

OIC Ministerial Conference on the Problems of Refugees in the Muslim World

27 – 29 November 2006

Enhancing Refugee and IDP Protection in the Muslim World

I. Introduction

1. The present working document has been prepared by the Office of the United Nations High Commissioner for Refugees (UNHCR), in close collaboration with the Organization of the Islamic Conference (OIC) Secretariat, for the OIC *Ministerial Conference on the Problems of Refugees in the Muslim World*. Its aim is to highlight ways and means to enhance refugee and IDP protection in Member States of the OIC. The paper describes the institution of asylum in the Islamic tradition and compares it to the development of the institution of asylum and the legal norms regarding internal displacement in international law. It also gives an overview of asylum and internal displacement in the Muslim world, including major developments and challenges. Finally, it introduces the Agenda for Protection as a programme of action containing many suggestions and actions which can be drawn upon to inform improvements in asylum practices and policies.

II. Asylum in the Islamic tradition

2. From its emergence in the Arabian Peninsula during the 7th century, Islam laid the foundations for the institution of asylum in its public law through the holy Koran and the Tradition (Sunna). Islam was born in a climate of hostility and persecution. When Prophet Mohamed began to preach the new faith in the city of Mecca, he was met with the hostility of Meccan idolaters, whose chiefs, in particular, felt that the new religion represented a danger to the old beliefs and a threat to the existing social and political order. Consequently, in 615 A.D. the Prophet Mohammed initially sent a group of his followers across the Red Sea to the Christian Kingdom of Abyssinia (Ethiopia) in order to escape persecution and practice their religion without fear. Similarly, when he and his companions felt their lives and their faith under threat in Mecca, they decided to migrate “en masse” to Yathrib (Medina). This movement marked the beginning of the Islamic calendar (September 622 A.D.).

3. Respect for migrants and those seeking refuge has been a permanent feature of the Islamic faith. Based on the Holy Koran and Islamic Sharia, the institution of “Aman” (*safety*) guaranteed protection to those seeking refuge in “Dar-al-Islam” (the *House of Islam*). Once protection was granted, the foreigner became a “Musta’min” (*a protected person*) and it was the duty of the community to treat the “Musta’min” with dignity and respect throughout the period of his stay. The extradition of the “Musta’min” was prohibited even if it had been requested in exchange for the release of a Muslim. The Islamic tradition therefore recognizes in its own precepts the principle of *non-refoulement* which represents the cornerstone of modern-day international refugee law.

4. Throughout its history, the Islamic world remained faithful to this heritage and preserved the legacy of Islam in relation to human rights and asylum. It is in keeping with the deeply rooted traditions of “Aman” that the tenth session of the Islamic Summit held in Kuala Lumpur in October 2003 called for the convening of an OIC Ministerial Conference on the Problems of Refugees in the Muslim World, in cooperation with UNHCR.

III. Asylum and refugee protection in international law

5. Throughout the world and over the centuries, societies have welcomed frightened, weary strangers, victims of persecution, violence and/or armed conflicts. International protection can be defined as all actions aimed at ensuring equal access to and enjoyment of the rights of refugees and asylum-seekers, whether women, men, girls and boys, in accordance with the relevant bodies of law, including international refugee law, international humanitarian law, and international human rights law. International protection to people fleeing persecution begins with their admission to safety in a country of asylum, the grant of asylum and respect for their fundamental human rights, including the right not to be forcibly returned to a country where their safety or survival are threatened (the principle of *non-refoulement*). The need for asylum ceases only with the attainment of a durable solution.

6. The 1951 Convention relating to the Status of Refugees and its 1967 Protocol can be said to be the modern embodiment of the ancient and universal tradition of providing protection to those fleeing persecution. They have a legal, political and ethical significance that goes well beyond their specific terms. They are the first and the only instruments at the global level which specifically regulate the treatment of those who are compelled to leave their homes, enumerate the rights and responsibilities of refugees as well as the obligations of States that are parties to it. For over half a century, the Convention and its Protocol have clearly demonstrated their value and flexibility, and have afforded an effective framework for the protection of refugees. Today, a total of 146 States are party to the 1951 Convention and/or its 1967 Protocol and the number continues to grow.

7. The 1969 OAU Convention governing the specific aspects of Refugee Problems in Africa is an effort to adapt the 1951 Convention to realities on the continent. It added to the 1951 Convention refugee definition by including a more objectively based consideration, namely “owing to external aggression, occupation, former domination or events seriously disturbing public order.” The OAU Convention also built upon the 1951 Convention by recognizing the security implications of refugee flows and more specifically focusing on durable solutions -- particularly voluntary repatriation -- while also promoting more vigorous burden sharing when it comes to refugee assistance and protection.

