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Executive Committee of the High Commissioner's Programme  
Agenda item 5(a)

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Mr. Chairman,

I am asked to introduce to you the 2007 Note on International Protection (Document AC.96/1038). The Note is the High Commissioner's annual report on the state of international protection for persons of concern to UNHCR. It serves to explain how we deliver protection, through what kinds of activities and to what ends. It also documents the emerging trends, some of which are heartening and others quite worrying. The Note is structured around the goals set out in the Agenda for Protection, endorsed by this Committee some 5 years ago. As the Note makes clear, together we still have some way to go to realise these goals.

Protection, and UNHCR's mandate for it, is ever more relevant in the very complex world of displacement. The High Commissioner's Statement and the General Debate, dominated as they were by protection issues, have made this very clear. Refugee dramas play out with sad regularity on all continents, the human consequence of war, violence, persecution, fear and a combination of man-made and natural disasters. True, as the Note on International Protection reports, there have been some promising trends over the preceding year which have been discussed in the General Debate. They include, in the area of solutions, 2006 saw over 700,000 refugee returns, and to date for 2007 the number is around 500,000. Local integration is practiced, not only talked about, with some very positive examples being set in Southern and West Africa and Latin America. Resettlement referrals for this year are already over 43,000. There has also been more serious attention to and investment in making protection better. Many States have facilitated and supported UNHCR's efforts to strengthen protection and bridge the gaps closer to where protection is first sought, with our Strengthening Protection Capacity Project clearly seen as value-added.

This being said, asylum is still a lottery in a number of regions. The world of borders is particularly shadowy, with interception, turn-arounds and *refoulement* taking place outside the frame of any proper scrutiny. Security is driving the operation of asylum systems in an increasing number of countries, contributing to the growth of a culture of thinking where rights are becoming peripheral. Arbitrary detention, including of children, is an outgrowth, and the privatization of detention is particularly worrying. While resettlement trends are broadly positive, UNHCR is concerned about the growth of a class of persons becoming the "untouchables" for resettlement countries, and the strategic use of resettlement has included also some incidents of strategic misuse. I want to explore some of these developments in the comments that follow.

The Note is structured around the goals of the Agenda for Protection. The first of these, which the Note reports on, is strengthened implementation of the basic refugee instruments. This was enhanced in a number of countries through the introduction of new legislation and asylum support structures. It is, however, still a fact that finding asylum can become a matter of chance in some regions, due to inconsistency by States in applying Convention standards. The widely divergent refugee recognition rate among States is a telling indicator, with research showing, for example, that persons from Iraq, from Sri Lanka or from Somalia have very different prospects of finding protection depending on where their claim is lodged. Security concerns and arbitrary detention, not subject to *habeas corpus* or judicial review, are leaving asylum seekers in legal limbo in quite a number of countries, including several I had the occasion to visit this year. Detention of refugees and asylum seekers is often in conditions which put their health and well being at serious risk. Sitting in overcrowded, badly ventilated cells, talking with Iraqis whose sentences for illegal entry or overstay had long expired and whose chances nevertheless for release were as good as nil, unless it was for the purposes of returning to Iraq, brought this starkly home to me, during a recent mission. Particularly worrying, Mr. Chairman, are the effects of privatisation of detention. This has turned detention in some countries into an industry. By creating an economic lobby in favour of detention, this has undermined serious efforts to create alternatives to detention and has contributed even further to blurring the distinction between the refugee and non-refugee detainees.

As the Note illustrates, flowing from Article 35 of the 1951 Convention, UNHCR has long been accompanying and supporting the development of asylum systems in a myriad of ways. Our offices provide states with advice on new legislation. We visit reception and detention facilities, monitor access to asylum procedures at land, sea and air borders and promote compliance with international and regional norms. Together with partners, including NGOs, we counsel individual asylum seekers and participate in training of border guards, status determination authorities and others, not only in international refugee law, but also in such vital areas as cross-cultural communication, gender-sensitivity and the determination of the best interests of the child. In many States these efforts are well received as a proper exercise of our protection mandate and we enjoy a very productive collaboration with the authorities. We are, though, concerned that, with populism on the rise in some States, this is not always the case. Racist anti-foreigner campaigns, which are deplorable in themselves, are also singularly counter-productive. They help to breed intolerant societies across the board and inflame public antipathies, which is a law and order issue in its own right

