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Agenda item 3: International Protection

Introductory Statement by
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Mr Chairman, Distinguished Delegates, Ladies and Gentlemen,

I am pleased to introduce this year's Note on International Protection, contained in document EC/63.SC/CRP.11.

Protection is at the heart of what this organization stands for, what it seeks to promote and what it is duty bound to ensure. The period covered by this year's Note has been eventful from a protection perspective. By way of example, just over the last few weeks we have seen new refugee influxes, border closures, loss of life at sea, threats of deportation of recognized refugees for whom resettlement solutions have already been identified, a questioning of UNHCR's legal role to supervise the 1951 Refugee Convention, violent attacks against refugees and asylum-seekers, including round-ups leading to their detention, and one legislative initiative no longer in line with a regional refugee instrument.

By the same token we have also seen incredible generosity and openness on the part of host communities, often in the most impoverished parts of a country, positive and forward-looking court decisions, significant changes to domestic legislation enhancing protection safeguards for refugees or closing loopholes in nationality laws to eliminate instances of statelessness, sustainable returns of those displaced internally to their areas of origin, new accessions to statelessness instruments and expressions of strong commitment to protection principles.

This, in a nutshell, is the mosaic of protection in today's world, with its continuing challenges, advances and hopefully only temporary setbacks. The examples I have just mentioned also show how important it is not only to report on ongoing concerns and achievements but also to reflect on what needs to be done in partnership with others, including this Standing Committee.

But before highlighting a number of themes elaborated in the Note, let me quickly recapitulate some facts and figures summarized in the Global Trends Report issued

last week.[1] I will not address protracted refugee situations and SGBV in my remarks since we have just heard an update from the Assistant High Commissioner [Protection].

Global Trends

Forced displacement due to conflict and persecution continues to affect vast numbers of people. For the last five years, the annual level of forced displacement has been over 42 million people. At the end of 2011, 42.5 million people were either refugees, internally displaced, or had sought asylum. Of these, 4.3 million people were newly displaced last year, some 800,000 of them as refugees. This was the highest number in more than a decade. Another 3.5 million were newly displaced inside their countries -- a twenty per cent increase from 2010. Around four-fifths of the world's refugees fled to neighbouring countries. And of the 10.4 million refugees under UNHCR's mandate, almost three quarters -- 7.1 million -- have been in protracted exile for at least five years. We also have detailed population data on 3.5 million stateless in 64 countries around the world but estimate that the overall population is several times larger. This is why we need to continue mapping stateless populations.

These trends confirm that finding solutions must remain at the forefront of international concern and UNHCR's work, even as new displacement challenges, including an increasing number of emergencies, demand our immediate attention.

Protection in emergencies

Given these growing forced displacement numbers it is not surprising that protection in emergencies has again emerged as a major theme. The past eighteen months have borne witness to successive emergencies, resulting in significant movements of people and requiring quick action by UNHCR and its partners.

As we are meeting here in Geneva, thousands of people are fleeing fighting in Blue Nile State and South Kordofan in Sudan, escaping into South Sudan and Ethiopia. UNHCR, along with partners, have to cope with ensuring emergency protection and assistance to refugees already weakened by conflict and flight in areas which are remote and enormously difficult to access. Another emergency is unfolding in the Sahel region, which was already hit by protracted drought and food insecurity. The outflow of some 180,000 refugees from Mali towards Niger, Burkina Faso and Mauritania, is matched by an almost equal number of internally displaced. In the Middle East and Turkey, over 90,000 Syrians have found refuge in neighbouring countries while an estimated 1.5 million people are in need of humanitarian help inside Syria. Other situations also present particular protection challenges. In countries such as Somalia, Afghanistan, Yemen or Iraq, getting help to the internally

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[1] UN High Commissioner for Refugees, *Global Trends 2011: A Year of Crises*, 18 June 2012, available at: http://www.unhcr.org/refworld/docid/4fdeccbe2.html

displaced means working in environments where access is difficult and violence or criminality present serious security risks.

