the EU (which amounts to 86 per cent of the initial pledges).¹⁴² In parallel, in **September 2016**, a **reform of the Relocation Decisions** – adopted to alleviate pressure from Italy and Greece, which together had received over one million arrivals in the summer of 2015 – was introduced.¹⁴³ This made it possible for Member States to fulfil their relocation obligations by resettling Syrians from Turkey rather than by taking in applicants already present in Europe. A total of 54,000 places, of those initially foreseen for (intra-EU) relocation, were earmarked for this purpose. Since the conclusion of the EU-Turkey Statement in March 2016,¹⁴⁴ over 20,292 Syrian refugees have in fact been resettled from Turkey.¹⁴⁵

135 European Commission, *Recommendation of 27 September 2017 on enhancing legal pathways for persons in need of international protection*, C(2017) 6504, 27 September 2017, Recitals 1, 4 and 13.

136 Decision 281/2012/EU amending Decision No 573/2007/EC establishing the ERF for the period 2008 to 2013, (2012) OJ L 92/1.

137 Statement by Cecilia Malmström on the results of the Ministerial Pledging Conference 12 May, MEMO 11/295, 13 May 2011 http://europa.eu/rapid/press-release_MEMO-11-295_en.htm?locale=fr accessed 26 July 2019.

138 AMIF Regulation 516/2014, (2014) OJ L 150/175.

139 EASO, *EASO Annual Report 2013*, 71 and Annex C.14; *EASO Annual Report 2014*, 8 and 81–82; *EASO Annual Report 2015*, pp 8 and 26; *EASO Annual Report 2016*, p 26; *EASO Annual Report 2017*, 11 and 102–105; and *EASO Annual Report 2018*, 11 and 35–37 www.easo.europa.eu/easo-annual-report accessed 26 July 2019.

140 Commission Recommendation on a European resettlement scheme, C(15) 3560, 8 June 2015.

141 European Council Conclusions, Council Doc 11097/15, 20 July 2015.

142 European Commission, ‘European Agenda on Migration: Continuous efforts needed to sustain progress’, Press Release, 14 March 2018 http://europa.eu/rapid/press-release_IP-18-1763_en.htm accessed 26 July 2019.

143 Council Decision 2016/1754 of 29 September 2016 amending Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, (2016) OJ L 268/82; further, on the Relocation Decisions and for an evaluation of the scheme, see Elspeth Guild, Cathryn Costello and Violeta Moreno-Lax, *Implementation of the 2015 Council Decisions establishing provisional measures in the area of international protection for the benefit of Italy and of Greece*, PE 583.132 (March 2017) [www.europarl.europa.eu/RegData/etudes/STUD/2017/583132/IPOL_STU\(2017\)583132_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/583132/IPOL_STU(2017)583132_EN.pdf) accessed 26 July 2019.

144 EU-Turkey Statement, EC Press Release, 18 March 2016 www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement accessed 26 July 2019.

145 European Commission, *EU-Turkey Statement: Three years on* (March 2019) https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20190318_eu-turkey-three-years-on_en.pdf accessed 26 July 2019.

In **September 2017**, a further **commitment to resettle 50,000 refugees** 'over the next two years' was tabled 'as part of the European Commission's efforts to provide viable safe and legal alternatives for those who risk their lives at the hands of criminal smuggling networks' across the Mediterranean.¹⁴⁶ To facilitate the transition into a permanent framework, the European Commission adopted a new recommendation at the same time, inviting Member States to take a 'stronger engagement', focusing primarily on the Middle East and North Africa (MENA) region and, especially, on 'key African countries along and leading to the Central Mediterranean migration route, including Libya, Niger, Chad, Egypt, Ethiopia, and Sudan'.¹⁴⁷ Therein, it also called for a commitment with UNHCR's new 'temporary mechanism for emergency evacuation of the most vulnerable migrants from Libya',¹⁴⁸ explored in chapter 4. By March 2019, there were over 50,000 pledges made by 20 Member States,¹⁴⁹ and over 24,000 persons have already been resettled under this new scheme, making it 'the largest EU collective engagement on resettlement to date'.¹⁵⁰

If the **July 2016 proposal for a permanent EU Resettlement Framework**,¹⁵¹ discussed below, calling for a unified procedure and common selection criteria, is finally adopted, it will replace the current ad hoc initiatives and facilitate the attainment of the European Commission targets with a harmonised approach.¹⁵²

4.2.2 PROPOSAL FOR A URF REGULATION

The **URF**, proposed by the European Commission, is part of the package-reform of the Common European Asylum System tabled in response to the 'refugee crisis' and currently (still) under negotiation.¹⁵³ Its main **objective** is to overcome one-off, ad hoc schemes and initiatives resulting from the rough compilation of national or multilateral programmes, providing for a collective and harmonised approach to resettlement at EU level, with common standards, unified criteria and a common procedure.¹⁵⁴

This is expected to **reduce divergences** in approach among the Member States and to put the EU in a stronger position, speaking as one voice in the international scene. Making a single pledge on behalf of all the Member States together, it is believed, will **give more visibility** to the organisation and increase its credibility as a contributor to

146 State of the Union 2017 – Commission presents next steps towards a stronger, more effective and fairer EU migration and asylum policy, Press Release, 27 September 2017 http://europa.eu/rapid/press-release_IP-17-3406_en.htm?locale=FR accessed 26 July 2019.

147 Commission Recommendation of 27 September 2017 on enhancing legal pathways for persons in need of international protection, C(2017) 6504, Recitals 10, 14–15 and paras 3(a)–(c).

148 *Ibid*, Recital 18 and para 3(c).

149 Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, France, Germany, Ireland, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovenia, Spain, Sweden and the United Kingdom.

150 See n 139 above: *EASO Annual Report 2017*, 11 and 102; and *EASO Annual Report 2018*, 11 and 35–36.

151 See n 119 above.

152 See Jean-Claude Juncker's statement to this effect, *Ensuring Legal Pathways to Europe*, 13 September 2017 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927_factsheet_ensuring_effective_legal_pathways_to_europe_en.pdf accessed 26 July 2019.

153 For an update, see n 139 above, *EASO Annual Report 2018*, 21–23.

154 See n 119 above, Explanatory Memorandum, 1–2 and Recital 11 of the Draft Regulation.

world resettlement efforts. It is also hoped that this will increase EU leverage vis-à-vis third countries, helping the EU to achieve its foreign policy objectives and **better manage migration**, making it easier to convince international partners to assume their share of responsibility¹⁵⁵ – which, as things stand, is an odd proposition, considering that, of the total 74.79 million persons of concern to UNHCR, only 3.8 million are hosted in the EU28 (with Germany, on its own, hosting 1.5 million of that number), representing roughly five per cent of the global displaced (or three per cent, excluding Germany).¹⁵⁶ A more plausible objective is, therefore, for the programme to become ‘a direct demonstration of the Union’s commitment to helping countries under the heaviest migratory pressure’, ‘**sharing the responsibility with third countries** to which or within which a large number of persons in need of international protection has been displaced’.¹⁵⁷ **Additional benefits** pursued by the scheme are the reduction of irregular, unsafe journeys, especially across the Mediterranean, and the reduction of the risk of large-scale movements of spontaneous arrivals to the EU through the provision of **alternative legal pathways**.¹⁵⁸

The programme is based on **voluntary commitments** by the Member States and is intended to produce **no individual right to resettlement** – in spite of, or ‘without prejudice to’, as the European Commission notes, ‘the right to asylum and the protection from *refoulement* in accordance with Articles 18 and 19 of the Charter of Fundamental Rights’.¹⁵⁹ On the other hand, resettlement is widely defined as consisting of ‘the admission of third-country nationals... in need of international protection from a third country to which *or within which* they have been displaced to the Member States with a view to granting them international protection’¹⁶⁰ [emphasis author’s own] – which becomes effective ‘the moment when resettled persons arrive on the territory of the Member States’ concerned.¹⁶¹

Strategic **resettlement priorities** are to be discussed regularly at a High-Level Resettlement Committee, composed of representatives from the European Council, European Commission, European Parliament, High Representative of the EU and Member States, with the European Asylum Support Office (EASO), UNHCR and IOM possibly

155 *Ibid* and Recitals 9 and 10 of the Draft Regulation.

156 The precise figures are: Austria (167,195); Belgium (69,413); Bulgaria (21,586); Croatia (8,278); Cyprus (27,321); Czech Republic (5,623); Denmark (47,586); Estonia (78,236); Finland (28,344); France (458,919); Germany (1,447,900); Greece (137,757); Hungary (6,308); Ireland (13,336); Italy (295,599); Latvia (225,572); Lithuania (5,050); Luxembourg (3,614); Malta (0); the Netherlands (116,091); Poland (26,396); Portugal (2,235); Romania (5,871); Slovakia (2,489); Slovenia (1,016); Spain (101,597); Sweden (317,987); and the UK (172,089), making a total of 2,345,508 persons excluding Germany and 3,793,408 including Germany. See UNHCR, *UNHCR Statistics: The World in Numbers* (end of 2018) http://popstats.unhcr.org/en/overview#_ga=2.247348420.1732592435.1562525215-1084420301.1538336069 accessed 26 July 2019.

157 See n 119 above, Explanatory Memorandum, 4 and 5.

158 *Ibid*, p 6 and Art 3 of the Draft Regulation.

159 *Ibid*, p 7 and Recitals 19 and 33 of the Draft Regulation. It is also not intended to affect the capacity of EU Member States to adopt or continue to pursue their own national resettlement schemes, provided that they ‘do not jeopardize the attainment of the Union’s objectives under this Regulation’. Therefore, ‘[r]esettlements under national resettlement schemes outside of this framework will not be supported financially by the Union’s budget’, as per the Explanatory Memorandum, 15.

160 See n 119 above, Art 2 of the Draft Regulation.

161 *Ibid*, Recital 25 and Art 10(7)(a) of the Draft Regulation.

invited as observers.¹⁶² Those strategic priorities are then to be taken into account in the design of the operational Annual Union Resettlement Plan to be decided by the European Council, on a proposal by the European Commission, on a yearly basis. The plan should, at a minimum, indicate the maximum number of resettlement places, the overall geographical priorities and the contribution of each Member State to the plan.¹⁶³ The criteria for the definition of the **geographical priorities**, however, are very much **deterrence-orientated** and have been criticised as a **vehicle for migration control**.¹⁶⁴ Article 4 of the proposed regulation establishes that in the selection of beneficiary countries from where resettlement should take place, the risk of onward movement of displaced persons to the territory of the Member States must be taken into account alongside the EU's overall relations with the country concerned, the complementarity of resettlement with other financial and technical assistance provided to that country, and, most importantly, the cooperation record of that country, via return and readmission or through increased capacity for reception and protection, in reducing the number of displaced persons irregularly crossing to the EU.

Eligibility criteria, by contrast, are more generous than those typically applying under the UNHCR *Handbook*. Not only persons qualifying as refugees, but also **persons running a real risk of serious harm** are eligible for resettlement. Apart from meeting the criteria for refugee status or subsidiary protection under the EU Qualification Directive,¹⁶⁵ candidates must fall within at least one of the vulnerability categories identified in Article 5(b) of the Draft Regulation. This includes all UNHCR resettlement categories plus 'persons with socio-economic vulnerability' as an extra group of targeted persons. The Draft Regulation also defines family members of EU citizens or foreign nationals legally residing in a Member State as potential recipients of resettlement. These are also broadly defined and encompass spouses/unmarried partners, minor children, adult dependents, siblings and ascendants of unmarried minors. The idea is that 'family unity can be maintained'. Nonetheless, within these groups, Member States 'may give preference', as they see fit, to candidates with family links in the resettlement country, with social or cultural ties that 'can facilitate integration' (provided they do not unduly discriminate), or with particular vulnerabilities or protection needs.¹⁶⁶

Yet, when it comes to **exclusion**, the Draft Regulation introduces comparatively **the most restrictive regime** of those explored herein. It contemplates an **obligatory exclusion** clause, according to which persons falling, in substance, within Articles 1D, 1E or 1F of the Refugee Convention, or having committed a serious crime or otherwise posing a danger to the community, security, 'public policy', public health or international relations of any of the Member States must be banned from resettlement. In addition, persons in respect to whom an alert has been issued in the Schengen Information System or equivalent

¹⁶² *Ibid*, Art 13 of the Draft Regulation.

¹⁶³ *Ibid*, Art 7 and Recital 21 of the Draft Regulation.

¹⁶⁴ European Policy Centre, *The EU Resettlement Framework: From a humanitarian pathway to a migration management tool?* Discussion Paper (June 2018) www.epc.eu/documents/uploads/pub_8632_euresettlement.pdf?doc_id=2012 accessed 26 July 2019.

¹⁶⁵ Qualification Directive 2011/95/EU (recast), (2011) OJ L 337/9, Arts 13 and 18.

¹⁶⁶ See n 119 above, Art 10(1) of the Draft Regulation.

domestic database for the purposes of refusing entry; and **persons who have** irregularly entered or stayed, or merely **'attempted to irregularly enter'** a Member State **'during the five years prior to resettlement'** must also be excluded. Finally, persons who have already been resettled by another Member State; and persons whom Member States have previously refused to resettle in the last five years or in relation to whom a Member State 'has objected to their resettlement' must be disqualified as well.¹⁶⁷ On top of this, Member States have the *option* to refuse resettlement through a **discretionary exclusion** clause, according to which candidates to whom the obligatory exclusion clause applies on a **prima facie basis** may, too, be rejected. How the prima facie analysis is to be carried out, according to which proof or to which standards and whether there is an option for individuals to object or appeal decisions taken on this basis is not specified anywhere in the Draft Regulation. It is also not clear whether UNHCR would have the possibility to resubmit the case for reconsideration within the **five-year resettlement ban period**.

The resettlement procedure, then, has been divided into four stages: **identification, registration, assessment** and **decision**.¹⁶⁸ The 'ordinary procedure' regulates these four stages, outside cases of special urgency – where an 'expedited procedure' may apply, in circumstances to be explored in chapter 4.¹⁶⁹ According to Article 10 of the Draft Regulation, upon the identification of a suitable candidate, the person concerned must be registered, and, upon registration, the 'full [eligibility] assessment' begins.¹⁷⁰ The **identification** phase can be assumed by the Member State itself or with the support of UNHCR, EASO, or other 'relevant international bodies' – which seems to exclude NGOs – referring appropriate candidates, falling within the scope of the EU resettlement priorities and vulnerability categories. Once identified and registered, the **assessment** of personal circumstances must be carried out on the basis of documentary evidence, including information from UNHCR, personal interview or a combination of both. Member States can, at that point, also ask UNHCR for a full RSD assessment and/or for an evaluation of family or cultural links and/or particular vulnerabilities/specific needs. Whatever the case, whether with or without **UNHCR assistance**, a decision must normally be reached within eight months, extendable for another four. If the decision is **negative**, no resettlement shall take place. There are no details in the Draft Regulation as to whether candidates are to be informed in writing of negative decisions, given reasons for them, and/or whether any legal avenues for appeal or judicial review, in line with EU law norms, should be made available by the Member States.¹⁷¹

In the case of a **positive** decision, the Draft Regulation details what is to happen next. Refugee status or subsidiary protection status must be granted and notified to the person concerned. The Member State concerned shall then organise **travel arrangements**, including fit-to-travel medical tests, travel documents, the facilitation of

167 *Ibid*, Art 6(1) of the Draft Regulation.

168 *Ibid*, Recital 13 of the Draft Regulation.

169 *Ibid*, Recitals 14–15 of the Draft Regulation.

170 *Ibid*, Recital 14 of the Draft Regulation.

171 The principle of effective judicial protection is considered a general principle of EU law, thus with general application within the entire EU legal system, as codified in Art 47 CFR and implicit in Art 19 TEU. See, eg, Case C-64/16 *Associação Sindical dos Juizes Portugueses*, ECLI:EU:C:2018:117.

any exit procedures and transportation. It must also provide a **pre-departure** orientation programme, with information on rights and obligations, language tuition and the basics of the Member State's social, political and cultural setup. EASO, as well as other partners, can provide assistance in this regard, coordinating practical or technical aspects and facilitating the sharing of infrastructure between the Member States.¹⁷² A lump sum of **€10,000 per resettled person** will be allocated from the **EU budget** under the scheme to help cover the costs.¹⁷³

5. Conclusions

Resettlement is the key 'durable solution' providing the **basis for** the development of '**complementary pathways**' to international protection, which, as explored in the next chapters, borrow elements from resettlement. The previous sections have, therefore, examined in detail the main arrangements and characteristics of this solution, as designed by UNHCR and in its national and regional variations.

Regarding **qualification** conditions, all programmes coincide in providing a channel to effective asylum to refugees who have already undergone RSD, but opening up opportunities for others in refugee-like situations, who may or may not have already crossed an international border, to equally benefit from resettlement in particular situations. The determination of geographical and group **priorities** tends to be dictated by humanitarian concerns, except in the EU's case, where 'strategic' migration control objectives focalise efforts and determine the allocation of resources. In turn, formal **exclusion** criteria, in all cases, expand substantially on Refugee Convention clauses, including on character, medical and security reasons. In nearly all cases, the length of **procedures** and formalities required pre- and post-identification of potential candidates creates an obstacle to expedited relocation. This makes programmes **exceedingly slow** and **unresponsive to growing needs**.¹⁷⁴

Among the different iterations of the resettlement solution, the CPA stands out as a particularly successful example. Several lessons can be learnt from its design and the manner of its implementation. **Ownership, partnership** and **principled cooperation** between all the relevant stakeholders are key elements accounting for its accomplishments. The introduction of an element of **prima facie determination, based on a presumption of the need for international protection** of a **circumscribed, well-defined nationality group** is also a very important factor to bear in mind, facilitating engagement and swift processing times. This, together with the above elements, shall be taken into account in the design of the proposal for an EEV in Part III of this study.

172 See n 119 above, Art 12 of the Draft Regulation.

173 *Ibid*, Art 17 of the Draft Regulation.

174 This is why UNHCR urges partners to improve the resourcing, planning and predictability of programmes so these can be expanded in a sustainable way. See n 27 above, 18.