Capacity building for asylum is no easy task. It is particularly challenging in countries faced with large, mixed flows of asylum seekers and migrants. Here it is our responsibility to bring added value. UNHCR carries moral authority. It has, though, to do more than this. It needs to bring real assistance to the table. This is recognised by the Office. I have made it a particular task to foster and advocate for the Strengthening Protection Capacity Project, which falls under my supervision. The project is a new way of thinking about capacity building for protection. It is being well received, having won the confidence of host and donor States alike. Its strength lies in its clear articulation of gaps and a focus on remedying them. Proceeding from consensus among refugees, host States and UNHCR, the project develops concrete interventions to improve the

protection environment in ways that strengthen both the State and communities' capacities. The result is that it has, to date, generated over 10 million dollars in additional funding for the protection of refugees. We hope that it will be able to replicate this achievement for initiatives benefiting IDPs and initiatives benefiting Stateless persons, in relation to whom the methodology is being extended.

Protection of refugees in the context of mixed migration movements, the second goal of the Agenda for Protection, has had to confront the continuing life and death dramas of sea arrivals and their criminal exploitation by people smugglers or criminal rackets. On 21 September the following information was sent to headquarters by our office in Saana:

*“Two smuggling vessels arrived to the Yemeni shores at 06.30 am. The boats had approximately 125 passengers each. The disembarkation was in deep waters. 26 persons died during the trip or at the time of disembarkation. The new arrivals reported that smugglers threw 8 persons off-board during the trip and 5 died in the hold of the boats due to dehydration. The security authorities said that 13 dead bodies were washed ashore and they buried them. A number of new arrivals who arrived to the reception centre were badly beaten by the smugglers during the voyage; 10 were severely injured. They reported that the smugglers on the 2 boats confiscated the water and food. Female refugees reported that a 21 year old Somali girl was raped by the smugglers. The fare for this trip ranged between 60 to 80 US dollars”*

This story has been repeating itself, more or less, almost on a daily basis these last months, with Yemen continuing to generously keep its borders open to the victims. We have yet to find an accommodation with States on the issue of sea borders. States still refuse disembarkation. Ships may refuse to rescue. There is a worrying absence of systems which properly balance migration management with refugee protection. While a State's protection responsibility is relatively clear in the case of people intercepted or rescued in its territorial waters, there is still a difference of opinion over the application of protection obligations outside territorial waters. In UNHCR's understanding, the responsibility of States, including respect for the principle of *non-refoulement*, is engaged wherever they assert jurisdiction. There is, though, a need to see how this translates into good operational practice. UNHCR appreciates, in this regard, the developing relationship we enjoy with FRONTEX, the European external border management agency. The presence of FRONTEX at this session of the Executive Committee is a welcome development. We have also recently reinvigorated our partnership with concerned intergovernmental organizations, including the International Maritime Organization, to look at cooperation on sea rescues. We will want to bring to States some additional suggestions here.

Building protection space within a context of broader migration management is a high priority for UNHCR and a focus of the activities of my office. How to constructively engage with migration issues, as a protection and not a migration agency, is the challenge. An effort in this regard, with which I remain directly involved, is UNHCR's 10 Point Plan. We are pleased with the support it is now attracting even while some delegations are interested in discussing further aspects of it. Its utility lies, perhaps, in the approach it takes to unpacking migration problems. Its philosophy is that the best

response is one which is geared not to the phenomenon of migration as such, but to the people themselves who are moving, different and various as they are. It envisages a blend between the more traditional tools, in particular refugee status determination, and the less traditional, such as specialised visa or labour migration arrangements. In some regions, notably North Africa and Europe, the Plan has moved significantly from the strategy to the implementation phase. To give but one example, as an initiative to promote protection-sensitive entry systems, UNHCR has been concluding border arrangements with Central European authorities, most recently with the Slovak Aliens and Border Police, to enable joint monitoring activities along land borders and at airports.