UNHCR has strengthened its emergency response capacity by capitalizing on the synergies of emergency, security and supply and joining these functions under one Division. The Office has also adopted an organization-wide approach to emergency response, part of which was the reconfiguration of the Emergency Capacity Management Service which, *inter alia*, reinforced protection at the core of emergency response. A senior protection adviser position has been created and dedicated to providing guidance, tools and oversight of protection interventions in emergencies. We are simultaneously strengthening our *protection capacity* in emergencies, to enable timely responses to critical protection risks from the very onset. Practical tools are being designed for protection staff who have been deployed. They comprise a set of checklists giving priority to child protection and SGBV, a work-plan matrix, as well as guidance to assist with fact-finding field visits and interviews. These tools will ensure a more standardized protection response in our operations and will be supplemented by increased monitoring and strengthened partnerships with other humanitarian actors. A manual on the *Security of Persons of Concern*,[2] jointly developed with the Division of Emergency, Security and Supply, provides a tool for field staff to better address security incidents. Yet, humanitarian response, however effective or well managed, can never be a substitute for international engagement, which is necessary to address the root causes underlying these emergencies.

Sudden large-scale influxes have also placed an increased burden on UNHCR's refugee status determination [RSD] and resettlement processes. In some ways this is a new feature of our emergency protection response. In 2011, UNHCR conducted RSD in 67 countries, registered 80,050 new individual RSD applications at first instance and issued 52,600 substantive individual RSD decisions [excluding decisions taken on a *prima facie* basis].

In humanitarian emergencies, UNHCR's RSD activities are frequently only one part of a complex and resource-intensive protection response. Displacement in connection with the upheavals in North Africa and the Middle East has placed significant pressures on our operations in the region, as well as Turkey, which in 2011 replaced Malaysia as the operation registering the largest number of new RSD applications. These increased from 9,200 in 2010 to 16,000 in 2011. In Egypt and Tunisia, UNHCR was required to implement very significant emergency RSD operations in 2011 on the borders with Libya. UNHCR's RSD operation in Tunisia, which had traditionally registered only a very small number of asylum-seekers annually, became one of UNHCR's larger and more complex mandate operations in only a matter of weeks. Carrying out RSD for 3,800 asylum-seekers from over 30 countries presented exceptional challenges and called for the swift set-up of the physical and technical

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[2] UN High Commissioner for Refugees, *UNHCR Manual on Security of Persons of Concern, November 2011,* First Edition, available at: http://www.unhcr.org/refworld/docid/4f6313032.html

infrastructure required to support high-volume RSD and resettlement in the earliest stage of the emergency, while concurrently responding to the immediate protection and humanitarian needs of the new arrivals.

As a critical complement to its mandate RSD activities and to be prepared for emergencies, UNHCR continues to work towards establishing or strengthening national capacity in the area of RSD, particularly when handing over RSD to Governments. We also promote initiatives to facilitate sharing by States of expertise and resources with countries that experience particular pressures on their RSD systems. For example, UNHCR is currently supporting the implementation of regional initiatives to strengthen the asylum systems in Latin America and in Eastern Europe, which are based largely on the Quality Assurance Initiatives developed in Western Europe. This is an example of cross-fertilization of regional good practices.

Protection climate

If we now turn to other parts of the world, a worrying trend is casting a shadow. We are witnessing the scapegoating of the "other" and, in the case of refugees or stateless people [and migrants more generally], their stigmatization as those who cheat and "abuse" the system or, worse still, as criminals. In the wake of economic uncertainty, high unemployment rates and an ongoing financial crisis, those on the margins of society, including refugees, asylum-seekers and the stateless, are easy prey for the tabloid press and populist politicians. This phenomenon has already emerged in some countries where the public debate on asylum and migration has become so acrimonious as to preclude any reasonable dialogue about the real issues and challenges, and how to confront them.

The real test of our commitment to protection and asylum comes in times of uncertainty. Opposing extremist views and addressing xenophobia requires political leadership. It will also continue to be critical to condemn strongly violence and discrimination against refugees, asylum-seekers and migrants, to stand firm and not to yield to anti-foreigner sentiments.

UNHCR alone cannot change such sentiments or attitudes. Working in partnership remains essential. The recent establishment of the UN Network on Racial Discrimination and Minorities by the Secretary-General's Policy Committee is a welcome development, as it facilitates collaboration between UN entities, contributes to developing relevant guidance and helps to share effective practices to combat racial discrimination and protect minority rights.