Chapter 2. Sponsorship schemes

1. Introduction

In parallel to resettlement, community and private **sponsorship initiatives** have proliferated, making available resettlement places to a wider spectrum of potential beneficiaries. These initiatives are characterised by a transfer of responsibility from state authorities to **non-state actors** for **all or part of the resettlement action**, including the identification, referral, pre-departure, post-arrival reception and/or integration process of beneficiaries in the country of destination. However, state authorities retain final responsibility for the scheme. They determine the qualification criteria for sponsors and potential beneficiaries, may co-finance programmes through direct or indirect provision of funding and services, and shall step in in situations of sponsorship relation breakdown.¹⁷⁵ Normally, the **objectives** these initiatives pursue are several: they tend to **expand protection capacity** of the receiving state; **enable legal admission** to groups that would normally not qualify for resettlement; **facilitate integration and societal acceptance** in host communities and the resettlement country at large; and **foster public-private partnerships** that deliver resettlement in a cost-effective way.¹⁷⁶

Canada has pioneered efforts in this respect,¹⁷⁷ and the model has been replicated elsewhere. The **US, Australia** and some EU countries have adopted similar schemes – although there is no EU-wide equivalent yet.¹⁷⁸ The European Migration Network (EMN) has identified **six EU Member States**, that is, Germany, Ireland, Italy, Poland, Slovakia and the UK, that **follow different approaches**.¹⁷⁹ When these schemes follow the ‘**principle of additionality**’ they ‘add to’ the government resettlement quota, creating ‘additional’ opportunities for persons in need of international protection to find a durable solution at the sponsoring community or private entity/individual’s initiative. Moreover, some of these schemes, as explored below, unlike ‘classic’ resettlement programmes, do allow for resettlement *directly* from the country of origin of the displaced, thereby opening up a direct route of primary access to asylum, which provides relevant pointers for the design of an EEV, as proposed in Part III.

2. Community sponsorship and ‘blended’ schemes

Typically, **community sponsorship** initiatives, as emerged in Canada,¹⁸⁰ allow organisations – including NGOs, faith-based communities and similar actors registered with, and authorised by, the relevant government as resettlement partners – to submit

175 See n 31 above, 4–5.

176 *Ibid.*, 5.

177 Government of Canada, *Sponsor a Refugee*, 9 August 2018 www.canada.ca/en/immigration-refugees-citizenship/services/refugees/help-outside-canada/private-sponsorship-program.html accessed 26 July 2019.

178 The European Commission is considering its feasibility at EU level. See n 31 above.

179 See n 29 above, EMN 7. A latter study by the European Commission (see n 31 above) also surveys countries that have developed a ‘humanitarian corridor’, examined in Ch 3.

180 See n 109 above, 3.

referrals of refugees and other persons in need of international protection that they wish to assist for consideration for resettlement. If approved, the sponsor becomes responsible for providing material and financial assistance to the beneficiary for a limited period, while they integrate to the host community. Accommodation, clothing, food and general settlement orientation and services are to be provided during this time, which can last from one to several years, depending on the country. Normally, the sponsor must also help the resettled person to find employment and become self-sufficient within the period of the sponsorship agreement.¹⁸¹

In terms of **eligibility criteria**, most countries select on vulnerability grounds – Germany, for instance, launched the *Neustart im Team* (NesT) initiative in May 2019, targeting vulnerable persons.¹⁸² Poland and Slovakia target victims of persecution for religious reasons – especially with a Christian background. The content of **protection statuses** also varies. While in Canada persons obtain permanent settlement, in Germany, sponsored individuals receive a two-year extendable permit with an immediate right to work. By contrast, Ireland accords them a specific humanitarian status, allowing beneficiaries to work, invest or establish a business. In Poland, they are granted refugee status, while in Slovakia, they receive asylum on national terms. In all cases, **most of the costs are born by the sponsor**, including those of pre-departure travel and other arrangements, and of post-arrival medical and maintenance for several months/years.¹⁸³

This is part of the main challenge this kind of programme gives rise to, as it constitutes a form of **'privatisation of protection'**, shifting away certain responsibilities from public authorities, which may also lead to excessive selectivity of candidates for reasons unrelated to protection needs. Other obstacles relate to the **complexity and length of procedures**, to **logistical and coordination difficulties** between multiple actors, including regarding **pre-departure arrangements**, such as **obstacles in obtaining travel documents** or in completing **security checks** prior to arrival in the resettlement country.¹⁸⁴

A variant of community sponsorship are the so-called **'blended' schemes**, whereby referrals by resettlement partners (normally UNHCR) are matched with a community sponsor, thereby addressing some of the problems pointed out above.¹⁸⁵ The beneficiary, then, is supported *partly* by the sponsor and *partly* by the relevant government. The target population in these cases are resettlement candidates with enhanced assistance needs, over and above those normally provided for through government support alone

181 Ireland has adopted a pilot scheme following the Canadian example. The *Community Sponsorship Ireland* programme was first piloted in December 2018 and it is expected that up to 50 refugees would arrive in Ireland before October 2019. See Irish Government, 'Minister of State David Stanton T.D., launches Community Sponsorship Ireland', Press Release (undated) www.integration.ie/en/isec/pages/community_sponsorship_ireland accessed 26 July 2019. See also, 'Minister Stanton calls on communities to sponsor a refugee family as he launches pilot Community Sponsorship Ireland initiative', 6 March 2019 www.justice.ie/en/JELR/Pages/PR19000059 accessed 26 July 2019.

182 See n 139 above *EASO Annual Report 2018*, 36.

183 See n 29 above, EMN, 7–8.

184 *Ibid* 8.

185 See n 109 above, at 3.

and/or for longer periods than ordinary.¹⁸⁶ In **Canada**, this formula was first launched in 2013, as a three-way partnership between the government, UNHCR and approved sponsors. The programme allows ‘both new and experienced sponsors to cost-share with the Government and become involved in protecting refugees *with whom they have had no previous contact*’,¹⁸⁷ thus expanding the pool of potential beneficiaries. Under this programme, the government covers up to six months of income support, while the sponsoring partner assumes another six months and commits to provide social and emotional care to the resettled person for a year to facilitate integration.

The **UK** Vulnerable Person Resettlement Scheme (VPRS) and Vulnerable Children’s Resettlement Scheme (VCRS),¹⁸⁸ targeting 20,000 refugees fleeing conflict in Syria and 3,000 minors from the MENA region, respectively, can be considered as a mixed system, borrowing elements from ‘classic’ and ‘blended’ community sponsorship schemes.¹⁸⁹ The programme, running over three years (2016–2019), allows registered charities, community interest groups or religious organisations to act as sponsors accredited by the Home Office.¹⁹⁰ They need to sign a 12-month declaration, be approved by the relevant local authority, deposit a £9,000 guarantee and commit themselves to a range of obligations. They need to actively participate in every step of the process and, on arrival, provide accommodation for two years, initial orientation assistance, and help with access to welfare services. This requires significant resources and expertise, which has resulted in some limitations regarding participation in the scheme. The rhythm of actual transfers to the UK has, nonetheless, been steady,¹⁹¹ reaching a total of 16,000 relocations by June 2019, representing 69.5 per cent of the original target.¹⁹² An additional 5,000 places have been pledged for a new scheme, starting from 2020, consolidating the VPRS and VCRS lines in to one single programme, simplifying procedures and expanding the geographical scope beyond the MENA region. There are plans to continue the community sponsorship methodology, but running parallel and ‘in addition to’ the government’s commitment.¹⁹³

186 *Ibid* 11.

187 *Ibid* 12.

188 UK Home Office, *Syrian vulnerable person resettlement programme (VPRS) fact sheet*, 28 October 2015 (updated 21 July 2017) www.gov.uk/government/publications/syrian-vulnerable-person-resettlement-programme-fact-sheet accessed 26 July 2019; and ‘New scheme launched to resettle children at risk’, 21 April 2016 www.gov.uk/government/news/new-scheme-launched-to-resettle-children-at-risk accessed 26 July 2019.

189 UK Home Office, *Syrian Vulnerable Persons Resettlement Scheme (VPRS) – Guidance for local authorities and partners* (July 2017) www.gov.uk/government/uploads/system/uploads/attachment_data/file/631369/170711_Syrian_Resettlement_Updated_Fact_Sheet_final.pdf accessed 26 July 2019.

190 The first Syrian refugees under the programme arrived in Manchester in November 2015, through the sponsorship of Caritas Salford. See ‘Caritas Europe share the Community Sponsorship model of refugee resettlement at the European Parliament’, Caritas Salford (undated) www.caritassalford.org.uk/news/caritas-europe-share-the-community-sponsorship-model-of-refugee-resettlement-at-the-european-parliament accessed 26 July 2019.

191 UK Home Office, ‘Refugees of all nationalities fleeing Syria are now eligible for resettlement in the UK’, 3 July 2017 www.gov.uk/government/news/refugees-of-all-nationalities-fleeing-syria-are-now-eligible-for-resettlement-in-the-uk accessed 26 July 2019; and IOM, ‘Over 10,000 Refugees Resettled in UK Under Flagship Scheme’, Press Release, 23 February 2018 www.iom.int/news/over-10000-refugees-resettled-uk-under-flagship-scheme accessed 26 July 2019.

192 UK Home Office, ‘New global resettlement scheme for the most vulnerable refugees announced’, 17 June 2019, www.gov.uk/government/news/new-global-resettlement-scheme-for-the-most-vulnerable-refugees-announced accessed 26 July 2019.

193 *Ibid*.

In terms of **qualification**, relevant documentation states that '[t]he UK sets the criteria and then UNHCR identifies and submits potential cases for consideration', so sponsors cannot name preferred candidates themselves – thus reducing risks of fraud, discrimination and potential corruption.¹⁹⁴ Then there is a security screening and an **exclusion** process upon which certain cases may be rejected on 'war crimes or other grounds' without further elaboration. It is unclear how these are assessed and whether they expand on the Refugee Convention exclusion clauses, with the potential of rendering the process arbitrary. And there is **no** provision for **appeals or legal remedies** in cases of rejection. On completion of the screening phase, a full medical assessment is undertaken by the IOM, which also provides pre-departure and travel support. On **confirmation** of eligibility, an initial three-month entry visa is issued for travel, followed by a five-year Refugee Leave permit granted on arrival.¹⁹⁵ The whole process takes up substantial time, which has translated into long waits and the programme initially stalling for several months after launching.¹⁹⁶

3. Private sponsorship mechanisms

Private sponsorship is a slightly different mechanism from community sponsorship schemes. It **enables private citizens** – such as 'groups of five' in Canada – **to support individual arrivals** by family members and extended kin, who – at least in the case of Canada – have already been recognised as refugees by UNHCR or a foreign state.¹⁹⁷ The **first programme emerged in Canada** in 1979 and has resettled nearly 300,000 refugees since.¹⁹⁸ The sub-quota for 2018 was 16,000 of the total resettlement target, which represents 64 per cent of the entire number of refugees resettled to Canada that year.¹⁹⁹ The costs, in addition, are considerable. They have been estimated to be around CA\$16,500 for one individual and CA\$32,300 for a family of five for the first year of resettlement,²⁰⁰ raising criticism for the **privatisation/commodification effects on protection** that the programme produces.²⁰¹ On the other hand, the government provides for healthcare, education and integration services, and applicants are exempted from visa fees. Access to social security benefits is

194 See n 189 above, 6.

195 *Ibid.*

196 'UK community refugee scheme has resettled only two Syrian families' *The Guardian* (London, 18 January 2017) www.theguardian.com/uk-news/2017/jan/18/uk-community-refugee-scheme-has-resettled-only-two-syrian-families accessed 26 July 2019.

197 Government of Canada, *Groups of Five – Sponsor a Refugee*, 4 October 2018 www.canada.ca/en/immigration-refugees-citizenship/services/refugees/help-outside-canada/private-sponsorship-program/groups-five.html accessed 26 July 2019.

198 Asylum Insight, 'Private Sponsorship', 14 September 2017 www.asyluminsight.com/private-sponsorship/#.Wq-c9q10f3A accessed 26 July 2019.

199 See n 109 above, 2. The number was very similar in 2017: see Government of Canada, *Notice – Supplementary Information 2017 Immigration Levels Plan*, 31 October 2016 www.canada.ca/en/immigration-refugees-citizenship/news/notices/notice-supplementary-information-2017-immigration-levels-plan.html accessed 26 July 2019.

200 Government of Canada, *Guide for Groups of Five to privately sponsor refugees (IMM 2200), Sponsorship Cost Table for Privately-sponsored Refugees*, 10 May 2019 www.canada.ca/en/immigration-refugees-citizenship/services/application/application-forms-guides/guide-sponsor-refugee-groups-five.html#appendixA accessed 26 July 2019.

201 See, eg, Canadian Council for Refugees, *2017 Immigration Levels – Comments (undated)* <http://ccrweb.ca/en/2017-immigration-levels-comments> accessed 26 July 2019.

allowed from the second year after arrival.²⁰² So, in all, the scheme represents a public-private partnership that seems to work well.

In 2016, the Canadian model **inspired the UNHCR-led Global Refugee Sponsorship Initiative (GRSI)** designed to support other countries to adopt similar schemes.²⁰³ **Australia**, for instance, followed suit and launched its **Community Support Programme** on 1 July 2017²⁰⁴ after a four-year pilot,²⁰⁵ permitting individuals, businesses and community groups to sponsor eligible cases. The numbers, however, are small, with a yearly quota of 1,000.²⁰⁶ Qualification conditions include protection-related criteria, such as being outside the country of origin and subjected to 'substantial discrimination', but also require applicants to fall within Australia's settlement priorities, and meet specific health and character standards.²⁰⁷ Those with a job offer or likely to become financially independent in the short term are given priority. Actually, individuals need to show that they are 'employable and capable of supporting themselves by the end of their first year in Australia'.²⁰⁸ Prospective beneficiaries also need to be fluent in English and aged between 18 and 50. Applications must be submitted by an approved proposing organisation, under agreement with the government, with the skills and experience to administer the settlement process. Entrants under this scheme are non-eligible for government support, neither pre-departure nor post-arrival. It is the APO, either independently or in conjunction with Australian family members or other community organisations, that has to cover the costs of the application (which carries a fee) alongside the costs of pre-arrival arrangements (including medical tests and transportation), as well as post-arrival settlement, providing support and services 'commensurate with those received by other humanitarian entrants'.²⁰⁹ This includes social security payments, for the first year, which virtually shifts responsibility for material subsistence and community integration to the private sector.²¹⁰ The government has, in fact, projected savings of AU\$26.9m over four years, showing no intention of reinvesting gains into other publicly funded resettlement opportunities.²¹¹ So, one key drawback of the Australian scheme is that it is not based on the principle of additionality. Indeed,

202 Government of Canada, *Guide to the Private Sponsorship of Refugees Programme*, 14 January 2019 www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/guide-private-sponsorship-refugees-programme.html accessed 26 July 2019.

203 UNHCR, *The GRSI* (2019) <http://refugeesponsorship.org> accessed 26 July 2019.

204 Australian Department of Home Affairs, *Community Support Program*, 11 December 2018 <https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/community-support-program> accessed 26 July 2019.

205 Australian Refugee Council, *Community Proposal Pilot and Community Support Program*, 29 May 2019, www.refugeecouncil.org.au/getfacts/seekingsafety/resettlement/community-support-program accessed 26 July 2019.

206 Australian Minister for Immigration and Border Protection, '2017 Budget', Media Release, 9 May 2017 http://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/5266893/upload_binary/5266893.pdf;fileType=application%2Fpdf#search=%22media/pressrel/5266893%22 accessed 26 July 2019.

207 Australian Government, *Community Support Program*, 17 January 2019 <https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/community-support-program/how-to-apply> accessed 26 July 2019.

208 See n 114 above, 3.

209 *Ibid* 12.

210 Australian Government, *Global Special Humanitarian visa (subclass 202)*, 11 December 2018 <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/global-special-humanitarian-202> accessed 26 July 2019.

211 Australian Government, *Budget Measures – Budget Paper No 2 (2017–18)*, 9 May 2017, 15 https://parlinfo.aph.gov.au/parlInfo/download/library/budget/2017_15/upload_binary/bp2.pdf;fileType=application%2Fpdf#search=%22library/budget/2017_15%22 accessed 26 July 2019.

sponsored places are integrated within the general government resettlement quotas, instead of creating additional protection capacity. The scheme, thus, reduces the overall spaces available under the general Humanitarian Programme.²¹² On the other hand, processing times seem to be faster than under alternative routes, prompting criticism that it is serving wealthy applicants to purchase 'priority access' to asylum.²¹³ Finally, the focus on business or individual employers being sponsors, rather than (real) communities of extended kin, diasporas or other support networks, runs the risk of economic exploitation, ultra-dependency and relationship breakdown.²¹⁴

In the **EU**, some countries have followed the Canadian example more closely. The **German Family Assistance Programme (FAP)**, for instance, facilitates family reunion with Syrian relatives affected by the conflict. Since 2013, more than 20,000 visas have been issued for the purpose and the programme is open-ended.²¹⁵ The criteria require relatives (either German citizens or legal residents) to sign a binding declaration assuming personal liability for all travel and accommodation expenses up to five years after arrival in Germany – excluding medical care costs, integration programmes, and education and vocational training expenses. The referral is done directly by the sponsoring kin and the beneficiary is then issued with a two-year renewable permit on humanitarian grounds. However, a subsequent successful asylum application will not release the sponsor of their obligations. Visa applications are processed and issued by German representations abroad, which has proved challenging given the high number of applications received, translating into strained capacity and long waiting periods of up to 1.5 years.²¹⁶ This is why, since June 2016, **IOM 'service centres'**, located in close proximity, have provided individual assistance in purpose-built facilities to alleviate pressure on German consular offices, accelerating processing times and releasing German authorities of application-preparation and pre-departure orientation tasks, allowing the programme to run smoothly. Several FAP centres have opened in Turkey, Iraq and Lebanon.²¹⁷

A similar initiative has been adopted in Ireland. The **Irish Humanitarian Admission Programme (IHAP)** started operating in 2018 through a three-way collaboration between UNHCR, the government and civil society organisations. Under the IHAP, up to 530 eligible family members of citizens or persons with a protection status, of good character and living in Ireland, acting as 'proposer', can be admitted to the country

212 Khanh Hoang, 'Risks and rewards in Australia's plan for private sponsorship', UNSW Kaldor Centre for International Refugee Law, 16 May 2017 www.kaldorcentre.unsw.edu.au/publication/risks-and-rewards-australias-plan-private-sponsorship accessed 26 July 2019.

