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DOING PROTECTION BETTER

Statement by Ms. Erika Feller, Assistant High Commissioner (Protection)

Mr. Chairman,

2011 has been, symbolically and actually, an important year for the protection both of refugees and of stateless persons. It coincides with the 60th anniversary of the 1951 Convention relating to the Status of Refugees, to which there are now 148 States parties, making it, together with its 1967 Protocol, among the most broadly adhered to of human rights instruments. The 60th anniversary commemorations have served as a useful platform for the organisation of events to re-contextualise the Convention, to recognise the vital purposes it continues to serve, and to explore how to build upon the foundations it has put in place.

The 50th anniversary of the 1961 Convention on the Reduction of Statelessness is also being commemorated. With 40 parties to the 1961 Convention, its coverage is clearly inadequate. It has, though, increased this year with the welcome accessions of Panama, the Philippines, Nigeria and Croatia, attesting not only to its continuing relevance, but also to growing appreciation of the fact that, if citizenship is a sovereign prerogative, redressing statelessness is nevertheless a shared and common responsibility.

Throughout the year, hardly a day has passed without refugee and other displacement situations making sobering news. At the same time, extraordinary acts of generosity and solidarity have meant that many thousands of people have found protection and solutions in new countries, or back in their own. The 2011 Note on International Protection and the additional Note on Statelessness, both of which I am introducing today, describe the advances but also the setbacks. What is clear from these documents is that responses need to be improved. This anniversary Excom is a timely juncture for a discussion on how this might be achieved and I want to start with three propositions in this regard. They are as follows: Core protection will be improved if:

- (A) it is given a higher priority, at a much earlier stage, in emergencies;
- (B) burden and responsibility sharing is approached in more creative and structured ways; and
- (C) more constructive ways can be found to resolve any inherent tension between national interests and international responsibilities.

Turning first to protection in emergencies, 2011 has seen UNHCR involved in a number of large-scale, complex emergencies involving both refugees and internally displaced persons. The Libya operation, the Côte d'Ivoire situation and the Somalia crisis are three. Such emergencies usually share in common that the displaced have had to seek safety in inherently unsafe areas, with host families with very limited resources, or in badly provisioned camps. Programmes have had to be mounted in difficult and remote

terrain, often ecologically ill-suited to sustaining a large, new population influx. It is not unsurprising, in such circumstances, that it is the life-saving imperatives which present themselves upfront. The real and present danger, though, is a tardy protection response.

In practice, this means that in major emergencies provoked by conflict, ensuring the civilian nature of asylum and dealing with the presence of combatants calls for, but may not always receive, an early protection intervention. Protection monitoring will rarely be the priority activity of an over-stretched emergency response team focusing on dealing with extreme malnutrition, meeting urgent shelter requirements, or dealing with the logistics of managing and settling large-scale arrivals. Core protection concerns like SGBV, trafficking and recruitment of children, family separation, or the needs of the disabled, may not be identified sufficiently early to prevent them becoming endemic in an operation when it settles.

This is a significant concern. One needs only to refer to the demographic breakdown of the Somali influx into Ethiopia, with its huge proportion of children. Overall, they account for almost 70 per cent of the refugees in the Dollo Ado camps. They have been arriving often separated from caregivers, with a baggage of experiences of deprivation and violence. Their needs are surely physical, but also for psycho-social counseling, family tracing, and care and education arrangements which help to offset protection threats such as the danger of child recruitment. The disabled can also be particularly vulnerable in fast-moving emergencies. They are often at heightened risk of sexual violence, domestic exploitation and exclusion from basic services. In addition, they may experience difficulty in moving, hearing, seeing, communicating or learning, which amplifies the difficulties of coping with displacement in emergency situations. The danger of this being overlooked during registration is high, with failure here having long-term protection consequences.