The 10 Point Plan touches, but has yet to develop the thinking, on secondary movements. These movements – both north/south, but also south/south – can become a major protection problem, with high potential to de-stabilise and compromise protection advocacy. Hence we have an interest in lessening the problem and its contingent difficulties. Work is soon to begin on a “tool box”, tied integrally into the frame of the 10 point plan. We will also be reviewing and re-issuing our policy on UNHCR’s role in relation to return of persons found not to be in need of international protection. What we can and cannot do deserves greater clarity, particularly when it comes to ensuring the necessary distinctions are made between return to countries, as opposed to regions, of origin, or return of persons rejected through fair procedures, as opposed to procedures which do not apply the proper criteria.

Turning now to the third goal of the Agenda, more equitable responsibility sharing, this continues to be elusive. This is starkly illustrated, for example, by the staggering arrival rates of Iraqis into neighbouring countries, the circumspect recognition of the burden this poses for countries like Syria, and the far too hesitant international approach to helping them shoulder it. Without sustained support for host States, protection there may well become academic. The agreement of Brazil and Chile to receive Palestinian refugees from camps on the Iraqi border was, though, a very welcome contribution to ending the untenable situation of these doubly victimised people.

Mr. Chairman, while fewer than one per cent of the world’s refugees may be resettled in any given year, resettlement is an important protection tool, a durable solution and a concrete manifestation of responsibility sharing. The upgrading of the resettlement section in DIPS to a resettlement service has improved UNHCR’s ability to manage this important solution. A telling indicator is that in 2006 the number of resettlement submissions increased globally by over 17%. For this year our aim is to continue this upward trend. With your support we should be able to meet the target of 60,000 submissions by end 2008. During 2007, four new countries indicated their readiness to become resettlement countries. Discussions with others are currently underway.

While these are all positive signs, the solution is, however, not without its dilemmas. Women-at-risk frequently remain in peril until departure and our ability to reduce risk by providing emergency shelter, or other protection interventions, is limited by our overall resource constraints. Processing delays on the part of resettlement countries is also a problem, particularly in this era of heightened security concerns. How to manage the by-products of resettlement in camp environments, including the depletion through

resettlement of the service providers [the teachers, the health workers, the camp committee members for example] on whom the viability of camp life may integrally depend, remains a challenge deserving of new initiatives. Managing risk to ensure the integrity of resettlement remains a priority for UNHCR, in particular to reduce the possibilities for fraud or malfeasance, which are quite high, resettlement being a very valuable commodity. There is the pull factor concern, which is not a reason for limiting resettlement, but in some operations certainly calls for strategies to limit it. And how to create protection space for refugees who will not be resettled is a priority over the coming period for UNHCR. This will mean heightened attention to protracted refugee situations where resettlement can be used strategically as one means to unblock access to protection and to other durable solutions. As I mentioned earlier, strategic use, let me say, yes, but not strategic misuse! Resettlement should not become a substitute for asylum within a State for spontaneous arrivals; nor should it become the *quid pro quo* for a functioning re-admission arrangement.

At this point, allow me to draw the attention of this Committee to an issue which is really starting to be a problem. Increasingly, some groups of refugees are simply becoming unwanted by resettlement countries. Neither their refugee status nor their protection needs are in question, but their desirability is. Among these “unwanted” persons are the politically sensitive ethnic groups, elderly persons for fear they will become a public charge, large families considered too costly a proposition, single men as a possible threat to public order, or refugees with low educational levels, who may take longer to integrate. These, in effect, supplementary resettlement criteria are working to exclude not inconsiderable numbers from a solution which would otherwise best meet their protection needs. We would really like to discuss this issue in greater detail with our resettlement partners.

Resettlement is one of three solutions. The Agenda sets as another goal making all solutions more accessible. The Note reports significant progress with returns, in particular to Afghanistan and on the African Continent, etc. However, bringing to an end protracted situations, which currently number – in a conservative estimate – some 30, is not only a collective responsibility but one of our greatest challenges. I have been tasked by the HC to consult widely within the office, including with Bureau Directors and the field, to identify those protracted situations where the prospects for making a difference and bringing them to some closure are good enough. We will then work on more comprehensive solutions strategies over the coming period.