213 Susan Kneebone, Asher Hirsch and Audrey Macklin, 'Private resettlement models offer a way for Australia to lift its refugee intake' (*ABC News*, 19 September 2016) www.abc.net.au/news/2016-09-19/private-resettlement-a-way-for-australia-to-lift-refugee-intake/7857988 accessed 26 July 2019.

214 See n 204 above.

215 ICMC, *Private Sponsorship in Europe – Expanding Complementary Pathways for Refugee Resettlement* (September 2017), 27 www.icmc.net/sites/default/files/documents/scoping-paper-icmc-europe-2017.pdf accessed 26 July 2019.

216 *Ibid* 28 and 29.

217 German Federal Foreign Office, *IOM's Family Assistance Programme*, 4 April 2017 http://germany.iom.int/sites/default/files/FAP/FAP_Infosheet_ENGLISH_2017-04-04.pdf accessed 26 July 2019. See also, IOM, 'Family Assistance Programme Centre Opens in Erbil to Facilitate Family Reunification in Germany', Press Release, 3 March 2017 www.iom.int/news/family-assistance-programme-centre-opens-erbil-facilitate-family-reunification-germany accessed 26 July 2019.

for over two years. The scheme targets nationals of the ten main refugee-producing countries, as per the UNHCR *Global Trends: Forced Displacement in 2018 report*, and who belong to the (also 'extended') family of the 'proposer'. Beneficiaries must either be in the country of origin, a neighbouring state or be registered with UNHCR, and those who can show a compelling humanitarian need to be reunited in Ireland are given priority, but there is no obligation to strictly qualify as refugees or beneficiaries of subsidiary protection. A full exclusion, security and good character screening is undertaken for the 'proposer', but not for the proposed family member. Instead, the 'proposer' must sign a statutory declaration confirming that the beneficiary does not fall within the Refugee Convention exclusion clauses, that they have never committed a crime, and that they, otherwise, pose no danger to the community or to the security of any EU country.²¹⁸ If approved, the beneficiaries are expected to be accommodated and catered for by the 'proposers', and 'nominations from proposers who are evidently in a clear position to accommodate their eligible family members in Ireland will be prioritised'.²¹⁹ Since the programme was launched, 166 family members have been granted permissions, of whom 99 have already arrived in Ireland, as of July 2019.²²⁰

4. Conclusions

Sponsorship schemes, particularly those that are community-based, hold promising potential to create/consolidate an alternative pathway to international protection to vulnerable persons. Yet, **arrangements vary significantly** across countries, which impedes rapid upscaling and systematisation.

On the negative side, the **numbers** catered for are small. Programmes tend not to be open-ended, but **geographically bounded** and **limited in time**. **Processing times** tend to be long. Selection criteria are complex and **not always protection-related**. Few initiatives allow for self-referrals and instead rely on referrals by UNHCR or the sponsors themselves. The involvement of private actors may produce accessibility issues, considering the amount of resources and expertise required, leading to risks of **'privatisation' or 'commodification' of protection**.

On the positive side, schemes tend to create **additional protection space**, adhering to the principles of additionality and complementarity, offering safe and regular alternatives to 'spontaneous arrivals'. All programmes, indeed, constitute a **display of solidarity** with the beneficiaries and the international protection community at large. Subject as they are to states conducting character and related checks prior to departure, they allow for **very high levels of security** – the Irish example offers an interesting adaptation in this respect, in that it allows for the sponsor (or 'proposer', in the language of the IHAP)

218 Irish Government, IHAP Proposal Form www.inis.gov.ie/en/INIS/form-ihap-proposal.pdf/Files/form-ihap-proposal.pdf accessed 26 July 2019.

219 Irish Government, *Irish Refugee Protection Programme Humanitarian Admission Programme 2 (IHAP)*, 21 February 2018 [www.inis.gov.ie/en/INIS/Pages/irish-refugee-protection-programme-humanitarian-admission-programme-2-\(ihap\)](http://www.inis.gov.ie/en/INIS/Pages/irish-refugee-protection-programme-humanitarian-admission-programme-2-(ihap)). See also n 139 above, *EASO Annual Report 2018*, 35 and 36.

220 Irish Government, 'Ministers Flanagan and Stanton meet UN High Commissioner for Refugees', Press Release, 11 July 2019 https://merriionstreet.ie/en/News-Room/Releases/Ministers_Flanagan_and_Stanton_meet_UN_High_Commissioner_for_Refugees.html accessed 26 July 2019.

to sign a declaration on behalf of the 'proposed' resettlement candidate warranting their good character with any controls being undergone by the 'proposed' upon arrival in Ireland. The involvement of private (especially family) and community sponsors **facilitates integration** and **social acceptance**, thereby **diminishing risks of disengagement** with the system. The **support of UNHCR** and other specialised agencies and organisations **boosts confidence and compliance with best standards**. Most importantly, for current purposes, several of the schemes **allow for resettlement from within the country of origin**/nationality of potential beneficiaries, thereby offering a direct means of access to protection, rather than via a first country of asylum.

Chapter 3. Humanitarian visas

1. Introduction

Like sponsorship mechanisms, humanitarian visas, especially as recently practised, in response to the Syrian crisis, provide for a cooperative endeavour between states and NGOs, sometimes with UNHCR support. The key difference is the type of protective arrangement they give rise to. Different from ‘classic’ resettlement and private or community-based sponsorship schemes, humanitarian visas **may or may not entail the grant of a protective status directly on arrival**. In certain cases, such as the Argentinian and Brazilian experiences, in a way very similar to ‘normal’ resettlement, they facilitate admission, after completion of RSD, and provide refugee status immediately upon entry.²²¹ But in other cases, which this chapter further looks into, they only furnish a **channel of safe and legal access to the territory** of the country concerned. Beneficiaries are selected in the country of origin or transit following a **‘lighter’ procedure**, without determining whether they qualify as refugees, for subsidiary protection status, or for other types of immigration permits under domestic law. They are rather **evaluated on a prima facie basis, screened out for security risks** and assisted in preparations for travel to the country of destination. It is only once they enter that they are admitted to the ordinary asylum procedure and their needs assessed in the same way as those of ‘spontaneous arrivals’. There are several examples of past and current schemes that embrace this basic premise. The sections below discuss ‘humanitarian corridors’ and regional initiatives at EU level as illustrations.

2. Country programmes: ‘humanitarian corridors’

A recent study for the European Parliament revealed that up to 16 EU countries have had humanitarian visa schemes in the past.²²² These have progressively been dismantled for different reasons, but have slowly started to re-emerge in the aftermath of the Syrian crisis. As of today, **Italy, France, Belgium** and **Andorra** have humanitarian visa schemes in the form of ‘humanitarian corridors’. These schemes are **quota-based, time-bound** and, typically, **limited to specific nationalities or profiles of displaced persons**. They use either short-term or long-term visa provisions, under either Schengen or domestic regulations, and involve a referral mechanism on the part of participating organisations, who also fund the scheme.²²³

2.1 Italy

In Italy, a coalition of several religious groups, including the Community of Sant’Egidio, the Federation of Evangelical Churches and the Waldensian Board, signed a memorandum of understanding with the Italian Ministries of Interior and Foreign Affairs in December 2015

²²¹ See n 33 above, 9.

²²² Iben Jensen, *Humanitarian Visas: Option or Obligation?*, PE 509.986 (September 2014) www.europarl.europa.eu/RegData/etudes/STUD/2014/509986/IPOL_STU%282014%29509986_EN.pdf accessed 26 July 2019.

²²³ See n 215 above, 17–23. See also n 139 above, *EASO Annual Report 2018*, 36.

for a two-year pilot programme, ensuring safe access to protection for 1,000 persons, **in addition to** the parallel **resettlement** scheme of the Italian government. The rhythm of implementation, unlike other community sponsorship schemes, has been swift from the beginning, with almost 90 per cent of the quota already filled by August 2017.²²⁴

The **beneficiaries** of the pilot were Syrian refugees displaced to either Lebanon or Morocco, from where the 'humanitarian corridor' was run by the faith-based groups. They were **identified on a prima facie basis** and **referred by the sponsors' local networks** on consideration of **vulnerability**, in consultation with UNHCR, targeting, especially, 'victims of persecution, torture and violence, as well as families with children, elderly people, sick people, and persons with disabilities'.²²⁵ But the project did not distinguish between refugees and others. It rather focused on 'individual cases determined by personal situation, age and health status, which are not a priority in the Geneva Convention'.²²⁶ Once identified, candidates were interviewed and after a **security screening process** by the Consular authorities, a **three-month visa** was issued on 'humanitarian grounds' for entry into Italy, for the sole purpose of **lodging an asylum application immediately upon arrival**.

One hundred per cent of cases submitted through this channel subsequently **qualified** for international protection following expedited procedures. However, **after qualification**, instead of the beneficiaries being treated like any other refugee or person with subsidiary protection status, their **material and other needs have been attended to by the sponsors** rather than the Italian state. Indeed, costs relating to accommodation, subsistence and access to services have all been covered by the sponsoring groups for an initial period of up to two years after recognition – thus deviating from the normal Qualification Directive provisions. The programme is, in fact, **entirely self-funded by the participating organisations**.

Another obligation of participating organisations is to provide **legal assistance** for the beneficiaries to be able to submit their asylum applications on arrival. Prior to that, **travel arrangements** for entry into Italy, including transportation, are also to be provided for by the sponsor. The sponsor is also in charge of furnishing **psychological and emotional support**, and **cultural and social guidance**, throughout the settlement process following from a successful asylum application.²²⁷ Each organisation has, therefore, developed its own approach, according to individual capacities and expertise, which has led to an amount of uncertainty as to the quality and duration of settlement assistance in individual cases.²²⁸

224 See n 215 above, 17.

225 Sant'Egidio, 'Humanitarian Corridors for Refugees' (undated) <http://archive.santegidio.org/pagelD/11676/langID/en/Humanitarian-Corridors-for-refugees.html> accessed 26 July 2019.

226 Chloe Lyneham, 'Humanitarian Corridors are Saving Lives', *Info Migrants*, 10 November 2017 www.infomigrants.net/en/post/6020/humanitarian-corridors-are-saving-lives accessed 26 July 2019. See also Alberto Mallardo, 'Humanitarian Corridors: A Tool to Respond to Refugees' Crises', *Border Criminologies*, 3 May 2017 www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2017/05/humanitarian accessed 26 July 2019.

227 Sant'Egidio, *Corridoi Umanitari in Europa*, Updated 27 June 2019, 4 www.santegidio.org/downloads/Dossier-Corridoi-Umanitari-20190627-web.pdf accessed 26 July 2019.

228 See n 215 above, 20.

Nevertheless, the **overall assessment** by participating organisations has been **very positive**. The key objectives of the programme have been fulfilled: It provides a safe and legal entry channel, alternative to smuggling and trafficking rings, thus avoiding dangerous journeys across the Mediterranean, which benefits vulnerable persons.²²⁹ As a result, a new memorandum was signed in February 2017 for an extra 500 places that were to be filled until the end of 2018. This time, the target group were Eritrean, Somali and Sudanese refugees displaced to Ethiopia, hence expanding the initial focus on Syrian exiles.²³⁰ On expiry of the pilot on Syrian refugees, a further memorandum was agreed in November 2017 to renew the programme for another 1,000 persons. Finally, the smaller programme, targeting the Horn of Africa, has equally been renewed, on 3 May 2019, for another 600 places, for Ethiopian and Nigerien refugees. In all, this means that the initiative counts nearly 2,500 beneficiaries who have already been transferred to Italy.²³¹

The scheme has been so well received that it has been replicated in three other European states. The ‘humanitarian corridors’ programme also runs in **Belgium** and **Andorra**. As in Italy, it is sponsored by Saint’Egidio, but on a much smaller scale. In Belgium, the quota is for 150 Syrian nationals from Turkey and Lebanon,²³² while in Andorra it is 20, also for Syrians from Lebanon.²³³ The procedure is tailored to the Italian model and uses the mechanism of short-term visas, allowing beneficiaries to travel safely and lodge an asylum claim on arrival. The French ‘humanitarian corridor’ is slightly different and is, therefore, explored separately in the next section.

2.2 France

In March 2017, France followed Italy’s example and opened a corridor from Lebanon for 500 Syrian and Iraqi nationals in a vulnerable situation, to last until the end of 2018. The memorandum was signed by five promoting organisations, that is, the Saint’Egidio Community, Protestant Federation of France, French Bishops’ Conference, *Entraide Protestante* and *Secours Catholique*.²³⁴ The scheme is not based on the Schengen short-term visa provisions, but on **domestic long-stay visa** regulations, whereby the candidate is delivered a **‘visa pour asile’** and granted permission to travel to France to apply for asylum on arrival.²³⁵

229 See n 227 above, 4.

230 ‘First African refugees to Italy via humanitarian corridors’, ANSA, 30 November 2017 www.infomigrants.net/en/post/6338/first-african-refugees-to-italy-via-humanitarian-corridors?utm_source=ECRE+Newsletters&utm_campaign=ff8195c031-EMAIL_CAMPAIGN_2018_02_23&utm_medium=email&utm_term=0_3ec9497afd-ff8195c031-420552073 accessed 26 July 2019.

231 Sant’Egidio, ‘*Corridoio Umanitari*’ (undated) www.santegidio.org/pagelD/30112/langID.html accessed 26 July 2019. See further n 227 above, 3.

232 Sant’Egidio, ‘*29 réfugiés syriens arrivent en Belgique par des “couloirs humanitaires”*’, 22 September 2018 www.santegidio.be/fr/29-refugies-syriens-arrivent-en-belgique-par-des-couloirs-humanitaires accessed 26 July 2019.

233 Parliament of Andorra, *ley de protección temporal y transitoria por razones humanitarias* (Ley 4/2018, 22 de marzo). See also Sant’Egidio, ‘*Empiezan los primeros corredores humanitarios en Andorra*’, 25 October 2018 www.santegidio.org/pagelD/30284/langID/es/itemID/27776/Sant-Egidio-empiezan-los-primeros-corredores-humanitarios-en-Andorra-en-Andorra.html accessed 26 July 2019.

234 ‘Humanitarian corridors: France joins Italy; Hollande and Giro, step forward against globalization of indifference’, *ONU Italia*, 14 March 2017 www.onuitalia.com/2017/03/14/humanitarian-corridors-france-joins-italy-hollande-giro-step-forward-globalization-indifference accessed 26 July 2019.

235 See n 215 above, 21.

In the French ‘humanitarian corridor’ – similarly to the Italian scheme – the **sponsor** assumes a number of **responsibilities** for travel, accommodation, settlement and integration support for one year. But, in terms of **beneficiaries**, unlike the Italian experience, the programme can also accommodate applications from persons with family or other links to France rather than just vulnerable cases.²³⁶

The **procedure** is very similar to the Italian one: the sponsor carries out scoping interviews, submits a list of candidates and a completed visa application for each of them to the French Consular authorities in Beirut. Embassy personnel, in consultation with the Ministry of Interior, undertake a security check and then issue a Visa D within two months. Candidates have 15 days to **apply for asylum after arrival**, and the asylum services have three months to reach a decision. In the meantime, applicants do not have the right to work. Care, throughout this period, as in the Italian model, is provided by the sponsor.²³⁷

A previous **humanitarian visa programme**, administered directly by the government, running from 2012 until 2016, allowed for the self-referral, mostly via relatives, of 8,900 Syrians and Iraqis.²³⁸ It seems that the scheme was resumed in 2018, with 998 ‘*visas pour asile*’ issued to Syrian nationals, and another 1,013 to Iraqis.²³⁹ A similar, though very targeted initiative was launched in December 2018, under the French Humanitarian Strategy (2018–2022),²⁴⁰ regarding **100 Yazidi women** stranded in Iraq, who were victims of sexual crimes by Islamic State (IS) fighters.²⁴¹ Unlike the ‘humanitarian corridors’, this smaller scheme is **entirely funded by the French state**, including costs regarding protection, security, education, medical and social support upon arrival. The government signed an agreement with the IOM for the management of the logistics of the scheme, which is ongoing.²⁴² As of May 2019, 28 Yazidi families (130 persons in total) had arrived in France under the programme.²⁴³

236 *Ibid* 22.

237 *Ibid* 23.

238 *Ibid* 21.

239 See n 139 above, *EASO Annual Report 2018*, 36.

240 French Government, *Emergency Humanitarian Action* www.diplomatie.gouv.fr/en/french-foreign-policy/emergency-humanitarian-action; and *France Humanitarian Strategy (2018–2022)* www.diplomatie.gouv.fr/IMG/pdf/strategie_humanitaire_2018-_eng_cle4c3b27-3.pdf accessed 26 July 2019.

241 ‘France to take in 100 Yazidi women stranded in Iraqi Kurdistan’, *France24*, 25 October 2018 www.france24.com/en/20181025-france-take-100-yazidi-women-iraqi-kurdistan accessed 26 July 2019.

242 ‘Signing of an agreement between France and the International Organization for Migration on welcoming 100 Yazidi women’, *France Diplomatie*, 10 May 2019 www.diplomatie.gouv.fr/en/french-foreign-policy/emergency-humanitarian-action/events/article/signing-of-an-agreement-between-france-and-the-international-organization-for accessed 26 July 2019.

243 ‘France takes in 28 Yazidi families who have been victims of Daesh – Communiqué’, *France Diplomatie*, 22 May 2019 www.diplomatie.gouv.fr/en/country-files/iraq/events/article/france-takes-in-28-yazidi-families-who-have-been-victims-of-daesh-communiqué-22 accessed 26 July 2019. See also, ‘IOM Assists Over 130 Yazidis to Resettle from Iraq to France’, IOM Press Release, 22 May 2019 www.iom.int/news/iom-assists-over-130-yazidis-resettle-iraq-france accessed 26 July 2019.

3. Regional initiatives: EU humanitarian visas

The EU has grappled with so-called protected-entry procedures for some time. The first detailed study on the matter, collecting national experiences and reflecting on ways in which these could be harmonised and upscaled, dates from 2002.²⁴⁴ Since then, the idea of an **EU humanitarian visa** has returned to the table at several points. One of the most concrete shapes the initiative has taken has been in the form of the **Voluntary Humanitarian Admission Scheme (VHAS)** (the 'VHAS Recommendation'),²⁴⁵ adopted as part of the implementation of the EU-Turkey Statement, which has also served as inspiration to the EU Resettlement Framework proposal.²⁴⁶ As expounded below in Section 3.1, the scheme represents a mixture between a 'classic' resettlement programme and a humanitarian visa scheme, in that it involves a process similar to the one followed in resettlement, targeting persons hosted in a first country of asylum, while, at the same time, it does not entail full RSD, but rather the issuance of a temporary permit that allows the individual to subsequently lodge an asylum application upon arrival. An alternative scheme, which would operate directly from countries of origin, has been put forward in a recent study for the European Parliament.²⁴⁷ This subsequently formed the basis of the Humanitarian Visa Resolution adopted in December 2018 by the Plenary, inviting the European Commission to submit a legislative instrument to give it effect,²⁴⁸ and is discussed in section 3.2.