Learning the lessons of these past and present emergencies, UNHCR will be undertaking an early review of how to improve the protection response in situations where life-saving assistance is the highest pressure. How to ensure adequate protection resources, early identification and capacity building of local partners, more targeted information gathering through prioritised protection monitoring, and overall a response strategy which integrates, not compartmentalises, protection from the beginning, will be examined. The aim is to make pre-planning for and early implementation of protection interventions, going beyond protection through assistance, more of a standard response.

UNHCR is developing a new global protection strategy for children that will be launched in 2012, with emergency situations as one of its focuses. A guidance note on working with Persons with Disabilities in Forced Displacement, developed in cooperation with Handicap International, has just been issued. We will shortly be launching, jointly with the Women's Refugee Commission, training on mainstreaming disability issues, including emergencies. When it comes to protection in IDP emergencies, the Global Protection Cluster, under UNHCR's leadership, is moving also to strengthen its operational support role in the field. Next week I will meet with the senior protection staff of all IDP operations in the first such global consultation on operationalising protection for IDPs.

It would also be useful if States could review how they can ensure protection has the priority it deserves in emergencies. Here I draw attention to two of several concerns we have. The first relates to funding. In our experience, there is a definite preference on the part of many donors for funding immediate returns. The more “hidden” results, among which protection outcomes can sometimes be placed, tend to be under-appreciated and under-funded. Again child protection is illustrative. A recent report of the Child Protection Working Group for the Global Protection Cluster, looking back to 2009, brings out that child protection is one of the least funded areas of the humanitarian response. Even accounting for statistical limitations with the study, the overall findings hold up and are worrying. Only some 45% of the estimated overall protection requirements in humanitarian emergencies were funded – which is in itself illuminating – and when it came to child protection projects, the figure was a mere 32%. Two-thirds of the proffered projects received zero funding. All these figures need to be measured against the level of funding for all other sectors of the humanitarian response in complex emergencies, which averaged at 68%.

Another concern links to resettlement, which still has to evolve as a response in emergency situations. Countries continue to insist on certain profiles of refugees and exclude particular nationalities or groups, regardless of emergency needs. Timelines for security vetting and processing of referrals and departure of those accepted are too long and there is a lack of immediately available reception facilities in resettlement countries. We are looking to expand emergency transit platforms for larger-scale evacuation. We also put to the Annual Tripartite Consultations on Resettlement in Geneva in July, the possibility of creating a pool of resettlement places which countries could sign up to in times of emergencies, outside the regular annual quota. These are the sort of creative solutions which need to be pursued.

Turning now to *more creative burden and responsibility sharing*, the international protection regime cannot survive without international solidarity and cooperation. The Note points out much which is encouraging and to which the High Commissioner has already referred. Despite the international financial downturn, donor funding for refugee and displacement programmes has remained robust and countries and communities in Asia, Africa and the Middle East have extended the hand of solidarity to millions of displaced persons. Moratoriums on return to disaster struck countries, such as Haiti, were able to be extended, while broad-based responses for long-standing populations, like the Afghan Diaspora, were able to accommodate alternative statuses, work permits and local stay options. Countries like Kenya and Ethiopia have kept their borders open to new influxes, even while they remain host, as well, to long-standing refugee groups. More countries are resettling refugees and there have been some significant examples of local integration becoming a reality.

Such positive examples need, though, to be set off against the reality that the large majority of the world’s refugees are found in developing countries, without the capacity and resources to maintain them. Burden-sharing has to be part of solidarity, but in the absence of any agreed parameters, or accountabilities, it is often, in the actual individual situation, found wanting. It was one conclusion of the 2010 High Commissioner’s Dialogue on Protection that the practice of burden-sharing needs re-thinking, to move it more from an aspiration to a set of dependable commitments.

To this end, UNHCR organised, as part of the 60th Anniversary commemorations, an expert meeting in Amman, Jordan, on International Cooperation to Share Burdens and

Responsibilities. The meeting canvassed a range of issues it was felt could contribute to greater dependability, including collective responsibility-sharing arrangements for solutions, shorter-term mechanisms like humanitarian evacuation, relocation or transfer, and how to promote broader respect for individual refugee status decisions. Developing a toolbox for operationalising burden-sharing has been a long-standing objective which also got some traction. Harmonisation of approaches at the regional level received particular support.