8. International human rights law is also relevant to defining and providing adequate protection to refugees and asylum-seekers. The Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights both recognize the rights of all individuals to adequate standards of treatment and living. The International Covenant on Civil and Political Rights provides standards for the exercise of civil rights, including protection against arbitrary

detention and torture, and the right to recognition everywhere as a person before the law. The Convention on the Elimination of all Forms of Discrimination Against Women promotes gender equity in the context of asylum. As regards children, the Convention on the Rights of the Child, in particular the “best interest” principle, provides important guidance for the design and implementation of protection policies for refugee children. Standards for the protection of children, including refugee children, were reaffirmed in the 2004 OIC Covenant on the Rights of the Child in Islam.

9. Primary responsibility for providing protection to refugees lies with States, notably the country in which the individual has sought asylum. All States have a general duty to provide international protection as a result of obligations based on international law, including international human rights law and international humanitarian law. States that are parties to the 1951 Convention and its 1967 Protocol have obligations in accordance with the provisions of these instruments.

10. Throughout its over five decades of existence, UNHCR has also worked closely with governments as partners in refugee protection. UNHCR remains the only organization with a specific mandate to protect refugees and find durable solutions to their plight at the global level. The High Commissioner’s responsibilities and mandate for refugees also include asylum-seekers, *i.e.* individuals who seek international protection, but whose status has not yet been determined.

11. UNHCR also ensures that States uphold their commitments to protect refugees by monitoring national practices, intervening on behalf of individual refugees where necessary and helping governments to improve their capacity to provide asylum and to enable refugees to become self-reliant, pending the identification of durable solutions. UNHCR cooperates with States, regional intergovernmental organizations, non-governmental organizations (NGOs) and a range of United Nations bodies to improve the provision of international protection.

12. Statelessness affects an estimated 11 million persons worldwide and affects all regions, including the countries of the OIC. While not all stateless persons are refugees, it has long been recognized that statelessness is a root cause of forced displacement.¹ In some instances, individuals and communities are deprived of their nationality by governmental decree and are subsequently expelled from the country which they consider to be their home. In other situations, stateless people are obliged to flee because of the persecution and discrimination which they experience. Having left the country where they have lived for most or all of their lives, stateless people may subsequently find it impossible to return.

13. In large part due to the link between statelessness and displacement, UNHCR has been given a mandate to prevent and reduce statelessness and protect non-refugee stateless persons by the United Nations General Assembly. The *Agenda for Protection* (See Section VII) specifically calls on States, intergovernmental organizations and

¹ For example, the link between statelessness and forced displacement was recognized by the United Nations General Assembly in Resolution A/RES/50/152 of 9 February 1996: it was “[c]oncerned that statelessness, including the inability to establish one’s nationality, may result in displacement, and stressing, in this regard, that the prevention and reduction of statelessness and the protection of stateless persons are important also in the prevention of potential refugee situations”.

UNHCR to adopt a more resolute response to causes of forced displacement, including statelessness. The *Agenda* therefore invites States to give renewed consideration to ratifying the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

IV. Protection of Internally Displaced Persons (IDPs)

14. The challenges of internal displacement continue to occupy a substantial place in the agenda of the United Nations in general and of UNHCR in particular. In 1998, the Guiding Principles on Internal Displacement were developed by the United Nations at the request of Governments after lobbying efforts by an organized group of non-governmental organizations (NGOs). The Principles define internally displaced persons as “persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”² Although the Principles are not a binding instrument on States, these Principles reflect and are consistent with international human rights law, international humanitarian law and analogous refugee law. As such, they identify the rights and guarantees relevant to the protection of the internally displaced in all phases of displacement. They provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement, and set forth guarantees for safe return, resettlement and reintegration.

15. The Guiding Principles underline that the primary responsibility for ensuring adequate responses to IDP situations lies with national authorities, who are encouraged to develop national laws and policies for the protection and assistance of their internally displaced populations based on the Guiding Principles. They also note that ‘international humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced,’ which a State should not interpret as an “unfriendly act or an interference in a State’s internal affairs.”³ In 2001, the UN General Assembly endorsed the Guiding Principles as an “important tool.”⁴

16. Despite the presence of the Guiding Principles, no individual UN body has the sole mandate to respond to situations of internal displacement. Rather, UN bodies have applied a collaborative approach to distribute responsibilities to assist Governments with their IDPs’ humanitarian and human rights needs. This method of coordination and cooperation is continuously being strengthened. This applies to all IDPs regardless of the causes of displacement, though UNHCR is focusing mainly on conflict induced IDPs rather than displacement caused by natural disaster. UNHCR is primarily active in the areas of protection, emergency shelter and camp coordination/camp management though this can depend on the humanitarian response of each IDP situation.