3.1 The EU-Turkey VHAS

The VHAS has developed under the EU-Turkey Statement regime, providing for a one-to-one 'exchange', according to which for every Syrian national irregularly crossing into the Greek islands and readmitted to Turkey from the EU, one Syrian refugee is to be resettled in the EU from Turkey.²⁴⁹ The VHAS aims to provide Syrian refugees in Turkey with 'orderly, managed, safe and dignified' access to international protection in an EU Member State and to demonstrate international solidarity.²⁵⁰ But it also aims to reduce the number of irregular arrivals. In fact, 'the number of persons to be admitted... is to be determined regularly taking into account... the sustainable reduction of numbers of persons irregularly crossing... into the European Union'.²⁵¹ Admission under the scheme is, thus,

244 Gregor Noll, Jessica Fagerlund and Fabrice Liebaut, *Study on the feasibility of processing asylum claims outside the EU against the background of the Common European Asylum System and the goal of a Common Asylum Procedure*, European Commission, 2002 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/pdf/asylumstudy_dchr_2002_en_en.pdf accessed 26 July 2019.

245 Commission Recommendation of 15 December 2015 for a VHAS with Turkey, C(2015) 9490, 15 December 2015.

246 See n 119 above, Recitals 4, 5 and 12 of the Draft Regulation.

247 Violeta Moreno-Lax, *Annex I: The Added Value of EU Humanitarian Visas-Legal Aspects*, in *European added value assessment accompanying the European Parliament's legislative own-initiative report (Rapporteur: Juan Fernando López Aguilar) – Study*, 22 October 2018 <https://publications.europa.eu/en/publication-detail/-/publication/a3b57ef6-d66d-11e8-9424-01aa75ed71a1/language-en/format-PDF> accessed 26 July 2019.

248 European Parliament, Resolution of 11 December 2018 with recommendations to the Commission on Humanitarian Visas (2018/2271(INL)) www.europarl.europa.eu/doceo/document/TA-8-2018-0494_EN.html?redirect#ref_2_1 accessed 26 July 2019.

249 See n 144 above, para 2.

250 See n 245 above, Recitals 4 and 6.

251 *Ibid*, Recital 10 and para 3.

strictly **subordinated to Turkey's** success in **halting unwanted immigration** rather than premised (solely or, at least, principally) on the candidates' protection needs – actually, the document includes a section on the 'prevention of secondary movements' that corroborates this approach, making pre-departure orientation and support targeted to informing candidates 'in particular' of 'the consequences of onward movement'.²⁵² The underpinning rationale is, therefore, not to expand asylum space per se, but to stem the flow of asylum seekers coming via Turkey into the EU and to prevent irregular intra-EU movement upon arrival, which detracts credibility from the EU's commitment 'to create a system of solidarity and burden sharing with Turkey for the protection of persons forcefully displaced by the conflict in Syria'.²⁵³

Once the Member States reach the 'common conclusion' that such is the case,²⁵⁴ the system is deployed based on a double-referral process, whereby UNHCR makes 'a recommendation... following [a] referral by Turkey', but only with regard to displaced persons 'who have been registered by the Turkish authorities prior to 29 November 2015' – thereby substantially reducing the pool of potential **beneficiaries**.²⁵⁵ Participation in the scheme is strictly voluntary. So, it is unclear why participating countries 'should take into account... absorption, reception and integration capacities, the size of the population, total GDP, past asylum efforts, and the unemployment rate' when accepting applicants²⁵⁶ – a distribution key only makes sense in cases where pre-defined, compulsory quotas or some other allocation mechanism is in place.

Decisions under the VHAS are to be taken according to a 'standardised' admission **procedure** with several elements – modelled on 'classic' resettlement programmes, including identity and registration checks, security and medical screenings, a vulnerability evaluation 'according to UNHCR standards' and an assessment of possible family links (although limited to 'the participating states') – alongside a 'preliminary assessment of the reasons for fleeing from Syria', rather than a full status determination process. In fact, persons are to be selected on a **prima facie basis**, 'as [being] in need of international protection, [and] without having a profile that could bring them under the scope of the exclusion clauses'.²⁵⁷ They must fall within at least one of the UNHCR resettlement submission categories. The assessment is undertaken on the basis of documentary evidence and/or an interview with the selected candidate,²⁵⁸ who can be **excluded** due to 'reasons for exclusion from international protection' under the Qualification Directive or because of security concerns.²⁵⁹

252 *Ibid*, paras 12–13.

253 *Ibid*, Recital 3.

254 *Ibid*, para 6.

255 *Ibid*, para 2.

256 *Ibid*, para 4.

257 SOPs were agreed in May 2016. See EC Presidency, VHAS with Turkey – Endorsement, Council doc 14571/1/17 REV1, 5 December 2017, ANNEX, p 4 <http://data.consilium.europa.eu/doc/document/ST-14571-2017-REV-1/en/pdf> accessed 26 July 2019.

258 *Ibid*, 10.

259 See n 245 above, para 7.

The process should be run through a ‘collaborative effort of the participating Member States, Turkey, UNHCR and EASO’, according to standardised operating procedures (SOPs),²⁶⁰ prepared by EASO and designed in consultation with ‘the Commission, participating states, the Turkish authorities, UNHCR and IOM’.²⁶¹ Nevertheless, all final **decisions**, to be adopted within six months,²⁶² rest solely (and **without appeal**) with the Member State concerned.²⁶³

Rather than refugee status, once admitted in the territory of the country of resettlement, successful candidates are to be granted **subsidiary protection** or an ‘equivalent temporary status under national law’, with a minimum duration of one year.²⁶⁴ But, according to the SOPs adopted to give effect to the scheme,²⁶⁵ ‘[t]his is without prejudice to the right of the admitted candidate to [subsequently] apply for and be granted international protection in the framework of an asylum procedure’.²⁶⁶

To foster **operational cooperation** between the authorities of participating EU countries, the VHAS Recommendation also suggests that ‘common processing centres and/or mobile teams’ be developed, ‘where staff of one participating State is authorised to represent another participating State for the purpose of conducting whole or part of the selection process on behalf of that other State’, including for ‘the assessment of documentation and the conducting of interviews’. The idea is that this takes place ‘either at the representation or in the province where the admission candidate is registered’.²⁶⁷ But the procedures to follow, the regulatory framework applicable in such cases, and any due process guarantees and effective remedies have not been specified – and the SOPs are also silent in this respect.

Up until March 2019, although the VHAS is yet to be officially activated, 20,292 individuals have been resettled from Turkey following similar arrangements. Irregular arrivals through the Aegean Sea are at a historical low; 97 per cent lower than in the period preceding the EU-Turkey Statement.²⁶⁸ Nonetheless, Turkey continues, for the fifth year in a row, to be the top country of asylum in the world, hosting 3.7 million (mostly Syrian) refugees.²⁶⁹ Syrians, from their part, remain the top refugee nationality, with 6.7 million displaced since the outbreak of the conflict in 2011.²⁷⁰ This is not to diminish the importance of the 20,292 resettled in the EU (and Schengen Associate Countries), but to put it in perspective. The number represents 0.5 per cent of the total refugees hosted by Turkey alone. So, insisting – as the European Commission does – that

260 See n 257 above.

261 See n 245 above, para 8.

262 *Ibid*, para 10.

263 *Ibid*, para 9.

264 *Ibid*, para 11.

265 See n 257 above. See also n 119 above, Recital 5 of the Draft Regulation.

266 See n 257 above, 12.

267 For a thorough critique of the EU-Turkey VHAS, see Violeta Moreno-Lax, *Europe in Crisis: Facilitating Access to International Protection, (Discarding) Offshore Processing and Alternatives for the Way Forward*, (Red Cross EU Office, 5 February 2016), <https://redcross.eu/positions-publications/europe-in-crisis-facilitating-access-to-protection-discarding-offshore-processing-and-mapping-alternatives-for-the-way-forward>.

268 See n 145 above, 1–2.

269 See n 2 above.

270 *Ibid*.

'more progress on returns to Turkey [is] needed',²⁷¹ appears to be unjustified – at least, from a pure 'responsibility sharing' perspective. It is also necessary to take into account in this context that Turkey has been disqualified as a 'safe third country' for Syrians by several observers – including, not least, the Greek courts, with 390 out of 393 decisions of the Greek Asylum Appeals Committees ruling that safe third country criteria were not met with regard to Turkey.²⁷²

3.2 *Towards a streamlined EU humanitarian visa?*

The European Parliament has been recurrently calling for humanitarian visas, especially since the outbreak of the 'refugee crisis' in the summer of 2015 and against the background of the massive death toll in the Mediterranean.²⁷³ It has tried to introduce provisions in this respect within the Common Visa Code, but failed due to opposition by both the European Commission and the Council. As an alternative, the Committee on Civil Liberties, Justice and Home Affairs (LIBE) drew up a legislative own-initiative report, requesting the European Commission to table a proposal for a legal instrument establishing a European Humanitarian Visa by the end of March 2019.²⁷⁴ The request, however, has gone unheeded. The European Commission has instead proposed to focus efforts on the adoption of the URF Regulation, citing political unfeasibility as a reason not to pursue the humanitarian visa route.²⁷⁵ Nonetheless, the recommendations in the LIBE report contain elements for an innovative solution worth considering at length.

The **starting point** is the 'current paradoxical situation',²⁷⁶ whereby persons in need of international protection are subjected, under EU law, to visa requirements for travel to a potential country of asylum in the EU, but, at the same time, are unable to obtain them precisely because, as protection seekers, they are in no position to show willingness and ability to return to the country of provenance upon expiry of the visa when submitting their applications. Otherwise, 'there is in EU law no provision as to how [else] a refugee should actually [legally] arrive, leading to a situation that almost all arrivals take place in

271 See n 145 above, 3.

272 Mariana Gkliati, 'The EU-Turkey Deal and the Safe Third Country Concept before the Greek Asylum Appeals Committees' (2017) 3 *Movements* 213 <https://movements-journal.org/issues/05.turkey/14.gkliati--eu-turkey-deal-safe-third-country-greek-asylum-appeals-committees.pdf> accessed 26 July 2019. See, especially, Greece 9th Appeals Committee, Judgment No 15602/2017, 29 September 2017, summary and English translation www.asylumlawdatabase.eu/en/case-law/greece-9th-appeals-committee-decision-156022017-29-september-2017 accessed 26 July 2019; and Greece 9th Appeals Committee, Judgment Nos 20802/2018 and 20898/2018, 25 September 2018, summary and English translation www.refworld.org/cases,GRC_ACA,5bc8c2a64.html accessed 26 July 2019. Cf Greek Council of State, Judgment No 2347/2017, 22 September 2017, summary and English translation www.asylumlawdatabase.eu/en/content/greece-council-state-turkey-safe-third-country-and-aspects-greek-asylum-procedure accessed 26 July 2019.

273 See, eg, European Parliament, Resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration (2015/2095(INI)).

274 European Parliament, LIBE, Report with recommendations to the Commission on Humanitarian Visas (2017/2270(INL)), A8-0328/2018, 16 October 2018, 11 (the 'EU Humanitarian Visas Report'). See also n 273 above on the adoption of the Report by the Plenary of the European Parliament in the form of a Resolution on Humanitarian Visas.

275 European Commission, *Commission response to text adopted in plenary*, SP(2019)149, 1 April 2019 [https://oeil.secure.europa.eu/oeil/popups/ficheprocedure.do?reference=2017%2F2270\(INL\)&l=en](https://oeil.secure.europa.eu/oeil/popups/ficheprocedure.do?reference=2017%2F2270(INL)&l=en) accessed 26 July 2019.

276 See n 274 above, 12 within 'Explanatory Statement'.

an irregular manner'.²⁷⁷ The end result is that protection seekers 'need to engage in life-threatening trips'.²⁷⁸

The consequence for Member States is also negative; they are then faced with 'uncontrolled arrivals (with unknown numbers and no information on who is arriving)'. There are attached **costs** as well: human, financial and operational, translating in 'increased efforts necessary to manage such arrivals in terms of enhanced border control and surveillance, search and rescue activities, cooperation with third countries, etc'. Finally, there are also crime-related effects, such as 'ever-stronger organised crime, which benefits from financial gain made by human smuggling'.²⁷⁹

Against this background, the LIBE Committee proposes addressing the situation of foreign nationals 'who are subject to the visa requirement, who are in need of protection against a real risk of being exposed to persecution or serious harm, and who are not covered by any other instrument, such as resettlement'.²⁸⁰ The idea is to provide a legal pathway that is 'complementary to and not [a] substitute [for] the already existing national entry procedures for humanitarian protection, resettlement procedures and spontaneous applications'.²⁸¹ The **solution** they suggest is to put together a harmonised legal framework at EU level for humanitarian visas, that is, visas generally available to 'persons seeking international protection to allow those persons to enter the territory of the Member State issuing the visa for the sole purpose of making an application for international protection in that Member State'.²⁸²

The **beneficiaries** under this initiative would be foreign nationals who are subject to a visa requirement under EU law and who face a risk of persecution or serious harm – coinciding with the categories of persons protected under the Qualification Directive and the principle of *non-refoulement*. By contrast, **family members** 'who would otherwise have a right to join [them] in a timely manner in accordance with other legal acts' would be **excluded**.²⁸³ The idea is that each qualifying applicant submits their own individual application.

It should be possible to lodge **applications** directly by the person concerned (by way of self-referrals), both in person and remotely, through electronic means or by post,

277 *Ibid*, 12 within 'Explanatory Statement' and 6 under 'Justification'. See further, Violeta Moreno-Lax, *Accessing Asylum in Europe* (Oxford University Press, 2017) Ch 3; and see n 273 above, preamble Recitals E and G.

278 See n 274 above, 12 within 'Explanatory Statement'.

279 *Ibid*, 12 within 'Explanatory Statement' and 6 under 'Justification'. See further, Milieu, *Annex II: The Added Value of EU Humanitarian Visas-Economic Aspects*, in *European added value assessment accompanying the European Parliament's legislative own-initiative report (Rapporteur: Juan Fernando López Aguilar) – Study*, 22 October 2018 <https://publications.europa.eu/en/publication-detail/-/publication/a3b57ef6-d66d-11e8-9424-01aa75ed71a1/language-en/format-PDF> accessed 26 July 2019.

280 See n 274 above, 13 within 'Explanatory Statement'.

281 *Ibid*, 5 within 'Motion for a European Parliament Resolution'; and EU Humanitarian Visas Resolution (n 273), Consideration 3.

282 See n 274 above, 3 and 5 within 'Motion for a European Parliament Resolution'; and EU Humanitarian Visas Resolution (n 273), preamble Recital A and Consideration 2. To make accessibility to this kind of visa easier to potential applicants, the LIBE Committee suggests that relevant information be widely posted on the websites of the European External Action Service and the EU Member States' representations abroad. See n 274 above, p 9 under 'Administrative Management and Organisation'.

283 See n 274 above, 7 under 'General Provisions'; and see n 273 above, 5 under 'General Provisions'.

at any diplomatic representation of the Member States. Applications should use a standard form, including the applicant's identity information, biometric identifiers and, if available, documentation substantiating the reasons for the fear of persecution or serious harm underlying the application. There should always be an interview with the applicant, undertaken either in person or remotely, through the use of videoconferencing, for instance, but always in a way that guarantees the security, safety and confidentiality of communications.²⁸⁴

The **assessment** of applications is to be entrusted to an independent and impartial authority, competent in matters of international protection, with adequate knowledge and expertise. Such authority is to reach a decision on a prima facie basis,²⁸⁵ considering the documents submitted, including the applicant's declaration, but 'without conducting a full status determination process', and on account of a **security screening**, through consultation of the relevant EU and national databases.²⁸⁶ But the LIBE report makes clear that 'the assessment [to be carried out] is an assessment of the visa application and not an external processing of an asylum application', due to the many legal and practical questions the latter would give rise to.²⁸⁷

The decision is to be taken in an individualised, written and motivated form, within 15 days, and communicated to the applicant.²⁸⁸ **Positive** determinations lead to the issuance of a visa, allowing its holder to travel to and enter the territory of the issuing Member State 'for the sole purpose of making an application for international protection', upon arrival, in that same Member State.²⁸⁹ On the other hand, a **refusal** to obtain a humanitarian visa should 'not... affect in any way the right to apply for asylum within the Union nor does it prevent the applicant to enter other available protection schemes'.²⁹⁰ There should be the possibility for the rejected applicant to mount an **appeal**, 'as is currently foreseen in the case of a refusal of a short-stay visa or a refusal of entry at the border' under EU rules.²⁹¹ The idea is that humanitarian visas follow as closely as possible the issuing rules applicable to Schengen visas under EU law.²⁹²

To facilitate the **administrative management** of the process, the LIBE report and Parliament Resolution foresee that it should be possible for state authorities to either be posted in consulates or embassies abroad or remain within the issuing country. The issuing procedure, then, could combine elements of direct and remote handling of

284 See n 274 above, 8 under 'Procedures for Issuing Humanitarian Visas'; and see n 273 above, 6 under 'Procedures for Issuing Humanitarian Visas'.

285 See n 274 above, 13 within 'Explanatory Statement'.

286 *Ibid*, 8 under 'Procedures for Issuing Humanitarian Visas'; and see n 273 above, 6 under 'Procedures for Issuing Humanitarian Visas'.

287 See n 274 above, 13 within 'Explanatory Statement'.

288 *Ibid*, 9 under 'Procedures for Issuing Humanitarian Visas'; and see n 273 above, 6 under 'Procedures for Issuing Humanitarian Visas'.

289 See n 274 above, 9 under 'Issuing a Humanitarian Visa'; and see n 273 above, 7 under 'Issuing a Humanitarian Visa'.

290 See n 274 above, 7 under 'General Provisions'; and see n 273 above, 5 under 'General Provisions'.

291 See n 274 above, 9 under 'Procedures for Issuing Humanitarian Visas'; and see n 273 above, 6 under 'Procedures for Issuing Humanitarian Visas'.