UNHCR shares the view that burden and responsibility-sharing are most likely to be advanced at the regional level. In our experience, failure to achieve more collaborative regional arrangements for refugee protection, as for assistance, can serve to destabilise refugee groups, lead to unpredictability and huge swings in protection delivery, inhibit longer term solutions, and can contribute to irregular secondary movement. Hence, we have been actively promoting regional protection mechanisms – as a complement to, not a substitute for, national protection structures. Concurrence with a concept for a Regional Cooperation Framework, achieved at the Ministerial Meeting of the ‘Bali Process’ in March 2011, has been one positive outcome. Taking inspiration from actions well in train to build a harmonised, then common, asylum system in the EU, which took an important step forward with the inauguration this year of the EASO [European Asylum Support Office], UNHCR is promoting that the Bali Framework incorporate a Regional Support Office as a State-owned tool to promote responsibility-sharing through information and “good practices” exchanges, capacity building and training, pooling of common technical resources and, if required, actual support with managing particular situations.

UNHCR has similarly been promoting responsibility-sharing approaches in other regions, through stakeholder conferences organized under the auspices of our ongoing project for implementation of the 10-Point Plan on Refugee Protection and International Migration. At a meeting in Kazakhstan in March, the Almaty Process for Central Asia was endorsed and it is now actively being followed up through initiatives in the areas of border management and asylum systems building.

The Amman consultation also emphasised burden-sharing for solutions. Realising solutions which are timely and durable is undoubtedly one of the most frustrating challenges. Local integration can come with a price. We have recently seen examples of this solution – such as the naturalisation of a considerably sized refugee group in one country – suffering for want of sufficient underpinning of it by the international community. When cessation comes into effect, as it will in some months time, for refugees variously from Liberia, Rwanda and Angola, its implementation, which will entail local stay for a number within these communities, must critically be able to depend *inter alia* on donor support.

There are not enough resettlement places to meet the needs, and limited capacities of receiving communities continue to be a factor impeding integration. UNHCR has recently launched an initiative, funded by the EU and to be implemented in partnership with IOM and ICMC, called “Linking in EU Resettlement”. Its aim is to reinforce resettlement arrangements in more than 15 EU Member States by building the capacity of new resettlement countries, their municipalities preparing to receive resettled refugees and their local resettlement providers. It is a grass roots effort, including activities like the development of a practitioners' website, the piloting of university

sponsorship schemes, media campaigns with a local community orientation, and even the first EU "Resettlement Skills Share Day" to be held in April 2012.

As to burden-sharing where solutions are not available, there is a need to invest more creatively in helping host states manage protracted displacement situations. I was particularly taken, during a recent mission to Ethiopia, by the Out-of-Camp policy put in place by the Government to offer certain refugee groups an alternative to protracted encampment and long-term dependency. Available to refugees who can demonstrate a capability to support themselves, it permits them in effect to move freely and become self-sufficient pending realisation of longer-term solutions. It needs and deserves to be supported by donors.

Protracted displacement disproportionately affects women and youth. This was spotlighted through the series of Regional Dialogues with Women and Girls, which were organised as part of the 60th anniversary events, from November 2010 to May 2011, in India, Colombia, Jordan, Uganda, Zambia, Thailand and Finland. These Dialogues underlined the critical importance of effective and sustained engagement with refugee communities in developing protection strategies. The women shared the harsh reality of their lives in refugee camps and urban sites with clear-sightedness and candour. They described the impacts, including sexual and gender-based violence, of lack of documentation, overcrowded and unhealthy shelter arrangements, inadequate health services, the lack of educational opportunities and unsafe and poor quality schools. One cross-cutting concern was the absence of livelihood possibilities in camps and in urban settings, with failure to invest in this being linked to negative coping strategies like survival sex and damaged prospects for successful integration or reintegration into communities when displacement ends. Refugee communities, properly enabled, are in fact "providers of first resort" when it comes to their own protection. In spite of the obvious importance of investing in livelihoods, this has yet to become a serious priority for the international community.