² Principle 1, *Guiding Principles on Internal Displacement*: UN doc. E/CH.4/1998/53/Add.2 (1998).

³ Principle 25, *Guiding Principles on Internal Displacement*: UN doc. E/CH.4/1998/53/Add.2 (1998).

⁴ *Protection of and Assistance to Internally Displaced Persons*, UN GOAR, 56th Session, UN Doc A/RES/56/164 (2001)

V. Overview of the refugee and internal displacement situations in the Muslim World

17. Member States of the OIC are a highly diverse group of States from almost all corners of the world. Many are undergoing fundamental political, social and economic changes. Despite their national constraints, OIC Member States have demonstrated a long tradition of hospitality towards refugees and feel, to a large extent, bound by fundamental principles of refugee protection. Thirty-six of the 57 OIC Member States are signatories of the 1951 Convention and/or its 1967 Protocol. In addition, virtually all OIC Member States in Africa have signed the 1969 OAU Convention.

18. Many States in the Muslim World have allowed large numbers of people in need of protection to enjoy de facto asylum, have access to basic social services and informal employment, and benefit from a high degree of tolerance. The 57 Member States of the OIC are host to an estimated 9.4 million refugees and persons of concern to UNHCR: approximately 45 per cent of the world's total of some 19 million. This figure does not include the Palestinian refugees who fall within the specific mandate given by the United Nations General Assembly to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), and whose plight remains a source of deep concern to OIC Member States, the broader international community, and certainly to UNHCR.

19. The Islamic Republics of Iran and Pakistan alone were host to over 30 per cent of the world's refugee population, before large-scale repatriation movements to Afghanistan commenced. Many other States are hosting immigrants originating from countries where, in view of the prevailing insecurity, return is not feasible, thus offering them a sort of de facto asylum. In the majority of cases, refugees in Muslim countries are staying in refugee villages and urban areas and enjoy a large degree of self-reliance and participation rather than being confined to closed refugee camps. However, in many situations refugees face serious limitations with regard to the right to work which negatively impacts on their ability to become and remain self-reliant. Equally significant is the fact that most refugees in the OIC Member States remain close to their geographic area of origin, which means that there are countries close to home that are willing to accept them and to offer them shelter and safety.

20. With regard to situations of internal displacement, OIC countries have some of the world's largest, most protracted and complex IDP situations. In Somalia, 400,000 remain displaced, in Uganda approximately 1.6 million persons, in Sudan over 5 million IDPs are estimated, in Lebanon the emerging crisis has led to 500,000 ~ 700,000 displaced, in Azerbaijan there are over 500,000 IDPs, in Indonesia approximately 250,000 remain displaced after the tsunami, etc. In response, certain countries are including IDPs in their National Plans (e.g. Afghanistan, the Republic of Azerbaijan, and the Republic of Iraq) or have adopted national IDP policies and legislation clarifying the rights of IDPs and the responsibilities of the respective government in regards to internal displacement, e.g. Uganda.

21. Some countries have achieved progress in adopting refugee legislation at the national level and in establishing national structures and procedures to deal with refugee issues. Others have gone one step further by becoming directly involved in or

preparing the grounds for direct involvement in the management of the process of refugee registration and refugee status determination.

22. Equally important is the wide recognition among the concerned States of UNHCR's role, their high degree of cooperation with the Office and their facilitation of its interventions on behalf of refugees. UNHCR has been able, to a certain extent, to dispel the feeling of apprehension and the climate of mistrust which has characterized the attitude of many States of the region towards asylum and UNHCR, as well as to secure a degree of understanding and support for its mandate. In this vein, a score of countries in the region have signed cooperation agreements with UNHCR and contribute to UNHCR's work through their active presence in the Executive Committee of the High Commissioner's Programme. Cooperation agreements have been signed between UNHCR and the OIC (1981) and the League of Arab States (2000), offering additional opportunities for enhanced partnership. A joint Plan of Action was also adopted in 2004 by UNHCR and the Islamic Educational, Scientific and Cultural Organization (ISESCO) aimed at improving the provision of education in refugee camps in some OIC Member States. A Memorandum of Understanding with the Gulf Cooperation Council is also under review and is expected to pave the way for wider discussions on the complex linkages between labor migration and asylum in the Gulf area.