292 See n 274 above, 13 within 'Explanatory Statement'.

applications. Cooperation with EU agencies, international organisations and NGOs, is also presented as an option to ease operations.²⁹³ In the same spirit and to ensure participation by Member States, the proposal suggests that EU **funding**, equivalent to that available under the European Resettlement Framework, should be provided in compensation to issuing countries per humanitarian visa delivered to a beneficiary under this scheme.²⁹⁴

4. Conclusions

If ever adopted, the **EU humanitarian visa** would constitute the first streamlined, **grand-scale attempt to provide for a lifeline of primary access to asylum** to persons in need of international protection. Even if ‘the decision to issue European Humanitarian Visas should remain the sole competence of the Member States’,²⁹⁵ as the Plenary of the European Parliament has noted – and would, thus, ‘[not] create a subjective right to request admission and to be admitted or an obligation on the Member States to admit a person in need of international protection’,²⁹⁶ contrary to the fears of the European Commission – the proposal holds the potential to make a very significant difference. The reliance on **self-referrals, prima facie determination** and **swift processing times** creates a **credible substitute for smuggling and trafficking routes**.

The **EU-Turkey VHAS**, by contrast, is **closer to a resettlement mechanism** than a route of primary access to asylum. Its very heavy reliance on deterrence converts it into a system of **migration control**. Nonetheless, the fact that it provides for an option for beneficiaries to lodge a ‘fresh’ international protection application upon arrival at the country of destination entails a component of the humanitarian visa experiments worth noting.

Finally, ‘**humanitarian corridors**’ are absolutely commendable in that they procure a means of access to high-quality asylum to persons displaced in a third country whose status is yet to be formally established. But they differ from the humanitarian visa formula in that they **do not focus**, at least exclusively, **on persons still within their countries of origin**. This, added to the fact that the corridors are entirely funded by community sponsors, makes expansion and replicability harder, and in part explains why the numbers remain small.

293 See n 274 above, 9 under ‘Administrative Management and Organisation’; and see n 273 above, 7 under ‘Administrative Management and Organisation’.

294 See n 274 above, 10 under ‘Final Provisions’; and see n 273 above, 7 under ‘Final Provisions’.

295 See n 273 above, 3, Consideration 3.

296 See n 275 above, 1.

Chapter 4. Emergency Evacuation

1. Introduction

In situations in which needs are so urgent that they do not allow for detailed consideration of the characteristics and circumstances of potential refugees, several emergency mechanisms for their rapid transfer to safer locations have been made available. The slowest (for its complexity) is **'emergency resettlement'**, which requires compliance with all resettlement formalities and works on the premise that beneficiaries have undergone full RSD before travel. The country schemes examined in section 2.1 demonstrate that this route is suboptimal. Only Canada reserves part of its yearly resettlement quota for these cases, which can, nonetheless, take substantial time for processing. The EU version of **'expedited resettlement'**, as proposed by the European Commission in the draft URF Regulation is also considered in section 2.2.

Due to the inadequacy of 'emergency resettlement' responses, **'Evacuation Transit Facilities'** have emerged to facilitate it. As expounded in section 3, they take the form of either **'Emergency Transit Centres (ETCs)'** or **'ETMs'** and are intended as points of transition in between countries of displacement and countries of final destination, so resettlement processing can be undertaken or completed in a secure environment. Section 4, then, explores **evacuation programmes** proper, focusing on the rapid transfer of persons at risk, and typically without full screening, from within the country in which the emergency originates and **directly to the country of final destination**, without intermediary stops. The Italian programme for **humanitarian evacuation from Libya** and the (past and very small) **EU Bethlehem evacuation scheme** launched in 2002 are considered in detail as experiences providing key insights for replication on a broader scale.

2. Emergency resettlement

In addition to 'normal' resettlement procedures, as pointed out in chapter 2, UNHCR may promote **'emergency' resettlement action** in situations requiring an urgent response. Several countries have, accordingly, reserved a number of places from their annual resettlement quotas to cater for such eventualities, or agreed to receive such referrals and to cut down processing times to better respond to need. Nonetheless, in emergency resettlement cases, the **full resettlement processing** protocols and criteria still apply, with UNHCR producing a dossier per identified candidate, including an RRF, and undertaking refugee status screening prior to referral. The key difference in relation to the ordinary priority level is that **deadlines are shorter** and **processing times faster**: 'Ideally, there [should be] a seven-day maximum time period between the submission of an emergency case for acceptance by the resettlement country, and the

refugee's departure'.²⁹⁷ The main resettlement countries, including **Canada**, the **US** and **Australia**, offer examples of this practice.²⁹⁸

2.1 Country schemes

To begin with, **Canada** reserves 100 places for relocation under its Urgent Protection Programme (UPP) to respond to emergency requests from UNHCR, in order to provide urgent protection to persons who qualify for resettlement and, thus, need **expedited processing**.²⁹⁹ Qualifying cases include 'persons in need of urgent protection through resettlement due to **immediate threats to their life, liberty or physical safety**', excluding medical cases.³⁰⁰ In such situations, while it remains important to record and document protection claims as much as possible, the **usual requirements** for biometrics and an interview **may be waived**. The reasons behind the urgent need for resettlement and justifying the abridgment of procedures should, in that case, be 'clearly stated'.³⁰¹ The request should be submitted directly by UNHCR to the migration office that covers the country/area where the refugee resides, which should provide an answer within 24 hours on whether they have the capacity to respond. The guideline is for the entire process to last one week, including medical examinations and background checks. If this is not possible (since checks take, at a minimum, between one to four months to complete), UNHCR should be kept informed of progress. When complete processing for a Permanent Resident Visa cannot be carried out, the competent authority may instead issue a **Temporary Resident Permit**. The Temporary Resident Permit document – similarly to what happens in 'humanitarian corridor' schemes – allows the beneficiary to travel to Canada *before* all the statutory checks have been concluded. Any remaining medical, security and criminality checks are then undergone on arrival, where the beneficiary can **subsequently apply for permanent residency**.³⁰²

The **US** also contemplates the possibility of receiving requests from UNHCR to accept emergency resettlement cases. Although there is **no** specific yearly **quota** reserved to this effect, authorities signal that there is 'very **limited capacity** to process applicants from referral to arrival in approximately 16 weeks'.³⁰³ This is due to limited stringent security clearance procedures, statutory protocols for detecting and treating TB overseas, and the

297 UNHCR, See n 41 above, 246.

298 Some European countries, including Finland, France, the Netherlands, Norway and Sweden also provide a small number of emergency resettlement quotas. Other countries, including the UK, are developing capacity. See, eg, UK Government, *New global resettlement scheme for the most vulnerable refugees announced*, 17 June 2019: 'A new process for emergency resettlement will also be developed, allowing the UK to respond quickly to instances when there is a heightened need for protection, providing a faster route to resettlement where lives are at risk' www.gov.uk/government/news/new-global-resettlement-scheme-for-the-most-vulnerable-refugees-announced accessed 26 July 2019.

299 See n 109 above, 2. See also Government of Canada, *Procedures for processing urgent protection (UPP) cases*, 25 February 2013 www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/refugee-protection/resettlement/processing-urgent-protection.html accessed 26 July 2019.

300 *Ibid* 9.

301 *Ibid* 7.

302 *Ibid* 9.

303 See n 107 above, 3.

regulatory requirement for a face-to-face interview with all applicants.³⁰⁴ Other than this **potential for expedited processing**, there is no other exception applied in these cases, with the 'normal' resettlement requirements remaining in place.

Australia has developed an **Emergency Rescue Visa**, granting permanent settlement, for application in emergency cases, which are prioritised for processing within the resettlement stream.³⁰⁵ There is **no** specific **quota** reserved for this category, but a very small number is granted every year. The targeted **beneficiaries** are persons facing persecution, whether they are still within their country of origin or not, with 'urgent and compelling reasons to travel to Australia', and under 'an immediate threat to their life or personal security'.³⁰⁶ Requests are **centralised** and referred to the Australian authorities via the UNHCR's Regional Office in Canberra. These referrals are given the '**highest processing priority**' of all applications for resettlement. The aim is to decide them within two days on receipt of the RRF from UNHCR. Once accepted, the objective is to evacuate the person concerned within three days, pending health, character and security clearance procedures. A flexible approach may be applied in the arrangement of these checks, depending on the specific circumstances and as determined by the Australian government in consultation with UNHCR.³⁰⁷

2.2 EU 'expedited' resettlement

The URF includes an '**expedited**' resettlement **procedure**, separate from the 'ordinary' procedure, to attend to '**specific humanitarian grounds or urgent legal or physical protection needs**'.³⁰⁸ Rather than on the basis of full RSD, the focus is on determining **prima facie** eligibility for international protection of the potential beneficiary, who should, nonetheless, undergo 'the same level of security checks' as any other candidate for resettlement under the framework.³⁰⁹

The expedited procedure is considered a 'derogation' from the ordinary steps to be taken under the ordinary procedure. So, when in application, Member States are to refrain from assessing whether candidates qualify as refugees, and they can also not request UNHCR to undertake full RSD for them. They must take a decision 'as soon as possible' and by a **maximum of four months** since the registration of the candidate concerned, which can only be extended once by another two months. In case of a positive decision, the beneficiary must be granted subsidiary protection status, resettled as soon as possible, and be given the **option to submit a full application for asylum** under the Qualification Directive **upon entry** in the resettling EU Member State, so their qualification for refugee status can be properly assessed.³¹⁰

304 *Ibid* 9.

305 See n 114 above, 2 and 4. See also, Government of Australia, Refugee category visas, 4 June 2019 <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/refugee-200> accessed 26 July 2019.

306 *Ibid* 6.

307 *Ibid* 7.

308 See n 119 above, Explanatory Memorandum, 12.

309 *Ibid*. As the European Commission notes, this approach follows closely the SOPs (see n 257 above) underpinning the EU-Turkey VHAS (see n 245 above). On prima facie recognition of international protection needs, see n 257 above, 4.

310 See n 119 above, Art 11 of the Draft Regulation.

However, rather than on a case-by-case basis, the framework foresees that it be for each targeted resettlement scheme to determine which procedure to apply, on consideration of the specific needs and circumstances of the emergency to be catered for.³¹¹ Under the proposal, it is for the European Commission to issue such '**Targeted Union Resettlement Scheme**', in line with the 'Annual Union Resettlement Plan' adopted by the European Council, taking account of the High-Level Resettlement Committee perspectives. Each targeted resettlement scheme needs to set out the number of potential beneficiaries, details about the participation of EU Member States, the target group, specific geographical coverage, date of deployment and intended total duration, and a detailed justification for the choices made, including with regard to the type of procedure to be applied.³¹²

3. Evacuation Transit Facilities

Considering the limitations of emergency resettlement, UNHCR has developed the concept of '**Evacuation Transit Facility**' (ETF) to facilitate urgent protection to refugees in need of resettlement at a short notice.³¹³ The concept builds on ad hoc experiences gathered in different locations worldwide. For example, in 1999–2000, 1,500 Tutsi refugees at risk in DRC were evacuated to Cameroon and Benin temporarily, while resettlement countries completed their processing. The war in former Yugoslavia offers a similar example. In 1999–2002, more than 4,500 refugees from Croatia and Bosnia were taken to Romania in transit until interviews by resettlement countries were completed. Again, in 2005 and 2006, Romania hosted 450 Uzbek refugees from Kyrgyzstan for a limited time until they were resettled by other countries.³¹⁴ Two models of emergency transit facilities have been developed through time: the **ETC model** and the **ETM**.

3.1 ETCs and ETMs

The **ETC model** applies in **Romania** and **Slovakia**, where a central, physical facility hosts all the evacuated refugees in one location. By contrast, the **ETM and Protection Transfer Arrangement (PTA) models**, as developed in **Costa Rica, Niger** and the **Philippines**, are characterised by the reception of evacuees being diffused, with the refugees concerned being housed in different locations.³¹⁵

311 *Ibid*, Explanatory Memorandum, 10.

312 *Ibid*, Explanatory Memorandum, 13, and Art 8 of the Draft Regulation.

313 UNHCR, *Information Note on Establishing Temporary Evacuation Facilities for Onward Resettlement*, Annual Tripartite Consultations on Resettlement, Geneva, 28–30 June 2007 www.unhcr.org/refworld/docid/46822d01d.html accessed 26 July 2019.

314 UNHCR, *Guidance Notes on Emergency Transit Facilities: Timișoara, Romania/Manila, Philippines/Humenné, the Slovak Republic*, 4 May 2011, 1, paras 1–5 www.refworld.org/docid/4dddec3a2.html accessed 26 July 2019. Specifically on the Humanitarian Evacuation/Admission Programme for Kosovar Refugees, see UNHCR, *The Kosovo refugee crisis: An independent evaluation of UNHCR's emergency preparedness and response*, EC/50/SC/CRP.12, 9 February 2000 www.unhcr.org/excom/standcom/3ae68d19c/kosovo-refugee-crisis-independent-evaluation-unhcrs-emergency-preparedness.html accessed 26 July 2019.

315 See n 314 above, *Guidance Notes on Emergency Transit Facilities*, 1, paras 1–5. Regarding Niger, see further UNHCR, *Niger: Country Operation Update*, (January 2019), 2, at <http://reporting.unhcr.org/sites/default/files/UNHCR%20Niger%20Operational%20Update%20-%20January%202019.pdf> accessed 26 July 2019.

The first ETC emerged in **Romania** via a tripartite agreement between the government, UNHCR and the IOM, for the establishment of a centre in Timișoara in 2008.³¹⁶ The second country to agree to host an ETM was the **Philippines** in 2009.³¹⁷ **Slovakia** was the third, also in 2009, but for a specific group of Palestinian refugees, agreeing to extend the agreement on a general basis in 2010.³¹⁸ **Costa Rica** was the fourth, entering into a PTA, first for a pilot with El Salvador in 2016, and for a fully fledged scheme, also including Honduras and Guatemala as countries of origin, in 2017.³¹⁹ The PTA is a variant of the ETM scheme that emerged in Central America to cater for the displacement of persons due to gang violence in the so-called Northern Triangle, offering individuals facing extreme risks in those three countries with safe and legal access to resettlement via Costa Rica, acting as a transit country.³²⁰ Finally, the latest to agree to host an ETM was **Niger**, in November 2017, in response to the emergency in Libya.³²¹

Although a detailed exploration of the ETM in Niger follows in section 3.2, it is worth summarising the key characteristics of ETFs. While the different formulas have their similarities and shared roots, there are also stark differences between them, especially with regard to processing arrangements. Whereas refugees transferred to Romania (ETC) will have undergone full RSD processing and been pre-approved by a resettlement country pending in-person interviews, persons evacuated to Niger (ETM) will regularly only undergo RSD and be submitted for resettlement to a potential host country upon arrival in Niger. By contrast, the PTA in Costa Rica contains elements of in-country processing that are not found in other ETFs. Below follows the general features, as formulated in the UNHCR *Guidance Notes on Emergency Transit Facilities*, and as they apply in particular to ETCs.

In terms of **beneficiaries**, ETFs, in both formats, target refugees and persons in refugee-like situations in particularly delicate circumstances, including: those facing an imminent or extreme risk of harm in the form of *refoulement* or some other life-threatening event; those in detention and for whom release requires a transfer out of the country of first asylum; those with a particularly high or sensitive profile, who face serious protection problems; and those in regard to whom processing for resettlement cannot be completed in the country of first asylum due to inaccessibility to the person concerned because of security or similar reasons. Normally, all UNHCR resettlement categories could potentially be considered for ETF transfer, **except** medical cases suffering from serious illness requiring major medical interventions. This is due to the lack of appropriate facilities within ETCs and ETMs.

316 Agreement between the Government of Romania and the Office of the UNHCR and IOM Regarding Temporary Evacuation to Romania of Persons in Urgent Need of International Protection and their Onward Resettlement, 8 May 2008 www.unhcr.org/refworld/docid/4a7c221c2.html accessed 26 July 2019.

317 Memorandum of Agreement Among the Government of the Republic of the Philippines, the Office of the UNHCR, and IOM Concerning the Emergency Transit of Refugees, 27 August 2009.

318 Agreement between the Government of the Slovak Republic, the Office of the UNHCR and IOM Concerning Humanitarian Transfer of Refugees in Need of International Protection Through the Slovak Republic, 22 December 2010.

319 UNHCR, PTA (December 2018) www.globalcrf.org/wp-content/uploads/2018/10/6.-PTA-dic18.pdf accessed 26 July 2019.

320 The PTA forms part of the *Comprehensive Regional Protection and Solutions Framework* within the *San Pedro Sula Declaration* of 26 October 2017 www.acnur.org/5b58d75a4.pdf accessed 26 July 2019.

321 See n 315 above, *Niger: Country Operation Update*.

A precondition for transfer to an ETC – though not to an ETM – is that there be an offer by a resettlement country agreeing to pursue resettlement processing in the facility, even if there is no guarantee of acceptance at the time of transfer. What UNHCR tries to avoid – and countries hosting an ETF make clear in the terms of the agreements concluded – is refugees becoming stranded in the transit location without onward resettlement and with no other durable solution in sight. Therefore, the **maximum stay** at ETCs and ETMs tends to be **six months** – prolonged only in exceptional circumstances.³²²

The process is based on **identification** and **referral** by UNHCR – or partner organisations, as in the case of the PTA – deciding on the suitability of the case for a transfer to an ETF. In this part of the process, the relevant bodies and offices within UNHCR decide on the basis of the **background of the case**, the protection risks of the person concerned, the circumstances that warrant transfer, whether the ETF host country agrees to the transfer and whether a potential resettlement country has accepted to run resettlement processing in regard of the person concerned at the ETF facilities. The case history is to be taken into account, including biodata, the UNHCR RRF, any documentation available and any notes on RSD regarding the candidate. This material, upon identification of a **suitable case**, should be assessed within 24 hours. In case of internal **approval**, the Resettlement Service within UNHCR shall locate a **suitable ETF**, considering places available, geographic proximity and processing expediency. On those grounds, once the best ETF for the case has been selected, contact must be made with the authorities of the country hosting it for their **approval** and the arrangement of an **entry visa** within seven working days. On receipt of a positive decision, **pre-departure arrangements** are organised, including for transportation, exit permits, transit visas and travel escorts, as appropriate. Counselling of the selected candidate is mandatory at that point, so they are informed of the conditions of the ETF arrangements. **On arrival** at the ETF, the potential **resettlement** country can undertake the **interview** and other processing formalities necessary. If needed, interviews can be organised remotely, using videoconferencing technology – as the case has been at the ETC in Timișoara. **Successful cases** will be put through the pre-departure protocols, including cultural orientation, medical checks and so on, for the quickest transfer possible to the **final resettlement** destination.³²³

Since the launch of the different ETCs and ETMs, these initiatives have been **evaluated positively**, on the whole.³²⁴ Even though the numbers remain small,³²⁵ qualitatively, the **life-saving aspect** of ETFs is vital. ETFs bring about immediate safety, security and access to basic services, while awaiting transfer to a resettlement country, to refugees who would otherwise never have been resettled.³²⁶ There are benefits for resettlement countries, too. Considering their limited capacity to respond to urgent cases, due to complex internal procedures, including security and health clearance prior to resettlement, ETFs offer stable and secure locations where to undertake **resettlement**

322 See n 314 above, *Guidance Notes on Emergency Transit Facilities*, p 3, paras 10–14. See also n 319 above, p 1.

323 See n 314 above, 4–8, para 17.

324 UNHCR, *Evaluation of Emergency Transit Centres in Romania and the Slovak Republic*, PDES/2016/02, p 1 www.unhcr.org/575935d17.pdf accessed 26 July 2019. See also n 319 above, 2.