Promoting self sufficiency has clearly to be part of such strategies. It contributes to ending protracted refugee situations. Dependent on subsistence-level humanitarian assistance which they cannot supplement through their own efforts, displaced persons often lead lives of poverty, frustration and unrealised potential. This is one of the most often cited causes for SGBV in protracted situations. Moreover, where the displaced in urban environments are confined to the informal sector, systematically facing exploitive working conditions, in the long run this erodes the environment for all workers, foreigners or nationals. UNHCR operations throughout the world are replete with positive examples of displaced people pursuing livelihoods in ways that contribute to local economies and foster peaceful co-existence with host communities. I have had good discussions over this session with Tanzania and Zambia, to take two examples.

We also have donors and others keen to support us in replicating these good examples. There is still the challenge in convincing governments to see that self-reliance is not only in the best interests of the displaced, but also makes sound economic sense and helps to underpin the security of the host areas.

Mr. Chairman, addressing security concerns more effectively is another goal of the Agenda. Tenuous security in many areas of displacement, from the Central African Republic to Chad to Colombia, Sri Lanka or to the Democratic Republic of the Congo, continue to destabilise UNHCR's protection efforts, as the Note on International Protection brings out. The adoption on 25 September of a UN Security Council resolution establishing a multi-dimensional UN mission in Chad and Central African Republic should help to stabilise the difficult and serious humanitarian situation in Eastern Chad, in particular. Security in Darfur still presents a stark picture as international aid agencies continue to struggle to come up with effective measures to prevent incidents of sexual violence that occur at an alarming rate. The police are under-equipped to respond adequately to security incidents. Most police locations lack vehicles and communication equipment. Impunity reigns. Very few incidents affecting the physical security of IDPs are ever adjudicated. Social services to support the most vulnerable in society are virtually non-existent. The high rate of attacks against humanitarian aid workers during field missions, including UNHCR and its implementing partners, has seriously restricted the ability to conduct monitoring visits to rural communities.

The security of refugees and of humanitarian workers is a real concern in our operations on behalf of internally displaced persons. It is one of the main hurdles for the protection cluster to overcome. Just a few comments on the protection cluster. As to where the cluster approach is making a positive difference more generally, there is consensus that it has laid the basis for better inter-agency collaboration, under a more accountable leadership, in the nine areas of response. This is the cluster arrangement in its totality. There is no contesting this achievement, or that UNHCR should engage with commitment and predictability, squarely within a framework of enhanced partner cooperation. So expectations for the potential of this common effort remain justifiably high. There have, however, been calls for a serious, field-driven reality check in the protection area. In particular, the flexibility of the formula to adjust to the often very different operating environments needs review. The balance between catalyzing the doing of protection and directly delivering it, in a framework resting on notions of agency of last resort, is yet to be well-struck. UNHCR is working to improve the ways it interacts with civil societies, to help build and maintain a self-regulating national system for internal displacement. Improving the leverage of IDP organisations in this system and creating channels for their voices to be heard is an objective we need actively to pursue. Further thought needs to be given to the scope of protection in situations where lack of respect for basic rights is all pervasive, not confined to displacement. There are also still questions about how to marry better the humanitarian, political and development agendas, particularly in a seriously degraded environment where protection may be the immediate need, but not perhaps the priority for the host government or even international partners. It was in a spirit of self-critical transparency that UNHCR has undertaken five real-time evaluations of IDP operations where the

cluster approach is in place, and they will be the basis for fine-tuning our own performance.