In countries in which racism, racial discrimination, xenophobia and related intolerance have seriously affected persons of concern to UNHCR, offices on the ground have undertaken various initiatives in line with UNHCR's Note on "Combating Racism, Racial Discrimination, Xenophobia and related Intolerance through a Strategic Approach". Moreover, UNHCR's public opinion survey, which the Office will release next week, and which is intended to measure attitudes and

awareness concerning refugees in eleven countries, is a recent valuable initiative in this regard.

Detention

Anti-foreigner sentiment, combined with concerns regarding border control, security and mixed flows, are equally manifested in the increased use of immigration detention.

Despite strong safeguards in the 1951 Convention, which recognize that seeking asylum is not an unlawful act, immigration detention generally remains far less regulated, reviewed and monitored than detention of criminals. Asylum-seekers are often detained without consideration for protection needs, individual circumstances or vulnerabilities. Mandatory detention regimes for certain categories of asylum-seekers have brought untold suffering and long-term psychological harm for the detained. The impact on children is particularly acute and distressing.

It is encouraging that some States are moving towards detention reform and implementing mechanisms such as community reception models, provisional release, reporting and case management. In addition, an increasing number of States are ensuring that vulnerable groups such as children, women at risk, older people, and persons with mental and physical disabilities are not detained. These practices have been found to be more effective, humane and cheaper than immigration detention. We are working with States to explore and implement such alternatives.

It is UNHCR's position that detention of asylum-seekers is an exceptional measure, lawful only when it is necessary in the individual case, proportionate and reasonable in all the circumstances. In 2011, UNHCR, together with OHCHR, held the first ever Global Roundtable on Alternatives to Detention.[3] We are currently finalizing our global strategy on detention, which we plan to roll out in 2013. We are revising our detention guidelines, which will be issued later this year. In partnership with the International Detention Coalition and the Association for the Prevention of Torture, we are also preparing a detention monitoring manual for UNHCR staff, NGOs, national human rights institutions and other monitoring bodies, which will be finalized next year. In addition, we have commissioned further empirical research into alternatives to detention to hear from asylum seekers themselves what motivates them to cooperate with alternative community-based schemes.

Human trafficking and smuggling

As part of a broader international response to human trafficking and smuggling, another aspect to UNHCR's partnership with States is to ensure that border controls and agencies are sensitive to the specific needs of vulnerable victims, including those

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[3] UN High Commissioner for Refugees, *Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons: Summary Conclusions*, July 2011, available at:
http://www.unhcr.org/refworld/docid/4e315b882.html

that are, or may be, in need of international protection. Combating such crimes needs to go hand-in-hand with proper protection safeguards of the sort envisaged by the Palermo Protocols. Safeguards should ensure that the victims of such crimes, some of whom may be asylum-seekers and refugees, are properly identified, not penalized and referred to relevant processes, including asylum procedures as appropriate. UNHCR has enhanced collaboration with key partners in this area such as IOM, OSCE, UNODC, OHCHR, ODHIR, the UN Special Rapporteurs on trafficking and on migration, the EU, the Council of Europe, and the African Union.

Maritime protection

Only last week we learnt about a tragic boat accident in the waters between Indonesia and Australia that underscores the hazardous nature of these perilous and often exploitative journeys, as well as the desperation of people taking to the sea. We have therefore been seeking to improve responses to distress at sea situations involving asylum-seekers, refugees and undocumented migrants. This issue is not new. Yet the lack of effective responses continues to lead to significant loss of life as well as tensions between States in some regions. For example, at least 1,500 people lost their lives in attempting to cross the Mediterranean following last year's events in North Africa. The high number of deaths is indicative of gaps in the implementation of the Search and Rescue (SAR) regime as well as lack of agreement on disembarkation and processing arrangements.