325 In the case of ETCs, this is due, in part, to the limited capacity of the centres: 200 places in Romania and 150 in Slovakia. See n 324 above, 1, para 2 and 4, para 27. See also n 319 above, 1 and 3.

326 See n 324 above, 4–5, para 27.

checks in optimal conditions and in cooperation with experienced partners, such as UNHCR and the IOM.³²⁷ Finally, countries hosting ETFs raise their profiles as resettlement facilitators, demonstrating solidarity, while neither assuming all of the operational costs (shared with the partner organisations) nor providing a durable solution themselves.³²⁸

But, there is also **room for improvement**. The **conditions** at ETCs have been externally evaluated as being suboptimal, even though the **facilities** remain **underutilised** – due, in part, to relevant UNHCR personnel not being aware of the existence of ETFs or of the procedure applicable to use them. In the Timișoara Centre, for instance, refugees are not allowed to leave the premises unless escorted, which amounts to a serious restriction of their freedom of movement, if not **de facto detention** for the entire duration of their stay at the centre.³²⁹ There is also a scarcity of leisure and occupational activities that refugees can undertake while at the centre, which brings a sense of boredom and ‘their lives [being put] on hold’.³³⁰ Sharing rooms with other families and individuals leads to tensions and stress, and the lack of adequate maintenance of the premises, and of basic household and personal items, contributes to that as well.³³¹ UNHCR external evaluators have, therefore, proposed that a set of minimum standards for ETCs be developed, so as to guarantee adequate treatment and the wellbeing of refugees.³³²

The ‘**turnover**’ of refugees has also been **slower than expected**, with some refugees overstaying the six-month period.³³³ This is due to different factors: the imposition of emergency priority quotas by resettlement countries; the lengthy procedures applicable to transfers from countries of first asylum; and the pre-condition that there be a resettlement country already identified as willing to process the potential beneficiary to set the whole system in motion.³³⁴ This has led to the conclusion that ETCs have, in the end, **moved away from their original objective**, serving more as facilitators of ‘normal’ resettlement than as urgent evacuation transit facilities, with UNHCR external evaluators even proposing that their name be changed to ‘Resettlement Transit Centres’, ‘to give a clearer indication of the main purpose of these centres’.³³⁵

Nonetheless, these flaws can be addressed, and there are signs of very **positive practices** developing as well. Although few, there have been urgent cases received at the Romanian ETC, thanks to the flexible approach adopted by the Romanian government, facilitating entry clearance to referred cases. Romania has **waived visa requirements** altogether **for evacuees** to reach the ETC from the country of asylum, thereby considerably shortening waiting periods and accelerating processing.³³⁶ And there are also very valuable lessons that can be learnt from the Nigerian ETM explored hereunder.

327 See n 314 above, *Guidance Notes on Emergency Transit Facilities*, 2, para 8.

328 See n 324 above, 2, para 7.

329 *Ibid* 3, para 18. Note, however, that this is the assessment of the external evaluator of the Romanian ETC, rather than UNHCR’s view of the situation.

330 *Ibid* 3, para 19.

331 *Ibid* 4, para 20.

332 *Ibid* 3, para 14.

333 *Ibid* 3, para 13.

334 *Ibid* 3–4, paras 16, 17 and 23.

335 *Ibid* 5, para 28.

336 *Ibid* 2, para 7.

3.2 ETM for Libya

The Nigerien ETM started in **November 2017** as one key part of the **evacuation plan for Libya**.³³⁷ The other key element is the **'transit and departure' facility**, launched in the same period, run by UNHCR in **Tripoli**, with Italian support, to organise resettlement and evacuation operations, including to the Nigerien ETM, also providing registration and assistance to the 50,000+ vulnerable refugees and asylum seekers present in the country.³³⁸

The ETM in Niger has **capacity for 1,000 evacuees** and priority is given to 'refugees trapped in detention in Libya'. The most common nationalities are Eritrean and Somali, and their **profiles** predominantly include torture survivors, who are also unaccompanied minors and/or women and girls at risk.³³⁹ Newly arrived evacuees are **registered and accommodated** in guesthouses in Niamey, while **awaiting resettlement** processing and/or departure to a resettlement country.³⁴⁰ Although nearly **2,000 evacuees**, since the beginning of the ETM, have been **resettled from Niger** to a third country (mostly to EU Member States, Canada and the US),³⁴¹ the **key challenge** remains the **slow processing** of candidates. Without improving the fluidity of the process, places in the Nigerien ETM remain occupied, so that no new refugees can be freed from Libyan detention centres for evacuation.³⁴²

UNHCR estimates that there are 5,600 persons arbitrarily detained in Libya, for whom the agency is advocating immediate release or evacuation to other places, such as the Nigerien ETM.³⁴³ However, for this to happen, third countries must step up efforts and offer more evacuation and resettlement places. The Nigerien government has agreed to host a **new ETM centre**, which is being prepared in Hamdallaye, 40 km away from Niamey, with **funding** from the **EU Africa Trust Fund**.³⁴⁴ But pledges from and actual departures to resettlement countries remain insufficient.

At 12 July 2019, there were **53,279 refugees and asylum seekers** registered with UNHCR in Libya.³⁴⁵ Since the beginning of the evacuation operation in late 2017, **only 4,000 persons** have been **transferred out of Libya**: 2,911 to the Nigerien ETM; 710 directly to Italy (to which we return in the next section); and 269 to the Romanian ETC. There are **three different groups of evacuees**, depending on the level of processing for resettlement that can be completed in Libya prior to departure. The first group is **fully processed** in Libya by both UNHCR and the resettlement country concerned, and taken out of Libya directly. The second group is fully processed for resettlement by UNHCR

337 See n 315 above, 1.

338 UNHCR, 'UNHCR welcomes Libya's transit facility to expedite third country solutions for vulnerable refugees', Press Release, 29 November 2017 www.unhcr.org/news/press/2017/11/5a1edc7c4/unhcr-welcomes-libyas-transit-facility-expedite-third-country-solutions.html accessed 26 July 2019.

339 See n 315 above, *Niger: Country Operation Update*, 2.

340 *Ibid* 3.

341 *Ibid* 5.

342 *Ibid* 7.

343 UNHCR, *Libya Update*, 12 July 2019 <https://data2.unhcr.org/en/documents/download/70272> accessed 26 July 2019.

344 See n 315 above, *Niger: Country Operation Update*, 2 and 6.

345 See n 343 above.

in Libya, then evacuated to the Nigerien ETM for further processing by the resettlement country. Finally, the third group is composed of those who are **only pre-screened** by UNHCR and evacuated to Niger for subsequent full processing by UNHCR and the resettlement country once in the ETM. Of the total 1,480 submissions for resettlement of persons in the first group, only 434 have left Libya. Regarding the other two groups taken together, of the total 2,234 evacuees submitted for resettlement, only 1,496 have departed from Niger.³⁴⁶

The **unavailability of pathways** to a durable solution, whether through evacuation, direct transfer (eg, via humanitarian visas), or resettlement, has **combined with the worsening of conditions** for **protection seekers** in Libya, who remain **trapped** in detention, **unable to flee** as the crossfire intensifies. This has contributed to the constellation of factors that has made it possible for Khalifa Haftar, commanding the rebel army opposing Al-Jarrai's UN-backed government, to **bomb the Tajoura Centre** in early July 2019, killing 44 detainees and wounding another 130.³⁴⁷ The situation in Tajoura was dangerous for a long time – UNHCR alerted to the need for urgent evacuation at least two months before the attack.³⁴⁸ In **response** to this, UNHCR and the IOM have jointly urged the EU and African Union to change their approach to refugees and migrants in Libya, making **human rights the 'core element'** of their engagement in the country.³⁴⁹ To this effect, systematic detention must stop, pull-backs and forcible disembarkation in Libya must stop, and assistance to Libyan authorities without human rights guarantees must stop, too. On the other hand, **systematic and widespread engagement with durable solutions** is essential, both through classic and more imaginative initiatives.

4. Evacuation programmes

The evacuation programme started by Italy in December 2017, and explored in section 4.1, has provided one such imaginative solution to vulnerable persons trapped in the midst of the Libyan crisis. Another example of a regionalised (EU) evacuation scheme is offered in section 4.2, providing a solution to a reduced number of Palestinians, trapped in the Church of the Nativity of Bethlehem during the Second Intifada, which constitutes nonetheless an example of a regional effort of coordinated evacuation.

346 UNHCR, *Libya-Niger Situation, Resettlement update #68*, 5 July 2019 <https://data2.unhcr.org/en/documents/download/70178> accessed 26 July 2019.

347 'Libya: Air raid kills dozens at Tripoli migrant detention centre', *Al Jazeera*, 3 July 2019 www.aljazeera.com/news/2019/07/deadly-strike-hits-tripoli-migrant-detention-centre-official-190703001156711.html accessed 26 July 2019.

348 UNHCR, 'Amid hostilities in Libya, 146 refugees evacuated to Italy', 29 April 2019 www.unhcr.org/news/press/2019/4/5cc701e04/amid-hostilities-libya-146-refugees-evacuated-italy.html accessed 26 July 2019.

349 UNHCR, 'UNHCR and IOM joint statement: International approach to refugees and migrants in Libya must change', Press Release, 11 July 2019 www.unhcr.org/uk/news/press/2019/7/5d2765d04/unhcr-iom-joint-statement-international-approach-refugees-migrants-libya.html accessed 26 July 2019. See also, UNHCR, 'UNHCR, IOM condemn attack on Tajoura, call for an immediate investigation of those responsible', Joint Press Release, 3 July 2019 www.unhcr.org/5d1c836c4?utm_source=&utm_medium=email&utm_content=here&utm_campaign= accessed 26 July 2019.

4.1 Italy's humanitarian evacuation programme from Libya

According to the latest figures, Italy has undertaken 710 evacuations directly from Libya since the start of the evacuation plan for the country in late 2017.³⁵⁰ Although the numbers are small when compared to the scale of need, the initiative is significant and worth replicating on a bigger level – especially now that violence is on the rise and UNHCR is ‘urging the international community to evacuate all refugees who remain inside detention centres in Tripoli and to bring them to safety’.³⁵¹

The Italian humanitarian evacuation programme from Libya started with the evacuation of 162 **highly vulnerable refugees** from Eritrea, Ethiopia, Somalia and Yemen, including unaccompanied minors, disabled persons and women at risk, who had been held captive for extended periods in Libya and undergone grave maltreatment and abuse. The unprecedented intervention, entailing the **transfer to Italy directly out of Libya**, was the result of a tripartite arrangement between the Italian authorities, the Libyan UN-recognised government and UNHCR.³⁵² The mechanism has been repeated several times, throughout 2018 and 2019, bringing to safety several hundreds of very vulnerable persons.

It is not clear from the information publicly available how exactly the **selection** process was undertaken. What we know is that upon **referral** and **acceptance** by the Italian authorities, the beneficiaries were accompanied, first to Tripoli by UNHCR personnel and then to Italy. They were **evacuated** on visas issued by the Italian Ministry of Foreign Affairs by two military planes, which landed at a military base near Rome, from which they were transferred to reception facilities by the Italian authorities. The Episcopal Conference of Italy, through Caritas, provided care, support and accommodation. It is only upon arrival that they were counselled and informed about the asylum procedure, which leads to the conclusion that **no full RSD** had been carried out prior to departure.³⁵³ The same procedure was used, for example, in February 2018, bringing 150 persons to safety in Italy, and in April 2019, after a new bout of violence broke out near Tripoli and a group of 146 persons in need of protection was transferred out of the country.³⁵⁴

4.2 The EU Bethlehem evacuation scheme

A **variant of the Italian evacuation programme, resembling the EU expedited resettlement scheme** – which, if the EU Resettlement Framework Regulation is adopted

350 See n 346 above.

351 See n 348 above.

352 UNHCR, ‘Groundbreaking first evacuation of 162 vulnerable refugees from Libya to Italy’, Press Release, 23 December 2017 www.unhcr.org/news/latest/2017/12/5a3e3d155/groundbreaking-first-evacuation-162-vulnerable-refugees-libya-italy.html accessed 26 July 2019.

353 *Ibid.* See also ‘Migranti, primo corridoio umanitario: atterrano in 162 a Roma su volo militare dalla Libia’, *La Repubblica*, 22 December 2017 www.repubblica.it/cronaca/2017/12/22/news/migranti_primo_corridoio_umanitario_atterra_a_roma_volo_militare_dalla_libia-184956196/?refresh_ce accessed 26 July 2019.

354 See ‘Corridoi umanitari: Caritas, altre 150 persone arrivate in sicurezza dalla Libia’, *SIR Agenzia d’Informazione*, 15 February 2018 www.agensir.it/quotidiano/2018/2/15/corridoi-umanitari-caritas-altre-150-persone-arrivate-in-sicurezza-dalla-libia accessed 26 July 2019; and see n 348 above. For an evaluation of these interventions, see Caritas Italiana, *Oltre il mare: Primo rapporto sui corridoi umanitari in Italia* (April 2019), 39–41 www.caritas.it/caritasitaliana/allegati/8149/Oltre_il_Mare.pdf accessed 26 July 2019.

will be streamlined and systematised – is the one-off, very small-scale, EU Bethlehem evacuation operation undertaken in 2002. The scheme targeted the 13 Palestinian nationals taking refuge in the Church of the Nativity in Bethlehem after the siege by the Israeli Defence Forces during the Second Intifada.³⁵⁵

Initially, the 13 Palestinians were transferred to Cyprus, and from there to other EU Member States. A Common Foreign and Security Policy (CFSP) **Common Position concerning the transfer and temporary reception** of the 13 Palestinian nationals, following an agreement with the Government of Israel, the Palestinian Authority and other parties.³⁵⁶ The initiative was taken ‘on a temporary basis and exclusively for humanitarian reasons’.³⁵⁷ Entry decisions fell within the sole competence of each of the receiving Member States – comprising Belgium, Greece, Ireland, Portugal and Spain – deciding on a sovereign basis.³⁵⁸ The purpose of the Common Position was to ensure ‘a common approach at the level of the European Union’, to ensure ‘comparable treatment’ and cater for common ‘security concerns’ by participating Member States.³⁵⁹

With that in mind, participating Member States were under an obligation to deliver (‘shall’ issue) a **national permit** allowing entry into their territory and stay for up to 30 months – a period that has been renewed several times; the latest in April 2016 for a further 24 months starting from 31 January 2016.³⁶⁰ That does not mean that the issuance of these permits was not to be ‘submitted to specific conditions to be accepted by the Palestinians concerned before their arrival’, as each Member State saw fit.³⁶¹ Member States also had to ‘take account of the public order and security concerns of other Member States’, despite the permit’s validity being ‘limited to the territory of the Member State concerned’³⁶² – which is **reminiscent of the ‘humanitarian corridors’ practice**, as developed in France, using long-term visas. Upon arrival, receiving countries had to ensure ‘the personal security of the Palestinians received’, while, regarding accommodation and integration matters, each could apply their respective national provisions – instead of the Qualification Directive regime.³⁶³

Although the number of beneficiaries is minuscule and the amount of discretion allowed to participating states very broad in how to decide practicalities on the ground, the fact that EU countries found a way to coordinate efforts and agree a series of **common arrangements for concerted action** is meaningful and may pave the way for future initiatives along the same lines.

355 ‘Timeline: Bethlehem siege’ (*BBC News*, 10 May 2002) http://news.bbc.co.uk/2/hi/middle_east/1950331.stm accessed 26 July 2019.

356 Council Common Position of 21 May 2002 concerning the temporary reception by Member States of the European Union of certain Palestinians, 2002/400/CFSP, (2002) OJ L 138/33 (as amended by Council Common Position 2003/366/CFSP (2003) OJ L 124/51, and Council Common Position 2004/493/CFSP (2004) OJ L 181/24).

357 Common Position 2002/400/CFSP, Recital 3, preamble, and Art 1.

358 *Ibid*, Recital 4, preamble, and Art 2.

359 *Ibid*, Recitals 4–6, preamble.

360 *Ibid*, Art 3, first indent, and Council Decision (CFSP) 2016/608 of 18 April 2016 concerning the temporary reception by Member States of the European Union of certain Palestinians, (2016) OJ L 104/18, preamble and Art 1.

361 *Ibid*, Art 3, second indent.

362 *Ibid*, Recital 6, preamble, and Art 3, second indent.

363 *Ibid*, Arts 4 and 6.

5. Conclusions

While all the above initiatives attempt to provide a solution to an urgent humanitarian need requiring emergency evacuation, **only schemes that do not entail full processing** prior to departure have proven **effective** in responding to the concrete necessity of a rapid transfer. The focus on ‘urgent’, ‘imminent’ and ‘extreme’ protection needs, assessed on a **prima facie basis** rather than on complete RSD, is what allows for the possibility of accelerated arrangements. It is also very positive that some initiatives permit the transfer of beneficiaries directly out of the country of peril, without having to undergo intermediary transit through an ETC or ETM first. The Italian evacuation programme for Libya stands out as an example of particularly good practice in this respect, allowing for the speedy evacuation of relatively large numbers of persons within short timeframes under flexible, streamlined processing modalities and in partnership with key stakeholders. The **relaxation of visa** requirements, and of exit and travel documentation formalities alongside **speedy transportation** to safety, are key operational components worth noting as well. By contrast, most other examples fail to live up to their purported objectives.