The final goal of the Agenda is to improve protection for refugee women and children. The Note is sober reading when it comes to repeated instances of the crime of rape, survival sex, weekend marriages, recruitment of children or persecution on account of gender. Child protection, combating sexual and gender-based violence and the protection of groups with specific needs, remain priority objectives in all of UNHCR operations. Tools proving their utility are the Age, Gender and Diversity Mainstreaming Strategy and the related accountability framework, which is under my overall supervision. We have also developed standard operating procedures for prevention and response to SGBV, as well as Guidelines for best interests of the Child determinations, and more recently have been undertaking a review of the situation of older persons and those with disabilities. Nonetheless, we must continue to ask ourselves what concrete changes we are achieving on the ground for those to whom we are accountable. Have they felt the impact of these initiatives? This year's independent evaluation of UNHCR's work in the area of SGBV and the anticipated evaluation of AGDM in 2008 will be the basis for assessment of if and where improvements are still needed. Prevention, in our view, is one area where improvement is called for. As recent missions have brought home, addressing the factors which render women and children at risk of violence is certainly needed, before that violence turns into an eventuality. This is particularly the case in environments where victims of sexual exploitation and abuse are shunned, or even criminalised, rather than assisted. We will be looking at how to bring prevention more integrally into our response strategies and our discussions with you in the months to come.

I also want to mention here the Women Leading for Livelihoods project, the Steering Committee of which I chair. Conceived as a way to encourage women to help women, the project has the potential to open up new relationships between women successful in the business world and displaced women in search of livelihood skills and opportunities to enable them to support themselves and their families in displacement and on return. I would encourage delegations with an interest in this area to discuss with our Gender Advisor how this project might be supported.

To this point, Mr. Chairman, I have presented an overview of protection successes and dilemmas related to the Note and the Agenda for Protection. There are several additional issues I believe are of interest under the protection item, to which I now turn.

The High Commissioner spoke of the meeting of UNHCR's Field Protection Reference Group, which took place in early September. We are particularly grateful to the Government of Canada whose financial contribution helped to make the first meeting possible. The initiative has been an effort on my part to institutionalise the role and input of Field-based colleagues in the elaboration of protection policies and the supporting tools. The agenda of the Reference Group covered protection strategies in the context of mixed migration, protection benchmarks for winding down operations, and the meaning of strategic use of resettlement. The Reference Group also touched on UNHCR's expanding protection role for internally displaced persons. As many of you will be aware, certain of these issues will be on the agenda of the first session of the

High Commissioner's Dialogue on Protection, scheduled for 12 December. We will present a background discussion note which will take closely into account the views expressed during the Reference Group meeting.

One highlight of the meeting was the opportunity provided on the third day for EXCOM members to have an informal and unstructured exchange with the Representatives. It seems this experiment was much appreciated by all and my feeling is that such an encounter should be repeated. Its utility will only be enhanced, though, by greater participation from a wider group of EXCOM members, which we will do our best to encourage.

A timely issue brought up during this encounter between EXCOM members and our Field-based colleagues was the utility of EXCOM conclusions. The process of drafting conclusions has become somewhat compromised in the minds of some participating States. Non-governmental organizations, who are our key partners, legitimately are seeking to have a more substantive input into the process. UNHCR fully supports this. There is a sentiment on the part of some that process has taken over content and that narrow national interests are allowed to neutralise the language to the point where the conclusions lose any practical utility. This is not correct. As the Field Reference Group affirmed, the conclusions, including the most recent ones, are put to regular use, by UNHCR and by partners, for advocacy, in negotiations, as a capacity building tool, or even to nudge judicial standard setting in a certain direction. They also have a particular resonance for our work in non-Convention States. One issue that Field colleagues did ask to be highlighted is that governments themselves could do more to make the conclusions a living tool. The drafters are not always the implementers of these conclusions and our colleagues have noted that in some instances there seems to be a real communications breakdown, with one sector of government not being aware of what has been agreed elsewhere by another sector. For UNHCR, this is certainly a handicap to full implementation.

There were several additional issues which field colleagues raised as obstacles they confront to realizing protection. It is interesting, I think, to put them up for a little bit of reflection. One is what some representatives described as an increasingly uneasy relationship between UNHCR and governments over when and how we should be implementing our protection responsibilities within their sovereign territories. The nature of the relationship between the host government and UNHCR is very important. It can either much facilitate our activities, or it can considerably curtail what we can do. Tension will enter this relationship where there is fear, an unwarranted fear we believe, that the grant of asylum will create discord between neighbours, or where our protection interventions are deemed not to be consistent in some ways with the prerogatives of State sovereignty.