23. Turning to civil society, UNHCR has intensified its contacts with NGOs in the Islamic world. In 2006, UNHCR has signed implementing arrangements with over 160 NGOs from OIC countries working principally in the sectors covering health and nutrition, shelter, transport and logistics, education, legal assistance and protection, and domestic needs and household support. In all OIC Member States, UNHCR is witnessing an increasing interest among members of civil society in learning about the basic principles of international refugee law. Moreover, the Office has reached out to many academic institutions, and organized seminars and roundtables targeting selected audiences and focusing on asylum and other human rights topics. NGOs are also encouraged to participate in UNHCR's protection training programmes. In 2004, the High Commissioner issued an instruction on the importance of regular dialogue and cooperation with NGO partners so as to strengthen the joint UNHCR-NGO capacity to identify and clarify protection gaps and find ways to address these through better coordination and improve complementarity of activities, including in terms of advocacy efforts.

24. It is a basic humanitarian precept that assistance is provided to all victims, without discrimination or considerations based on political motivations. Many Islamic charities traditionally respect the distinction between their humanitarian activities and political considerations. Recently, though, problems have arisen when the line between humanitarian and political activities has become blurred. This is sometimes simply a problem of perception. It is essential to maintain the noble cause of humanitarian work and remain apolitical. Focusing activities solely on the humanitarian needs of beneficiaries, strengthening and professionalizing resource management and demonstrating greater transparency in the collection and distribution of aid will reinforce the image of Islamic charities and help demonstrate the important contribution that they are making. UNHCR is convinced there is enormous potential to expand its collaboration with Islamic NGOs.

VI. Regional Developments

25. The number of persons of concern to the High Commissioner in the Muslim world has gone down, principally because the root causes of major displacement, from Afghanistan through to West Africa, have been addressed sufficiently to permit the voluntary return of large numbers of refugees, however, the number of internally displaced remains constant or is increasing.

26. In Afghanistan, 3.5 million people have returned to their homes after years of displacement during which they were generously hosted by countries in the region, especially the Islamic Republics of Pakistan and Iran. This is the largest repatriation movement in UNHCR history. UNHCR has provided returnees with initial aid for their reintegration in their country of origin, but greater efforts are needed by development actors to tackle the underlying problem of poverty, in order to consolidate and ensure the sustainability of return. While voluntary repatriation remains the priority, UNHCR is also consulting Governments in the region to open up new avenues for durable solutions for Afghans.

27. In Central Asia, citizenship has been granted to Tajik refugees in Kyrgyzstan and Turkmenistan, thus allowing for the local integration of almost all Tajik refugees. In Tajikistan, the authorities have shown their readiness to discuss a local solution for a residual group of Afghan refugees who have been staying in the country for many years. In Turkmenistan, a country-wide registration of all refugees, mainly Afghans, is due to be completed in 2005.

28. In many parts of Africa, UNHCR has focused on the durable solution of voluntary repatriation. The year 2004 saw sizeable repatriation movements to several countries in Africa. The main challenge in all these repatriation movements is how to ensure the sustainability of return, so that returning refugees do not feel compelled to leave their home countries again owing to a precarious economic, social or security situation. While this fundamentally hinges on enduring peace and stability, the sustainability of reintegration requires strong international financial support, progress in poverty alleviation and investments in long-term development, including in areas to which refugees are going home.

29. The peace processes now underway on the continent are driven by African States themselves, with the support of the African Union, sub-regional organizations and, in quite a number of situations, OIC Member States. Nevertheless, poverty, socio-political inequities, weak rule of law and governance continue to burden African countries emerging from armed conflict. In cooperation with various partners, UNHCR is engaged, for example, in devising a Comprehensive Plan of Action (CPA) for Somali refugees. Its aim is to secure a range of durable solutions to their long-standing plight, benefiting from strong international support. There is no doubt that OIC members have a role to play in supporting Africa in this very challenging period.