Emergency resettlement processing can take **several months**. The number of accepted cases is **very small**. **Background checks** are rarely waived or rendered flexible to a sufficient extent so as to allow for a rapid enough transfer. The requirement of **face-to-face interviews**, as in the US example, even though candidates have gone through UNHCR processing prior to referral, seems excessive in the circumstances. **‘Dossier’ applications should be allowed** instead, or at least the **use of technology** should be more widespread, relying on videoconferencing to conduct interviews more efficiently.

While **ETFs** are a very commendable initiative, they **cannot work** for the intended purpose of emergency transfer and evacuation, **unless** their physical, material and processing **capacities** are **expanded**, which requires a more serious commitment by countries of destination to engage in the provision of a durable solution. Increased funding of ETCs and ETMs by a plurality of partners may improve the conditions, but it is not enough if transfers out of these facilities do not materialise in a short timeframe. Optimisation of this resource requires **genuine responsibility sharing** with hosting countries.

What all these mechanisms also show is that **workability depends on multi-actor collaboration** and **mutual trust**. In the examples explored, this has translated in the identification and **referral of beneficiaries by UNHCR** (rather than through autonomous self-referral by the candidates themselves), and **security screening** emerges as a precondition in all cases. A **partnership with other relevant organisations** for pre-departure and post-arrival assistance appears as an important element too, to maximise the response capacity at the different points of deployment of each strategy. All these elements will be taken into account in Part III below for the development of the EEV proposal.

Part III: A proposal for an ‘emergency evacuation visa’

1. Introduction

As much as existing **complementary pathways**, as explored in previous chapters, have a positive impact and do provide for alternative avenues to international protection, there are **gaps** that need to be addressed. Their expansion is hindered by the **lack of common standards, limited coordination** across sectors and between partners, the **absence of mechanisms of support** that promote and build capacity, and the **lack of sufficient data, information and publicity** characterising some of these schemes.

Responding to these **challenges** is particularly urgent in light of state commitments, as mentioned above, ensuing from the New York Declaration and related documents. According to the GCR, in particular, states have agreed to develop alternative pathways ‘as a complement to resettlement’, in order to ‘facilitate access to protection and/or solutions’. It is specifically noted that ‘[t]here is a need to ensure that such pathways are made available on a **more systematic, organized and sustainable and gender-responsive basis**’, being crucial to this effect ‘that they contain **appropriate protection safeguards**, and that the number of countries offering these opportunities is expanded overall’, so strategies can be scaled up.³⁶⁴

The main vehicle to achieve the predictability and availability of complementary pathways is UNHCR **Three-Year Strategy (2019–2021) on Resettlement and Complementary Pathways** (the ‘Three-Year Strategy’).³⁶⁵ The strategy promotes the adoption of **solutions-orientated approaches** based on **multi-partner ventures** that realise the overall vision of **expanding** the base of actors engaged in these initiatives, the size and scope of related schemes, and the **protection impact** and ‘quality asylum’ they should lead to – in the resettlement terrain, the GRIS, referred to in chapter 2, has proven an effective mechanism to build capacity and promote community/private sponsorship schemes following this model; something similar could be established for the enhancement of other complementary pathways with IBA and IBA members’ input.³⁶⁶

It is against this background, and on account of the conclusions from the previous chapters, that the proposal for an EEV is submitted herein – drawing in particular on the Italian evacuation programme for Libya, as well as elements of the ‘emergency resettlement’ plans adopted by several countries in combination with sponsorship schemes, using the EEV proposal as a way to scale and streamline them. The main goal is to contribute to the realisation of the Three-Year Strategy objective of facilitating the admission of two million persons in need of international protection via complementary

³⁶⁴ See n 14 above, para 94. See also n 13 above, para 14; and see n 33 above, 4.

³⁶⁵ See n 27 above, 5.

³⁶⁶ *Ibid* 10 and 23.

pathways by the end of 2028.³⁶⁷ With this in mind, the idea is for a process of consultation with key stakeholders to be open by IBA and IBA members on the basis of this proposal. The **2019 Global Refugee Forum**, to be held in December in Geneva at UNHCR headquarters, will provide an ideal venue to present the proposal and galvanise support by potential partners.³⁶⁸

2. EEVs: systematising lessons learnt

In line with UNHCR’s Strategic Directions 2017–2021,³⁶⁹ complementary pathways, like the EEV proposed hereunder, should pursue **three main goals**, and be designed and implemented according to a number of minimum standards. Measures should aim to ease protection pressure on host countries of first asylum, constituting a mechanism of genuine **solidarity and responsibility sharing**. According to the principle of additionality, they should **expand access to durable solutions** and effective protection in countries of destination, rather than replace resettlement or curtail ‘spontaneous arrivals’. In addition, they should foster **refugee autonomy and self-reliance**,³⁷⁰ inter alia, by ensuring accessibility through **self-referral**, independently from any prior institutional submission, by guaranteeing the **publicity of relevant information** on the criteria, processes and arrangements that may be applicable, and by **removing the practical, legal and administrative barriers** that may impede access thereto.³⁷¹ Existing strategies, however, do not take this systematically into account, which constitutes both a challenge and an opportunity for the EEV proposal. Table 3 below serves to visualise these objectives that complementary pathways, including the EEV proposal, should pursue, according to UNHCR.

Complementary	Pathways	Objectives
Solidarity and responsibility sharing	Access to effective protection	Refugee autonomy

Table 3. Complementary pathways objectives.³⁷²

In terms of the **minimum standards** that complementary pathways should consider at the design and development phase, UNHCR notes the respect and protection of refugee rights as being paramount. Therefore, the **right to seek asylum and to protection from persecution and refoulement** should be at the heart of any complementary pathway strategy, including the EEV. **Non-discrimination** must also be taken into account, alongside the specific circumstances of **particularly vulnerable cases**, which should be prioritised. Eligibility and determination procedures should, then, be based on **objective criteria** on consideration of the specific context of the country of first asylum and the specific needs of the targeted population. In the end, the

³⁶⁷ *Ibid* 14.

³⁶⁸ UNHCR, *Global Refugee Forum*, 17–18 December 2019 www.unhcr.org/global-refugee-forum.html accessed 26 July 2019.

³⁶⁹ UNHCR, *Strategic Directions for 2017–2021*, 17 January 2017 www.unhcr.org/5894558d4.pdf accessed 26 July 2019.

³⁷⁰ See n 11 above, para 16.

³⁷¹ See n 27 above, 23–24. See also n 33 above, 5 and 12.

³⁷² See n 33 above, 6, for the table that Table 3 is based on.

complementary pathway at hand should **provide access to a legal status**, accompanied by **appropriate documentation** that allows the beneficiary to prove their identity, immigration situation and access **relevant public and support services**, including health, education, housing, psychosocial support, language and vocational training, and legal aid and assistance. The latter is the area in which IBA and IBA members can make a decisive contribution, whether providing information, counselling and representation services on a pro bono basis to refugees at the pre-departure and post-arrival phases at countries of departure and destination, or through training and knowledge-exchange with state authorities and other implementing partners; at the pre-departure stage, IBA and IBA members could specifically seek to cooperate with consulates and embassies for the issuance of visas and travel permits to facilitate transfers. **Family unity, due process** and the **best interest of the child** are also principles that should guide the development and implementation of complementary pathways, such as the EEV.³⁷³

To optimise the implementation of complementary pathways, the Three-Year Strategy has put together a number of **workability guidelines** that should also be taken into account. First, it is suggested that **multi-stakeholder and multi-sectoral approaches** be developed in cooperation with the relevant authorities. UNHCR can play a leading role in facilitating synergies and collaboration in this respect, identifying specific contexts or populations in need of alternative solutions, or offering capacity-building to maximise individual, organisation and community capabilities. The Three-Year Strategy also recommends that there be channels of **refugee participation** through co-design, consultation, and/or evaluation and feedback opportunities – organisations like the Refugee Congress in the US, reuniting refugees across the country that advocate and advise on resettlement, durable solutions, and inclusive and welcoming communities, could serve as a blueprint in this regard.³⁷⁴ The Three-Year Strategy also promotes an **evidence-based approach** – like the one underpinning this study – to the development of measures that are responsive to needs and address gaps, encouraging **bottom-up innovations** that foster engagement and co-ownership of all partners concerned. It favours the **use of technology** to facilitate communication, and guarantee the confidentiality and reliability of data exchanges between the actors concerned, including the data protection rights of refugees.³⁷⁵ Regarding **funding**, the Three-Year Strategy favours imaginative approaches as well. Mechanisms of co-financing in partnership with the IOM, UNHCR and/or civil society organisations alongside the states concerned can prove successful, as in the case of the community and private sponsorship programmes explored in chapter 2.

373 See n 11 above, para 18. See also n 27 above, 15; and n 33 above, 13.

374 *Refugee Congress* <http://refugeecongress.org> accessed 26 July 2019.

375 See n 27 above, 17 and 25. See also n 33 above, 13–15, referring to EXCOM Conclusion No 114 (LXVIII) 2017 on Machine-readable travel documents for refugees and stateless persons, paras 1 and 5 www.refworld.org/pdfid/59df19bc4.pdf accessed 26 July 2019; and UNHCR, *Policy on the Protection of Personal Data of Persons of Concern*, Part 6 (May 2015) www.refworld.org/docid/55643c1d4.html accessed 26 July 2019.

3. EEVs in practice: detailed considerations

On account of the vision, goals, minimum standards and workability guidelines for the development of ‘complementary pathways’ provided by UNHCR, as well as the conclusions from the chapters in Part II, the next sections develop the detail of the EEV proposal. Consideration of the limitations of the schemes explored in previous sections, the challenges they encounter, and the gaps they leave will be paramount. The objective is to propose a tool that **bridges these gaps** and **offers maximum complementarity to resettlement**, as the main ‘third country solution’ promoted by UNHCR. The elements below are conceived as a starting point for EEV partners to engage in a dialogue on how best to adopt and adapt the basic components proposed hereunder to specific scenarios in need of EEV action. The choice for a skeletal structure of the Model Convention following in the Annex is thus deliberate. One of the main objectives pursued by the EEV proposal is to open up opportunities for co-ownership of the EEV initiative, describing only the essential parameters and allowing space for potential participants to have their say and tailor the scheme in a way that reflects their input and responds to the realities on the ground.

3.1 Defining the situations covered by the EEV: the EEV Working Group

To be sure to maximise the protection impact of EEVs and to guarantee the objectivity of the **designation of geographical priorities** as qualifying for emergency evacuation, it would be best to follow **UNHCR emergency assessment tools**. This will also help to reduce risks of politicisation in decision-making. According to its New Emergency Policy, UNHCR defines a humanitarian emergency as ‘any situation in which the *lives*, rights or well-being of refugees, internally displaced people, asylum-seekers or stateless people **are threatened unless immediate action is taken** and which demands extraordinary measures’ [emphasis author’s own].³⁷⁶ On the basis of this, there are **currently ten declared humanitarian emergencies**, regarding Burundi, Central African Republic, DRC, Iraq, Nigeria, the Rohingya, South Sudan and Yemen.³⁷⁷ They are all characterised by very high levels of violence and insecurity, if not indiscriminate attacks on civilian populations, leading to vast numbers of persons being displaced, both internally and across borders, and in dire need of protection.

Within these situations, there are **specific groups and circumstances** that require heightened attention and an urgent response, where the EEV can add value and provide a particularly well-suited solution. In **Syria**, typically a country of origin, there are at present **2.98 million persons trapped in ‘hard-to-reach and besieged areas’**, ‘fleeing the bombs and bullets that have devastated their homes’.³⁷⁸ This particularly vulnerable population subgroup would especially benefit from EEVs; without a measure specifically providing for evacuation their protection will otherwise not be guaranteed. The same applies to **refugees and asylum seekers in Libya**, typically a transit country. After the attack on the Tajoura camp in early July 2019, where nearly 50 people lost their lives, UNHCR is ‘urging the international community to *evacuate* all refugees who remain

376 UNHCR, *New Emergency Policy: How to Better Prepare for and Respond to the Needs of Displaced People* (2017), 2 www.refworld.org/docid/59d4d5354.html accessed 26 July 2019.

377 UNHCR, *Emergencies* (undated) www.unhcr.org/emergencies.html accessed 26 July 2019.

378 UNHCR, *Syria emergency* (undated) www.unhcr.org/syria-emergency.html accessed 26 July 2019.

inside detention centres in Tripoli and to bring them to safety’ [emphasis author’s own].³⁷⁹ Jointly with the IOM, UNHCR has also designated it ‘[a]s a priority’ for the **5,600 persons detained in centres** elsewhere across the country to be released and taken to safety in other countries. This smaller population subgroup is at particular risk, but generally Libya is not safe for persons in need of international protection. The **approximately 50,000 refugees and asylum seekers registered** with UNHCR also require evacuation. The EEV would be a particularly fitting solution to the ‘managed process’ that is required to bring this to fruition.³⁸⁰

An **EEV Working Group** should be established similar to the existing Working Group on Resettlement, to stir efforts and dialogue around emergency evacuation, bringing together **participating governments** and **partner organisations**, with IBA presence and **coordinated by UNHCR** (as part of its mandate) for the yearly (or more frequent) identification of priorities and target groups in light of evolving events and developing necessities. Decisions within the EEV Working Group should be taken by consensus. The possibility to abstain and/or leave the group (rather than veto and block decisions) and/or not participate in a specific EEV action should exist, allowing remaining partners to continue ahead, pursue and implement an EEV action agreed among them. Different modalities of contribution – for example, by providing funding, expertise and/or evacuation places in specific scenarios – should thus be possible, so as to allow the widest range of participation options to potential partners.

The **process of determination of geographical and population sub-groups’ emergencies** should follow a ‘systematic assessment of risk’.³⁸¹ For the purposes of the EEV, as a first step, members should seek to establish **whether**, on the basis of the information available *ex nunc* from different reliable sources, **the country concerned should be considered unsafe**. Threats to life and physical integrity will play an important role, but should not be the only factors to be taken into account. According to UNHCR, for a country to be deemed ‘safe’ – at least in the context of the ‘safe third country’ debate – it must be capable of providing ‘effective protection’ from persecution and/or serious harm,³⁸² including, at a minimum, compliance with basic human rights; protection from *refoulement*; the provision of means of adequate subsistence; and access to status determination procedures with sufficient procedural guarantees open to those who may qualify as refugees.³⁸³

379 See n 348 above.

380 See n 349 above, ‘UNHCR and IOM joint statement: International approach to refugees and migrants in Libya must change’.

381 See UNHCR, *Preparedness for Emergencies: How to Better Prepare for Urgent Humanitarian Needs of Displaced People* (2017), 2 www.refworld.org/docid/59d4d5974.html accessed 26 July 2019. See also UNHCR, *Policy on Emergency Preparedness and Response* (2017) www.refworld.org/docid/59d4d4c54.html accessed 26 July 2019.

382 See, eg, UNHCR, *Global Consultations on International Protection: Asylum Processes (Fair and Efficient Asylum Procedures)*, EC/GC/01/12, 31 May 2001 www.refworld.org/docid/3b36f2fca.html accessed 26 July 2019.

383 UNHCR, *Position on a Harmonised Approach to Questions concerning Host Third Countries*, reprinted in the *3rd International Symposium on the Protection of Refugees in Central Europe*, 1 December 1992 www.refworld.org/docid/3ae6b31d47.html accessed 26 July 2019. See also EXCOM Conclusion No 85 (XLIX) of 1998 on *International Protection*, para (aa), stating that the country to which the asylum seeker is sent must treat them ‘in accordance with accepted international standards... ensure effective protection against *refoulement*, and... provide the asylum seeker... with the opportunity to seek and enjoy asylum’ www.refworld.org/docid/3ae68c6e30.html accessed 26 July 2019.

If these conditions are not met, **persons found in these countries should be presumed to be in urgent need of international protection**. That presumption should be **reinforced the higher the degree of violence and plausibility of harm**, justifying a prima facie determination approach. In situations ‘where the degree of... violence... reaches such a high level that substantial grounds are shown [per se] for believing that a civilian, [if] returned [or *left* there]... would, solely on account of his presence... face a real risk of being subjected to... serious [harm]’, individuals should automatically fall within the scope of application of the EEV scheme (emphasis author’s own).³⁸⁴

The practicability of the EEV action will also have to be taken into account in the designation of an area as EEV-relevant. In cases where implementation is not possible by any means, due to insurmountable physical impediments – for example, natural barriers, catastrophic events or high-intensity fighting, making accessibility of the area concerned impossible – the EEV Working Group will have to explore alternative arrangements or select an alternative location for the rollout of the scheme. One possibility may be to negotiate a temporary ceasefire and the opening of an escape route with the country concerned – like the ODP in use during the Vietnamese CPA – making accessibility possible.

A cut-off date, by which potential beneficiaries need to have been present in the relevant area, and/or registered with UNHCR – or another partner organisation, if UNHCR is not present in the specific location, such as the ICRC or Médecins Sans Frontières (MSF – Doctors Without Borders), provided they consent to do so – can serve to manage expectations and avoid any pull factor or ‘call’ effect that may overstrain the scheme. Flexibility should be exercised in particularly compelling cases, though. Ideally, the key to minimise discrimination, fraud and arbitrariness in this context would be for EEV Working Group members to agree on a list of documents they will accept as proof of identity and presence within the specific EEV-designated area for EEV qualification by an applicant. And there may be situations in which such precautions may become less necessary, where the area and group of beneficiaries intended can be circumscribed by other means – for example, when specifically targeting those in detention, as in the Libyan example indicated above, designating as EEV beneficiaries persons found in a particular enclosure at the EEV-relevant time to establish the scope of the coverage through non-arbitrary and non-discriminatory means. Another way of further circumscribing (or prioritising) the scope of application of a particular EEV action, again without incurring in discrimination and arbitrariness, would be to focus on particularly vulnerable profiles, such as unaccompanied minors, wounded persons or pregnant women, replicating the UNHCR vulnerability categories currently used for resettlement.