UNHCR is finding itself increasingly having to defend the mandate that States themselves have conferred on the office. We have a responsibility to build trust, including by defining our activities in good collaboration with host governments. That is very clear. An essential element of confidence-building has to be to reach a common understanding that protecting refugees must not be approached as if it were an unfriendly act towards neighbours. The asylum edifice is built on the proposition, as the

1951 Convention asserts, that the problem of refugees is a “social and humanitarian” one and that States have a responsibility to reduce tensions resulting from the granting of asylum. Otherwise, as we see in some parts of the world, protection is abandoned for deterrence, and what UNHCR is actually permitted to do is very very little. There is clearly a need to be sensitive to local conditions and concerns, but this is not the same thing as saying that the mandate itself should not be delivered by UNHCR. This is a problem for us and it deserves more discussion including in this Committee.

There needs also to be more reflection on what is, in some ways, the reverse side of the coin – that is, the lack of government engagement with refugee protection in some regions. UNHCR must too often step in to fill the void. One indicator is refugee status determination under the UNHCR mandate, which has continued to increase, despite the [until recently] decline in asylum seeker numbers. Between 2003 and 2006 the number of refugee applications world-wide decreased by 38% but during the same period, the number of applications submitted to UNHCR’s adjudication increased by 48%. Mandate status determination can mean the difference between protection and *refoulement*. It is also an intervention commonly put into question in the context of State sovereignty. One UNHCR office was recently accused of being in the business of “turning tourists into refugees.” In fact, we would prefer that States themselves put in place functioning national asylum procedures. We should not, and indeed satisfactorily cannot, replace such State structures. Nor can we serve as the guarantor that effective protection is available in any one country. However, in the absence of an effective national asylum system, it is not a choice for UNHCR not to exercise our mandate. We are obliged by our mandate to step in. State responsibility for refugee protection and how to engage it might, I believe, be a rather interesting topic for the High Commissioner’s Protection Dialogue at some point.

For our part, we recognise the need to keep our focus squarely on outcomes. A “culture of results” applies to protection as much as it does to any other aspect of UNHCR’s activities. In this context, UNHCR’s new RBM Software, Focus, could well prove a powerful tool for improving the quality of our protection work. Focus was initially developed as a tool to support results-based management, but is increasingly appreciated as a protection management tool as well. For those unsure about what the term “protection” covers, Focus effectively demystifies it by breaking it down into the activities it covers. We have high hopes for its utility in the protection context. It should, for example, help our offices and partners set clear protection objectives, budget for protection more effectively and report more meaningfully on protection results.

In conclusion, the office of Assistant High Commissioner – Protection was created some two years ago to advocate for results-based protection, both inside UNHCR and without. I have reported consistently to the Standing Committee meetings and at EXCOM on the thrust of these efforts, as you have requested me to do. The most recent update was presented to the June Standing Committee and is for those interested available at the back of the room. My experience has been that the terms of reference of the position I hold have meant the position is definitely value-added for UNHCR. In particular its existence can make a material contribution to the reinforcement of a protection culture both inside and outside the organization. My work has centered on the promotion of clear objectives, accountabilities and protection strategies, working not

only vertically from within the High Commissioner's Troika, but horizontally across the Bureaux, the support divisions and the Headquarters and Field divide. In addition, I have sought to drive policy development on certain key protection concerns, including the asylum/migration nexus. Another important area has been that of Statelessness. People are born Stateless, or become so by design or by mistake, in all regions, in developing and also developed countries. In some countries hundreds of thousands of people have been marginalized for decades. In others, there are the helpless, hapless individuals trapped in the machinations of sophisticated legal systems. A challenge looming is how climate change might alter the dynamics, as we approach a future involving the possible extinction of low lying areas and nowhere to go for their peoples. Mr. Chairman, the new dynamics of displacement, this issue amongst them, will likely come to shape our interaction with your governments in the years to come. It is timely that we soon start to reflect together on the form that this interaction might take.