Education is one of the highest priorities of refugees, and has a vital role to play in their protection and ability to find sustainable solutions. Access to education is, though, limited. Refugee enrolment in primary school is only 76 per cent globally and drops to 36 per cent at secondary level. Girls are at a particular disadvantage. In East Africa and the Horn, for example, only five girls are enrolled for every 10 boys. Refugee education is also generally of a low quality due to high teacher-pupil ratios and a lack of teacher training. As a result, many refugee children are unable to learn the skills, especially literacy and numeracy, which would enable them to claim their rights, to withstand the challenges of displacement and to rebuild their lives. Many of these difficulties derive from resource constraints. While UNHCR's education budget has risen in recent years, it has not kept pace with needs and demands. The projected budget for 2012, for example, is \$71 million, while the Comprehensive Needs Assessment stands at \$180 million.

UNHCR is formulating a five-year education strategy, drawing upon the recommendations of a recently completed independent review of the state of refugee education worldwide. The new strategy will *inter alia* seek to improve learning achievement amongst refugee children, to increase access to post-primary education and training, and to expand opportunities for refugees to participate in tertiary education, eg. through certified distance education programmes.

Investing in better conditions in camps is clearly in everyone's interests, those of States included. There can be a nexus between the conditions in refugee – or IDP – camps and heightened security risks, particularly in situations of protracted displacement where living conditions are impoverished and there is an absence of realistic solutions. Such circumstances can expose refugees and displaced persons to possible exploitation by criminal groups and organizations, heightening also the danger of their radicalisation. Too many refugees are forced to return to countries emerging from long, drawn-out war, where peace is fragile, infrastructure weak, the human rights situation not yet stabilized and the basic necessities of life in uncertain supply. There is a shared interest for States and other partners to invest in sustainable solutions for the long-term displaced and avoidance in the interim of breeding grounds for radicalisation and desperate acts.

This brings me to the third proposition relating to how better *to reconcile interests and responsibilities*. While clearly national interests and international responsibilities may compete, it is certainly not impossible to reconcile them in a manner which respects both. Prioritisation of one at the expense of the other comes at a high protection cost.

People leave their countries for different, often a mix, of reasons. The globalisation of migration and the industries which have sprung up around it, including people smuggling, have made it more difficult to identify persons whose claims to international protection should be considered well-founded. The preparedness of States to keep up the high quality of their refugee protection systems has been negatively impacted in some by the rising costs of the systems, by their misuse and by migration fraud. Broader concerns about national security, transnational crime and importing terrorism also have had their effect. For some years now, asylum-seekers have had to contend with ever tighter border controls and entry restrictions, as well as local hostility to them fuelled by a dangerous combination of populist rhetoric, xenophobia, irresponsible journalism, and sometimes just plain ignorance. Asylum-seekers have been swelling the ranks of irregular immigrants, not because *per se* seeking asylum is illegal but because, regardless of the validity of their claims and in spite of the international rules on non-penalisation for illegal entry, they nevertheless fall foul of tightening entry controls, growing visa requirements and ever more restrictive conditions for lodging asylum claims. Illegality in this sense has recently been termed by one commentator more of a “constructed concept” than an objective fact.