3.2 Beneficiaries: qualification criteria

In line with the previous section, the beneficiaries of EEVs should be **persons at risk of persecution or serious harm, whether they are still within their countries of origin or already outside, present within the emergency area** as declared by the EEV Working Group. **Race, religion, nationality** and other potentially discriminatory considerations should be **irrelevant** in this context. What counts is for the person

³⁸⁴ *Mutatis mutandis*, CJEU, Case C-465/07 *Elgafaji* (2009) ECLI:EU:C:2009:94, para 35.

concerned to be in the EEV-designated area at the time covered by the scheme and thus **fall within the scope of application of the EEV**, pursuant to the priorities identified by the EEV Working Group through the process specified above.

Countries participating in the EEV initiative should only **verify** the **presence** of the individuals concerned **within the country/region designated as an EEV priority** and collaborate with UNHCR, IBA and IBA members, as well as other participating partners to organise the evacuation. To guarantee accessibility, **candidates** should be able to **put themselves forward** for EEV consideration, without a formal referral by UNHCR or any other intermediary organisation. **No** full or preliminary **RSD** should be conducted at this point, **only essential identity** and **security screening** checks.

3.3 Processing arrangements

Individuals should be able to launch an **EEV application on their own behalf**, and possibly on behalf of their children and other dependants, provided they are present with them in the EEV-designated country/region and the family relationship can be established – otherwise they should each submit their own EEV applications separately. **UNHCR registration** cards (or the alternative arrangements agreed upon by the EEV Working Group in situations where UNHCR is not present) should serve **as proof of** such **presence**, and as preliminary evidence of their **identity**, pending detailed checks to be performed during the ‘normal’ asylum procedure that EEV beneficiaries will enter post-evacuation in the EEV country of destination.

To facilitate **access** to the **consular authorities of participating EEV countries**, applications should possibly be lodged not only in person but also through **electronic means**. There will be situations, like the two pointed out above regarding Syria and Libya, where no embassies remain open, precisely due to the high level of violence and insecurity plaguing the country/region concerned, and giving rise to the need for evacuation. It should also be possible to lodge an application **by proxy**, either via UNHCR or through another cooperating partner participating in the EEV scheme – that being an NGO with local presence on the ground (eg, MSF), another international organisation (eg, the ICRC) or the legal representative of the individual applicant (arranged through the IBA or an IBA member). The application should come in a commonly **agreed format** and serve to collect **basic bio-data** and preliminary information about the applicant, to be completed during the full RSD process to be conducted on arrival.

The applications received by the competent authorities of the countries participating in the EEV scheme should be **assessed** as swiftly as possible and **within a maximum of four weeks**. During that period, security checks shall be carried out, including via consultation of the relevant databases – just as they are normally performed within emergency resettlement and other evacuation mechanisms developed at national level, as explored in Part II. No further RSD or similar substantive processing should be undertaken

to avoid the many pitfalls of offshore/extraterritorial status determination procedures.³⁸⁵ Only persons objectively constituting an active threat to the security of the state concerned should be **excluded** and denied an EEV. To avoid discrimination and guarantee uniform application of the EEV scheme, a common definition of ‘active security threat’ should be jointly agreed for streamlined decision-making, through consultation within the EEV Working Group, which is compatible with the exclusion clauses of the Refugee Convention.

Decisions should be communicated **in writing**, explaining the **reasons for rejection**, and including an indication of a period of four weeks available for the applicant to submit a plea for the **reconsideration** of their application, to be assessed **by a different authority** than the one assessing the original submission, to avoid the risk of bias and corruption. Both **authorities**, examining the application at the first level and on appeal, should be **competent**, that is, with sufficient knowledge of the humanitarian emergency at hand and expertise regarding international protection matters.

The **reconsideration application** should add reasons, and possibly also documentation, to rebut the grounds for the rejection and substantiate the case for acceptance of the person concerned – in situations in which there may have been a mistake with the identity of the applicant or their circumstances, this mechanism can prove very valuable to achieve fair results. The authorities of the country concerned should be given **two weeks** to assess the new information and issue a final decision. But in no way should an EEV rejection impede access to protection through other channels.

The EEV Working Group should reach an agreement as to whether it should be possible for **rejected cases** to be (re)submitted to a different EEV country, and whether **multiple simultaneous applications** to different EEV issuing states would be appropriate in certain situations of aggravated danger. This seems to already be the case for ‘emergency resettlement’, so an analogous reasoning may be applied and lead to a similar solution in EEV cases. Whatever the case, to adequately manage the expectations of potential beneficiaries, thorough counselling should take place pre and post-application, so that applicants understand eligibility criteria and the full implications of the EEV scheme. The IBA and its members can play a key role in this respect.

In the event of a **positive decision**, this should be immediately **notified** to the person and their proxy, as the case may be. The country concerned should then start undertaking evacuation arrangements in cooperation with collaborating partners.

3.4 Pre-departure and post-arrival assistance

The EEV issuing country should coordinate efforts, possibly with the IOM, if they agree to participate in the EEV initiative, to **conduct fit-to-travel tests** and **organise**

³⁸⁵ See, eg, McAdam, *Policy Brief 1 – Extraterritorial processing in Europe: Is ‘regional protection’ the answer, and if not, what is?* (Kaldor Centre, May 2015) www.kaldorcentre.unsw.edu.au/publication/policy-brief-1-extraterritorial-processing-europe-regional-protection-answer-and-if-not accessed 26 July 2019; and McAdam, ‘Migrating laws? The “plagiaristic dialogue” between Europe and Australia’, in Hélène Lambert, Jane McAdam and Maryellen Fullerton (eds), *The Global Reach of European Refugee Law* (Cambridge University Press 2013), 25 ff. See also n 16 above, den Heijer, 274; and see n 127 above, 644–664.

transportation. Beneficiaries without passports should be issued Refugee Convention **travel documents** or ICRC travel documents to enable the transfer. Another option would be for the country of destination to issue a national one-trip substitute – as Canada does in some situations via its Single Journey Travel Document – to facilitate resettlement. Alternatively, the EEV Working Group could agree to produce a dedicated EEV Travel Document valid for partner countries, for the sole purpose of facilitating evacuation. For the facilitation of **exit procedures**, the intervention of the IBA and IBA members in cooperation with local actors can prove valuable to the EEV partner state.

Beneficiaries should be **accompanied on the flight**, whenever possible, by UNHCR or IOM staff, or by NGO partners personnel, who also support them throughout the post-arrival phase. This continuity of support will help candidates on the journey and through the adaptation period after disembarkation.

On arrival, following the community and private sponsorship schemes analysed in chapter 2, as well as the ‘humanitarian corridors’ mechanisms examined in chapter 3, EEV beneficiaries could be **‘matched’ with NGO partners**. These would take care of counselling and psychosocial needs and help them to **prepare** their full **applications for international protection**, with the IBA or IBA members’ assistance.

3.5 Outcomes and relationship to ‘spontaneous arrivals’

The **EEV** is designed as a context-sensitive tool, targeting a particular, finite group, solely intended to **facilitate** the **travel** of beneficiaries to a participating EEV issuing country for the purpose of submitting an asylum application. The beneficiaries, **on arrival** to the country concerned, should enter the reception structures existing for ‘spontaneous arrivals’ and **lodge an application for refugee or subsidiary/complementary protection status** following applicable rules.

On consideration of their **special vulnerability**, alternative arrangements can be made for those with heightened needs to receive the support they require. A **sponsorship mechanism** can be put in place, but with public authorities nonetheless retaining responsibility to provide access to healthcare, education and employment **on an equal basis to other asylum seekers in a similar situation**.

Whether EEV beneficiaries are granted asylum or some other form of protection will depend on national (or regional) legal provisions – independently from the mode of entry, whether via an EEV or some other route. To ensure uniformity of outcomes and avoid discrimination among refugees, the EEV Working Group could, nonetheless, discuss whether to harmonise the permit to be granted post-arrival – taking into account that, in line with Article 3 of the Refugee Convention, those claiming to be refugees should be given the option to access refugee status determination and not be discriminated against ‘spontaneous arrivals’. These matters should be made the object of thorough counselling, so EEV beneficiaries understand the options and their implications.

3.6 Participating countries, funding and sustainability arrangements

Countries under the EEV scheme, as with other ‘complementary pathways’, should **participate on a voluntary basis** and out of goodwill. Otherwise the initiative may not be feasible. These countries should express their wish to participate in the EEV scheme to UNHCR and should be invited to contribute their views to, or join as members, the EEV Working Group. The **main benefit** for them, apart from contributing to resolve life-threatening humanitarian emergencies and bringing very vulnerable persons to safety, is that they can **avoid the disadvantages associated with unknown, uncontrolled arrivals** through irregular routes – as is the case, for example, in Libya and the exodus of persons escaping the country across the Mediterranean in desperate ways with the help of smugglers.³⁸⁶ Having conducted security-screening procedures in relation to each incoming EEV beneficiary, participating countries also benefit from the certainty of catering for persons who do not constitute an active risk to public safety, reducing related costs in deterrence and containment measures.

To cover the **expenses** of the EEV scheme, **mixed-funding solutions** would be ideal. The International Rescue Committee has developed different financial models combining public and private funds to cover resettlement-based initiatives through social impact investments that could be adapted for the purposes of the EEV scheme.³⁸⁷ A dedicated **EEV Fund** could be created with contributions from different sources – much in the guise of the emergency appeals issued by UNHCR.³⁸⁸ Alternatively, the **European AMIF**, with standing contributions by participating countries, could serve as a (possibly more stable) model to replicate. Whatever the formula, the key is to maximise solidarity and responsibility sharing. In this perspective, **incentives** could also be created through funding solutions. Countries offering EEVs could then be ‘compensated’ through the EEV Fund with an allocation of €10,000 per evacuee, or whatever other amount seems appropriate to the EEV Working Group. This should cover transfer and assessment costs and contribute to first-reception upon arrival. A similar formula has been tested in the context of the Emerging Resettlement Countries Joint Support Mechanism (ERCM), sharing financial and technical support with very successful results.³⁸⁹

To guarantee the continuity and sustained efficacy of the EEV, its effectiveness should be **evaluated** at periodic intervals. A wide spectrum of voices, including those of EEV beneficiaries, should be collected to reflect on what works and what does not. The EEV Working Group should designate an **external assessor** to examine past schemes, test their efficiency and recommend any necessary changes. **Periodic monitoring** should be carried out by the **EEV Working Group**, designating a **task force** per EEV designated area,

386 UNHCR, *Routes towards the Mediterranean: Reducing Risks and Strengthening Protection* (June 2019) www.unhcr.org/partners/donors/5d1327ab7/unhcr-appeal-routes-towards-mediterranean-reducing-risks-strengthening.html accessed 26 July 2019.

387 See n 27 above, 21. See also, International Finance Corporation (IFC), *Private Sector and Refugees: Pathways to Scale* (April 2019) <https://data2.unhcr.org/en/documents/download/69470> accessed 26 July 2019.

388 UNHCR, *The Global Appeal and Supplementary Appeals* (undated) www.unhcr.org/the-global-appeal-and-supplementary-appeals.html accessed 26 July 2019.

389 UNHCR, *Emerging Resettlement Countries Joint Support Mechanism (ERCM)* (September 2016) <http://reporting.unhcr.org/sites/default/files/Information%20Sheet%20on%20ERCM%20September%202016.pdf> accessed 26 July 2019.

which should undertake the individual examination of each EEV operation upon completion, so results and lessons learnt can be taken into consideration for the planning and rollout of subsequent schemes. All **EEVs** issued and rejected, as well as the grounds motivating rejection, should be **recorded** and **reported** to UNHCR, as coordinator of the EEV Working Group, so circumstances in which EEVs are granted or denied, both for transparency purposes and **quality control** can be tracked.

Finally, to guarantee appropriate uptake by donors, partner organisations, and EEV beneficiaries themselves, to achieve the goal of evacuating the targeted group within the intended period, **EEV schemes** should be **made public**. The relevant information regarding the scope of each particular EEV action, the criteria, processes and arrangements that may apply, as well as sufficient details on outcomes, pre-departure and post-arrival support should be **accessible** on the EEV Working Group website. Alongside partner organisations, UNHCR, as Chair of the EEV Working Group, as well as participating countries through their consular posts and immigration/asylum services, should also make the information **available**. This will serve to boost confidence in the scheme through enhanced transparency, to manage expectations and to support the independence and autonomy of refugees in accessing 'complementary pathways' on their own to reach protection.

Annex

Model Convention for EEVs

TITLE I: GENERAL PROVISIONS

Article 1

Purpose

This convention establishes the procedures and conditions for issuing EEVs by countries participating in the EEV scheme for the purposes of emergency transfer of persons in urgent need of international protection and their entry into the EEV issuing country to lodge an asylum application upon arrival.

Article 2

Scope of application

The EEV scheme covers persons present in an EEV area, as designated by the EEV Working Group, by the cut-off date agreed upon by the EEV Working Group, if applicable.

Article 3

The EEV Working Group

1. The EEV Working Group shall be composed of the countries voluntarily participating in the EEV scheme and the partner international and NGOs that wish to contribute to its implementation.
2. The EEV Working Group is to be coordinated and chaired by UNHCR and should meet on a yearly basis for a general assessment of emergency situations and also on demand, if called upon by the Chair, to respond to new emergencies as they arise.
3. Decisions shall be adopted by consensus, leaving room for flexibility so as to accommodate as much as possible the requirements and requests of members, and maximise the potential for EEV action.
4. The main function of the EEV Working Group is to identify emergency areas where EEV intervention is necessary, using UNHCR declared 'humanitarian emergencies' as a starting point, taking into account the following criteria:

- (i) risks of persecution and/or serious harm, taking account of threats to life and physical integrity;
- (ii) degree and spread of violence and insecurity;
- (iii) availability of protection from *refoulement*;
- (iv) coverage of human rights and basic needs of subsistence; and
- (v) accessibility of resettlement in useful time.

5. The EEV Working Group, on the identification of particular EEV-relevant areas, may decide to indicate a specific cut-off date for registration with UNHCR or other partner organisations, unless the area and group of beneficiaries intended can be circumscribed by other means (eg, when specifically targeting those in detention and/or with particular vulnerabilities justifying the prioritisation of their cases).

6. The EEV Working Group will also decide on the possible means that applicants can use to prove presence in the area and on the format of the application to ensure consistency and uniformity of decision-making.

7. The EEV Working Group will coordinate the logistic response concerning the pre-departure and post-arrival assistance necessary to carry out the evacuation of EEV beneficiaries.

TITLE II: PROCEDURES AND CONDITIONS FOR ISSUING EEVs

Article 4

Eligibility

1. Persons present in the EEV-designated area, by the cut-off date agreed by the EEV Working Group if applicable, can submit an application for an EEV on their own behalf and on behalf of their children and other dependants if they are together and cannot submit their own application. Every effort should be made to maintain family unity.

2. Once it is determined that they are indeed present within the relevant area, candidates should automatically qualify for EEV consideration, without discrimination on nationality, race, religion or other grounds.

3. Only applicants that pose an active threat to the national security of the issuing country shall be rejected EEVs.

Article 5

Authorities responsible

1. EEV participating countries shall designate the authorities competent to receive and process EEV applications.
2. EEV authorities must be trained in international protection matters and have sufficient knowledge of the humanitarian emergency covered by the specific EEV scheme.

Article 6

Application

1. EEV candidates shall submit their EEV request by completing an EEV application form, indicating their bio-data and any reasons why they do not pose an active threat to security and therefore should not be excluded from EEVs.
2. EEV candidates should append to the application a copy of their UNHCR registration card or other proof of identity and presence in the EEV designated area for verification.

Article 7

Processing and decisions

1. It should be possible for EEV competent authorities to receive EEV applications in person, by proxy or through electronic means, particularly in circumstances in which they do not have a local representation in the EEV area.
2. Competent authorities, on receipt of EEV applications, shall verify the presence of the applicant in the EEV area and, if applicable, registration with UNHCR or alternative partner organisations by the cut-off date concerned.
3. They must also undertake any security checks that may be necessary under national law and exclude only applicants that pose an active threat to the national security of the issuing state.
4. Decisions must be reached as soon as possible and within four weeks of submission of the application.
5. Decisions must be notified to the applicant in writing and, in the case of a rejection, provide reasons, and a period of four weeks for candidates to rebut and resubmit their cases for reconsideration.
6. In no way should a final negative decision impede access to effective protection through other means.

TITLE III: LOGISTICS AND SUPPORT

Article 8

Application and pre-departure assistance

1. In case of a positive decision, the competent authorities shall make arrangements for the evacuation of the EEV holder as soon as possible.
2. They may cooperate with EEV Working Group partners and other organisations in the preparations required, including fit-for-travel tests, exit formalities and counselling.
3. In case EEV beneficiaries do not have a passport, the competent authorities of the EEV issuing country should provide Refugee Convention travel documents, ICRC travel documents or equivalent documentation.

Article 9

Post-arrival conditions and support

1. On arrival to the EEV issuing country, the EEV beneficiary will be allocated to a reception facility on the same basis as other applicants for international protection.
2. The EEV beneficiary will be given sufficient time and facilities to prepare his/her asylum application also with the assistance of EEV partner organisations.
3. Throughout this period, they may be matched with a local sponsor or one of the partner organisations participating in the EEV scheme to receive counselling and other services, as required.

TITLE IV: FINAL PROVISIONS

Article 10

Funding and compensation

1. An EEV Fund will be created through donations and contributions by the EEV Working Group members to finance EEV actions and activities.
2. In particular, a compensation mechanism will be established, so that a lump sum of €XXX per EEV beneficiary is allocated to the EEV issuing country to cover the costs associated with the evacuation.

Article 11

Monitoring and reporting

1. The EEV Working Group will designate a monitoring Task Force from among its members in charge of monitoring the rollout of EEV interventions and preparing a report assessing individual EEV schemes.
2. EEV participating countries shall communicate to the EEV Working Group the data regarding EEV issuing activity, including granted and rejected applications, and reasons for refusal.
3. Information from the individual monitoring missions, the country reports on EEVs, and feedback collected from applicants shall form the basis of EEV evaluations as per Article 12 of this Convention.

Article 12

Evaluation

At periodic intervals, to be agreed upon by the EEV Working Group, a comprehensive, external evaluation of the EEV scheme shall be undertaken to establish fitness for purpose and locate gaps and areas of possible improvement.