Developing more effective responses to distress-at-sea incidents involving persons of concern to UNHCR is therefore a high priority for the Office. A global expert meeting on this issue in November 2011 endorsed three operational tools to enhance cooperative responses: a *Model Framework for Cooperation, Standard Operating Procedures (SOPs) for Shipmasters* and *Mobile Protection Response Teams*.[4] Regional adaptation of the Model Framework is being considered in the Caribbean and the Asia-Pacific region and will be the subject of a number of regional meetings planned for 2012 and 2013. Maritime protection more broadly is high on the agenda of the Regional Support Office [RSO] being established as part of the Bali Process in the Asia-Pacific region. UNHCR will be working closely with the RSO to improve maritime protection responses, based on inter-State cooperation and responsibility sharing.

Statelessness

Statelessness is an anomaly in the 21st Century and a significant human rights problem. If left unaddressed it could breed inequality, marginalization and stigmatization. Over the last decade, many countries around the world, including Turkmenistan, Sri Lanka, Bangladesh, Thailand and the Russian Federation, have made considerable progress in resolving long-standing statelessness situations and

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[4] UN High Commissioner for Refugees, *Refugees and Asylum-Seekers in Distress at Sea - how best to respond?*, 5 December 2011, available at: http://www.unhcr.org/refworld/docid/4ede0d392

granting nationality to formerly stateless populations. Several countries, including Kenya and Tunisia, have amended their nationality legislation with a view to reducing or preventing statelessness, including by removing bars to the passage of nationality by women to their children and thereby affirming gender equality.

A recent global survey of nationality laws[5] found that 26 countries continue to discriminate against women by failing to give mothers the ability to confer their nationality on their children on an equal basis as fathers. The consequence of such laws is that children can be rendered stateless where fathers are unable or unwilling to pass on their nationality. UNHCR welcomes the growing trend for States to remedy gender inequality in their citizenship laws. This said, more legal and practical reforms are needed to ensure that women have equal rights when it comes to nationality matters.

The Ministerial Meeting last year marked a sea change in how the international community is acting to prevent and resolve statelessness. In the past twelve months, we have seen a historic rise in accessions: nine to the 1954 Convention and eight to the 1961 Convention and many more pledges to accede or consider acceding to these instruments. A number of States are on the verge of implementing their pledges, for example, Hungary has completed the domestic procedure to withdraw its reservations to the 1954 Convention while the parliaments of Ecuador, Honduras, Portugal and Togo have all passed the required legislation for accession to one or both of the statelessness conventions. A number of other countries are making progress on establishing statelessness determination procedures that improve the identification and protection of stateless persons. We have also seen reform of problematic aspects of nationality laws, as well as initiatives to map stateless populations and to improve birth registration as a means of preventing and reducing statelessness. I have recently personally witnessed the distribution of birth certificates in Thailand and the Philippines and was moved by how gratefully people received them.

Yet, efforts to address statelessness across the globe remain insufficient. Goals can never be achieved without ambition. Would it not be great if we could collectively set ourselves the target of reducing statelessness by half in the next five years and virtually eliminate statelessness by 2021, on the occasion of the 60th anniversary of the Convention on the Reduction of Statelessness? While this goal may seem ambitious, many of the pieces are already in place to achieve it in a number of States. What is needed is follow-through. For example, the possibility to end the plight of Kuwait's Bedoun is well within reach. The Kuwaiti government has announced a plan to resolve the situation within five years and to grant eleven basic rights to the Bedoun, including birth registration. Procedures are currently underway to naturalize a group of stateless residents eligible to obtain Kuwaiti citizenship,

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[5] UN High Commissioner for Refugees, *Background Note on Gender Equality, Nationality Laws and Statelessness* , 8 March 2012, available at: http://www.unhcr.org/refworld/docid/4f59bdd92.html

including the children of Kuwaiti women who are either widows of, or divorced from, stateless residents.

I reiterate here today UNHCR's availability to provide States with technical and operational support to tackle these problems. To our civil society partners, I have a similar message. Just a handful of NGOs are working on statelessness. I am inspired to see if we could not establish a truly global initiative, a civil society movement focused on ensuring that there is greater understanding of statelessness and to work in partnership with States and UNHCR both globally and at country level to address the predicament of each stateless population.