Making asylum seeking ever more an illegal activity is not the correct way to reconcile interests and responsibilities. The human and practical costs are too high. This is particularly apparent when it comes to deterrence of sea arrivals which takes a very high human toll and yet does not deter. Boat arrivals take place with regularity across the Gulf of Aden, over the waters of Asia to Australia, and from North Africa across the Mediterranean to Europe. There is a high loss of life at sea as people are enticed, or forced, onto overcrowded, unseaworthy vessels, often equipped with nothing but a satellite phone. Deterrence measures have not stopped boat arrivals, only made them more deadly where they go wrong. And the time-honoured tradition of rescuing those in distress at sea is seriously itself now in distress. As part of its 60th anniversary program of events, UNHCR is convening in Djibouti in November 2011 a meeting of experts – governmental and non-governmental – to examine practical cooperative measures which would facilitate rescues and allocate better the responsibilities for processing and solutions. Hopefully this meeting will see its way clear to exploring,

even endorsing, mechanisms like disembarkation guarantees, rapid response funds or resettlement pools.

Automatic detention is also part of the deterrence machinery put in place by States to respond to concerns about border infringement. A UNHCR-commissioned study released earlier this year found that there is no empirical evidence that detention deters irregular migration, and that compliance or cooperation rates with the outcome of asylum decisions, even negative ones, are regularly higher than 90 percent when persons have been released into non-detention supervision arrangements. As a practice, detention has proved seriously detrimental to the physical and psychological health of asylum-seekers and refugees. It is being maintained in spite of mounting evidence that costs for detention are generally substantially higher than for less coercive, but just as effective, alternatives to detention.

Managing entry responsibly and keeping populations safe from internal and imported threats are obviously core national interests of governments. UNHCR appreciates this and accepts that we have a responsibility, indeed an obligation, to make our own contribution here. Internally we have taken some important steps to reduce the vulnerability of our RSD and resettlement procedures to infiltration and misuse. We are also working to ensure that our response in mass influx situations features appropriate screening mechanisms, including targeted exclusion triggers, so that potential security and exclusion issues can be addressed at an early stage, circumstances permitting. UNHCR also has a role to ensure that refugees themselves take seriously their own duties, under international law, to respect and abide by the laws in force in their countries of asylum.

UNHCR takes seriously the responsibilities conferred upon it to assist States, as the primary protection providers, with increasing the availability of effective protection and realisable solutions. UNHCR has been specifically mandated to enhance the legal framework for refugee protection, promote measures which improve the situation of refugees and reduce the numbers requiring protection, and work with States to achieve admission, the grant of asylum on acceptable terms and the realisation of lasting solutions. Supervising the application of the 1951 Convention is a core responsibility of UNHCR provided for in the Convention.

However, UNHCR's activities are not a substitute for the responsibilities of States. We have been concerned over recent times by a tendency in some States to choose to reconcile their interests and their responsibilities through what some have termed a policy of "benign neglect". This means in practice that some Governments approach refugee protection in a minimalistic manner, through policies resting on non-deportation, but "doing nothing else". They decline to assume any responsibility for asylum management, leaving UNHCR to register, undertake refugee status determination, and issue all documentation, in addition to providing large-scale humanitarian support. This has led, for example, to UNHCR having to carry out refugee status determination under its mandate in some 57 countries. Last year UNHCR directly received 89,500 individual applications for international protection. In some countries this "hands off" approach to protection entails a requirement that UNHCR resettle all recognised refugees, often within tight timeframes, regardless of the fact that resettlement is a solution available to very few. This is just not workable.

One of the most glaring deficits when it comes to acceptance of state responsibility is statelessness. Responsibilities to reduce statelessness and protect stateless persons are not concertedly assumed. Gender discrimination, ill-conceived or arbitrary laws and even mere inadvertence continue to generate statelessness and prevent its resolution. Just on one continent, six countries restrict citizenship on an ethnic or racial basis, more than 20 fail to provide in any explicit way for a right to nationality and more than one-half of the countries prevent women from passing on their citizenship. Acceptance of responsibility means in practice that States not only commit to the reduction of statelessness, for example through accession to the 1961 Convention, but that they implement its provisions positively through nationality laws ensuring that every child can acquire a nationality. It should be made easier to apply for citizenship, and in the interim, stateless people should be treated with dignity and respect for fundamental rights. They certainly should not be held in indefinite detention simply because of absence of an entitlement to another State's protection.