30. Since the start of the conflict in Darfur, western Sudan in early 2003, UNHCR has been at the forefront in the humanitarian response to the plight of the internally displaced persons in Darfur and to Sudanese refugees in eastern Chad. The presence of armed elements along the Chad-Sudan border has increased tension in the region. The Office now assists over 207,000 Sudanese refugees from Darfur in 12 camps in

eastern Chad. Up to 50,000 Chadian nationals have been internally displaced in eastern Chad, compounding an already untenable humanitarian situation in that region. In Darfur, at the time of this writing, besides focusing on a huge number of the internally displaced, UNHCR is dealing with the influx of an estimated 15,000 Chadian refugees who have recently sought refuge there. A protracted emergency response is sustainable neither in Sudan nor in Chad. The impact of the Darfur Peace Agreement is yet to be assessed. Nonetheless, it is vital for the international community to advocate for the implementation of the peace agreement. It is also important to rebuild the victims' confidence so that they feel they will be protected effectively in their former home areas, and to create conditions conducive for the attainment of durable solutions, notably voluntary repatriation. UNHCR has been engaged at the same time in the repatriation of Eritrean refugees from eastern Sudan. Regretably, this process is stalled at present due to political conditions in the region. In southern Sudan, following recent political developments, there is growing hope that the 500,000 Sudanese refugees presently in eight neighbouring countries and the millions of internally displaced persons will be able to return home.

31. In North Africa, 2004 witnessed a breakthrough thanks to implementation of a Confidence-Building Measures programme that has, for the first time, enabled direct contact between the Saharawis in the Tindouf camps in Algeria and their communities in the Territory of Western Sahara.

32. Improving procedures and standards for the registration of asylum-seekers and refugees has been an important focus of UNHCR in recent years. Gender-sensitive registration and documentation have been incorporated into standard registration procedures in countries from Uzbekistan to Yemen. UNHCR interventions in other countries, such as Côte d'Ivoire, Pakistan and Turkmenistan focused on ensuring that obstacles were removed from refugees being issued identity documents, work permits, birth and marriage certificates, and 1951 Convention travel documents.

33. Significant numbers of Iraqis are still hosted by countries in the region and further abroad since the present situation does not yet allow return in safety and dignity. The challenging operational environment calls for innovative programming, and UNHCR is working in close partnership with the Iraqi authorities and NGOs on a range of assistance, property, displacement and citizenship issues. Assistance to returnees includes shelter and infrastructure, income-generation activities, legal aid and information. Returnee monitoring data obtained during 2004 and 2005 showed that about 80% of the returnees in northern Iraq and more than 35% in the lower south of Iraq ended up internally displaced upon return, mainly due to the lack of housing, employment and social services.

34. In Asia, the protracted exile of some 20,000 Muslim refugees of Myanmar in Bangladesh remains a major source of concern to UNHCR. Although the vast majority of the initial 250,000 refugees have voluntarily returned to Myanmar, those remaining in Bangladesh have been without a lasting solution for more than a decade. In a positive development, the Malaysian Government has recently indicated that some 10,000 Rohingya asylum-seekers from Myanmar, resident in Malaysia for over a decade, will be provided with temporary stay permits.

35. Other countries in Asia have used labour migration tools, to address the

situation of refugees irregularly present on the territory. In 2005, Malaysia, for instance, issued residence and work passes to persons of concern from the Indonesian Province of Aceh, thus enabling refugees' access to the labour market. The Malaysian authorities confirmed that this approach will also be extended to refugees originating from Northern Rakhine State in Myanmar. A similar approach was used by Thailand, an OIC observer, in 2004, whereby 1.2 million migrant workers from Cambodia, Laos and Myanmar, including many persons of concern to UNHCR were granted work permits.

36. In Europe, close cooperation has continued with OIC countries on asylum and refugee protection issues. Azerbaijan, a State party to the 1951 Convention since 1993 adopted asylum legislation as well as a proper structure and procedures. Azerbaijan has by now one of the few functioning Government RSD systems in the Commonwealth of Independent States (CIS). Important progress was made in Albania, where asylum legislation was adopted in 1998 and has been complemented by the adoption of several other pieces of legislation that have enhanced its asylum system. The Stabilization and Association process between Albania and the EU has also given new impetus in the field of asylum. The European Union (EU)-funded CARDS initiative provided concrete support for the "pre-screening procedure" which is implemented jointly by UNHCR, IOM and OSCE. The procedure provides a valuable tool to approach and manage mixed migration flows in a holistic manner, through a formal system of registration and referral. Important developments also took place in the Western Balkans, where there is a commitment to solve the remaining population displacement by the end of 2006, and facilitate returns or local integration of refugees and internally displaced persons depending on their individual decisions. Bosnia and Herzegovina is well on its way to have a functioning asylum system. However, a revision of the Citizenship Law which included the establishment of a Commission which should review the citizenship accorded to persons who received citizenship during the war have required close follow up to ensure that the procedural safeguards were maintained including the right to effective legal remedy and prevention of statelessness.