Internally displaced persons (IDPs)

Internal displacement goes hand in hand with protection issues such as insecurity, discrimination, exploitation, SGBV, child soldiers, lack of documentation, etc. It not only curtails livelihoods and arrests development but is also often used to exercise control over territory and people, thus entrenching injustice and inequality. A positive development in 2011 was the return home of some 3.2 million IDPs -- the highest rate of returns in more than a decade. Our global strategy over the past year has focused on increasing integration between field needs and global initiatives, while promoting the development of law and policy. This has led to a number of initiatives.

By way of examples, UNHCR held the first Global Field Consultations on IDP Protection with senior protection staff from twenty-six IDP operations, in order to frame the Office's IDP strategy over the next two years. Among many things, colleagues debated the intersection between refugee and IDP operations; how UNHCR can best support national authorities who are developing laws and policies on internal displacement; and UNHCR's role regarding protection of civilians in a changing operational environment.

As lead agency for the Global Protection Cluster (GPC), UNHCR also completed an extensive consultation process with more than three dozen GPC partners in order to reinforce the GPC's focus on field support. This consultation culminated in the 2012-2014 Strategic Framework.

Additionally, UNHCR has strengthened its capacity to promote laws and policies on internal displacement at the national and regional levels. A UNHCR-led UN Protection Working Group successfully developed draft national legislation and a policy framework on internal displacement in Kenya, and UNHCR is currently supporting a similar process in Afghanistan. In a number of countries, UNHCR has provided comments on draft constitutions with the goal of strengthening constitutional provisions for the protection of persons of concern. In addition, UNHCR is supporting the development of model legislation for the implementation of the Kampala Convention.

Moreover, we have just published a study entitled: *IDPs in Host Families and Host Communities: Assistance for Hosting Arrangements*.[6] It illustrates how protection principles can be applied in practice, such as how to use support to communities to enhance hosting as a protection mechanism while also bridging ethnic or religious tensions that could arise. The study provides another example of how we are strengthening partnerships with communities, with governments and with persons of concern.

In the months to come, building on these developments, we will provide more guidance on how to develop comprehensive protection strategies through protection programming, advocacy, assistance and the search for durable solutions.

Coherence of operational protection approaches

The last twelve months have seen the Office bolster its protection responses for particularly vulnerable persons of concern -- notably in the areas of education, child protection, the disabled and SGBV -- while strengthening its partnerships with NGOs. The Office has released an updated SGBV strategy,[7] including a special initiative on SGBV, a new Education Strategy for 2012-2016,[8] and a new Child Protection Framework.[9] Two later agenda items of this Standing Committee relate to children and UNHCR's AGD approach so I will not describe them in detail here.

Suffice it to say that we are creating synergies between areas of work that may have been "siloed" or distinctive areas in the past and bringing them together within the context of a larger, integrated protection framework. We have learned from experience that approaches to education, child protection, SGBV prevention and response cannot be piecemeal. Working with the most vulnerable such as the disabled and older people, we are consolidating each work area, while simultaneously strengthening crosscutting inter-linkages. We thus aim to weave a protection "web" that will reinforce operational protection responses while concurrently minimizing protection gaps through which the most vulnerable might fall. The Strengthening Protection Capacity Project is thus interlinked with implementation of the SGBV Updated Strategy, the new Education Strategy and the Child Protection Framework.

In addition, we are focusing more on forging partnerships with NGOs with specific expertise while also looking strategically at our work with other UN agencies such as

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[6] UN High Commissioner for Refugees, *IDPs in Host Families and Host Communities: Assistance for Hosting Arrangements*, April 2012, available at: http://www.unhcr.org/refworld/docid/4fe8732c2.html

[7] UN High Commissioner for Refugees, *Action against Sexual and Gender-Based Violence: An Updated Strategy*, June 2011, available at: http://www.unhcr.org/refworld/docid/4e01ffeb2.html

[8] UN High Commissioner for Refugees, *UNHCR Education Strategy, 2012-2016*, 28 February 2012, available at: http://www.unhcr.org/refworld/docid/4f4cd9812.html

[9] UN High Commissioner for Refugees, *A Framework for the Protection of Children*, 26 June 2012, available at: http://www.unhcr.org/refworld/docid/4fe875682.html

UNICEF, a key partner in regard to child protection and education. We benefit from their expertise while at the same time sharing our protection approach and helping them bring this protection outlook into their programming. For example, SGBV prevention and response is a feature of the disability inclusion work we are doing with the Women's Refugee Commission, with which the Office has concluded a strategic partnership aimed at enhancing the protection space available to persons of concern with disabilities. During training with the most prominent national disability actors in a number of countries, we found that not one of them had considered SGBV to be a concern. Including these partners in our work enables us to raise SGBV awareness and boost capacity within the broader disability community in a country.