CONCLUSION

Allow me to end on some concluding observations about the 1951 Convention in its anniversary year.

Against the background of all the mentioned issues, UNHCR continues to be encouraged to revisit how protection can better be realised. We have been asked to challenge some traditional assumptions about where best to implement protection programmes and on whom responsibilities for solutions should rest. We are called upon more frequently to make available our expertise and our capacities to help protect persons other than refugees. At the same time, we are being reminded not to forget our roots, to maintain refugee protection as the central priority and to respect our mandate. In fact, we are thinking of holding "protection dialogues" at capital level with interested States.

If the balance is not always so easy to strike, certainly respect for our mandate – its strengths, its limits and its flexibilities – is a central guiding rule. To take one example on one aspect of our work relating to the Middle East – Palestinian refugees – we continue to strictly respect the boundaries of our mandate, having due regard to UNRWA's responsibility in its areas of operation. Last month, I co-chaired with UNRWA's Commissioner-General, a meeting to identify ways to enhance coverage of protection and assistance needs for Palestinian refugees in the distinct domains of UNHCR and UNRWA.

UNHCR is eager to explore new ways of thinking and doing protection, but without obscuring the clarity of our protection objectives, or making them more difficult to realise through damaging or sidelining the basic tools. The 1951 Convention was drafted to confer a right to protection on persons made otherwise exceptionally vulnerable through being temporarily outside the normal framework of national state protection. Creating a refugee protection regime which was universal in its applicability and non-discriminatory in its application has been one of the main achievements of the 1951 Convention, together with its 1967 Protocol. Its non-political character has been instrumental in enabling it to operate in the often highly politicised contexts of displacement situations. The moral and legal bases of the Convention, with the non-*refoulement* principle at their core and with their roots in human dignity, international solidarity and the imperative of protecting individual lives, are enduring.

This said, we do accept that the Convention, while protection's bedrock, is not its all-embracing blueprint. There are gaps. For example, if persecution is an age-old practice, there is no definition of it in the 1951 Convention, which has contributed to divergence in applying the notion in different countries. The cultural and social context of the commission of acts has proved, in many cases, a decisive factor in refugee status determinations. We have been working on 'need to know' guides focusing on minority and indigenous groups, as well as on sexual orientation and gender identity, to assist UNHCR and partner staff in better engaging with diversity among the populations for whom we have responsibilities. Another area of divergence relates to draft evaders and deserters fleeing internal civil disturbances or forced conscription of limitless duration. This is particularly topical in some current UNHCR programmes. How such persons can, and indeed do fall within the refugee definition will be the subject of updated guidelines from UNHCR.

When it comes to mass influxes, doctrinally the Convention should apply in its entirety, but in practice, outside its non-derogable protections, it more often than not serves as an aspirational basis for extending protection, rather than the blueprint for what is actually made available. A better bridge needs to be built between *prima facie* status and the Convention regime. This bridge might, perhaps, be a temporary protection response which ensures immediate protection for groups clearly in need on a shorter term basis, but in relation to whom return is the desired and best solution.

Temporary or interim protection has a significance, yet to be authoritatively articulated, for displacement driven by forces other than persecution, serious human rights violations and ongoing conflict. There is no generally provided for right to cross international borders to seek safety for seriously at-risk persons fleeing compound disasters, where the push factors, if dire, are nevertheless not the classic refugee ones, such as environmental devastation, perhaps linked to climate change. The Convention is unlikely to be fully applicable, much less applied, and interim protection is likely to be what is being sought and what is most responsive to the protection needs. Several 60th Anniversary events, including a major inter-governmental meeting in Oslo in June, and the very useful "Nansen Principles" which resulted, recognised this as a gap both in law and practice needing redress.

We hope that the December Ministerial Meeting will be the occasion for forward-looking thinking on all these issues, and that this thinking will find its way into State pledges which will make a real and genuine difference to the protection of refugees and of stateless people.