UNHCR's AGD approach recognizes that the forcibly displaced and the stateless are not one homogeneous group; they include individuals who have specific needs and capabilities that must be taken into account in protection programming. The AGD Accountability Framework, which senior managers are required to complete each year, has proven to be a critical tool in attaining our goal of ensuring equitable outcomes for all persons of concern. The value of the tool has evolved. Initially it aimed at highlighting minimum standards, providing clarity on key commitments, promoting understanding on AGD-related successes and challenges, as well as better linking Headquarters and the field. In addition, it has proven to be an effective early warning system for UNHCR to identify and then address performance gaps, and a valued mechanism for external and internal reporting and a tool viewed by many to be "cutting edge" and a model of good practice. Our learning has led us, in the past year, to focus on and further develop the "diversity" component of the AGD approach. Recognizing and responding to diversity is central to our ability to deliver equitable outcomes, in particular for those who are at risk of being overlooked or whose specific needs mean that they need tailored support.

Conflict and other situations of violence and asylum

Beyond the many initiatives I have described we are also exploring how to respond to evolving displacement trends. The last few decades have, for example, seen changes in the causes, character and effects of armed conflict, as well as the emergence of a range of other situations and actors of violence. Armed conflicts are increasingly characterized by widespread violence leaving, at times, little distinction between combatants and non-combatants. In many situations around the world violence is often protracted and intractable, coupled with an absence of state infrastructure and instability. Interviews with refugees and conflict-affected populations, including IDPs, confirm the complexity of contemporary conflict and other situations of violence. We are seeing multiple, simultaneous and overlapping forms of violence: armed guerilla conflict; insurgency; inter-ethnic clashes; clan or tribal feuds; civil resistance which is met by armed forces; gang violence; organized crime; political violence; etc.

As conflict and other forms of violence evolve, so do the characteristics and profiles of those in need of international protection. Although the majority of persons of

concern to UNHCR are fleeing violence and conflict, they are not always recognized as refugees under the 1951 Convention. It is thus vital to properly analyze the causes, character and effects of the conflict and violence to enable an appropriate application of the Convention.

In meeting the international protection needs of people fleeing armed conflict and other situations of violence, it is important to reconfirm the primacy and relevance of the 1951 Convention and its 1967 Protocol. The 1951 Convention provides for a global protection regime listing specific rights for refugees. It is therefore important to properly interpret the Convention grounds, in particular the social group ground and the nexus. Arguably, in the context of armed conflict and other situations of violence, children and women, for example, may qualify as a particular social group.

We are currently conducting research into this area and UNHCR will develop guidelines on how international and regional refugee instruments apply to people fleeing violence and conflict across international borders. They will also identify in detail those who may not necessarily be covered by existing instruments and explore possible alternative frameworks or approaches in such instances. This research thus fits within broader discussions on protection gaps and temporary protection that we looked at as part of the commemorations cycle.

Mr Chairman,

In conclusion, I would like to return to today's protection landscape. Protection is an expression of our common humanity. It is meant to bring us together, to overcome divisions and to act in partnership. Indeed, one thread running through my statement today has been the significance of partnership for our shared work in providing protection to the forcibly displaced and the stateless. It takes many forms. Partnership in responding to emergencies, partnership in standing up to anti-foreigner sentiment, partnership in ensuring that those in need of international protection are properly identified and supported in mixed migration flows, partnership in protecting the internally displaced and partnership in finding solutions for the stateless. Let me repeat an important message. Protection can neither be done by one actor alone nor by acting in isolation. It involves good governance and requires government ownership, community ownership and civil society ownership. Above all, it must be underpinned by a strong commitment to accountability to the people affected by displacement or statelessness. I look forward to an interesting debate on this year's Note on International Protection.