37. Over the last years, refugees and asylum seekers from the Russian Federation – most of whom are believed to be Chechens – have formed one of the largest groups of persons of concern to UNHCR in the region. Some of the cases have difficulties accessing asylum procedures and UNHCR has had to intervene on a number of cases. Their asylum claims are not always treated consistently amongst European countries because of security and political sensitivities arising from concerns linked to past or potential involvement with armed or terrorist activities. Similarly, resettlement prospects have diminished for this group and are often limited to a small number of especially vulnerable cases.

VII. Major challenges confronting the protection situation in the Muslim World

38. Despite these many positive developments and accomplishments, displacement situations in the Muslim world are nevertheless marked by a range of challenges relating to access to protection; to implementing durable solutions, including to a variety of protracted refugee situations; and to building partnerships and domestic asylum systems and enhancing response mechanisms to IDPs.

A. Accession to the refugee instruments, development of protection frameworks and capacity building

39. A total of 21 countries in the Muslim world have not yet acceded to the international refugee instruments. This is an important challenge. While accession is not an ultimate goal in and of itself, it provides a means to make progress in further building countries' capacity to deal with asylum issues by adopting asylum laws and related structures and procedures that are in conformity with international standards, while also establishing and enforcing protection-sensitive migration policies. There is also a need to revisit a number of outdated pieces of refugee legislation, often mirroring reservations made principally to the social and economic provisions of the 1951 Convention at the time of accession. This requires the political will of the concerned governments, combined with more substantive investment from UNHCR aimed at the planned, orderly and gradual handover of the refugee status determination responsibility to national structures.

40. Only few countries have developed comprehensive national IDP policies. UNHCR and other humanitarian partners can work with governments to clarify and develop national policies and legislation based on the *Guiding Principles* to provide a clear framework for a Government to respond to existing or future internal displacement situations.

41. A comprehensive protection framework also involves the training of law enforcement authorities and other national institutions dealing with refugees and IDPs. It equally includes providing appropriate documentation to refugees attesting to their protected status, and to grant them basic rights, including the right to education, freedom of movement, and access to employment and health services. IDPs, however, should enjoy the same set of rights as other nationals. UNHCR regularly provides technical support to countries for the enactment and implementation of legislation consistent with international standards. UNHCR can also play a catalytic role in encouraging the States of the region to provide further support to the non-governmental sector and to further associate civil society in dealing with asylum problems so that such institutions can relieve the pressure on State structures, attract additional funding for refugee programmes and find more tailored responses to refugee situations.

42. The protection afforded to refugees by the 1951 Convention and its 1967 Protocol begins with effective access to territory. Incidents of *refoulement* continue to take place and restrictions affecting access to territory and/or asylum procedures remain in place in a number of cases.

43. Addressing security issues remains a major preoccupation of UNHCR. Whether through armed attacks or military infiltration, the security of refugees and IDPs in many countries is often threatened. Banditry and lawlessness in asylum countries prompt refugees to repatriate in conditions which are not yet safe. Sexual and gender-based violence (SGBV) remain prevalent in many refugees and IDP camps. Displaced children are regularly confronted with exposure to sexual exploitation, abuse, and violence in the unstable environments in which they live. The risk of recruitment of children by armed groups and forces is a particular concern for

displaced children whose proximity to conflict and border areas make them susceptible. Such recruitment not only constitutes violence against children, but also leads to these children learning extremely violent behaviour. Despite many efforts, persons of concern to UNHCR living with HIV/AIDs have not been systematically included in national antiretroviral therapy (ART).

44. The provision of education to refugee and IDP children is not only a fundamental right, but the means by which a community can provide protection, normalcy, social support and opportunities for girls and boys. However, efforts to ensure such provision is often hampered by lack of resources for quality education, low attendance rates due to economic constraints, cultural perceptions of gender roles along with reluctance of host communities and governments to accept refugee and asylum-seeking students into their schools. There is still a critical need to establish safe school environments so that girls and boys can attend school free from threats including, but not limited to, corporal punishment, discrimination, exploitation and abuse inflicted upon by those responsible for their care in some cases.

45. The loss of a care provider exacerbates the emotional distress a displaced child experiences and increases his/her risk to abuse and exploitation, military recruitment or detention. There continues to be a general lack of legislative protection and procedural guidelines to ensure proper treatment and protection of unaccompanied and separated children seeking asylum. Establishing effective family tracing and reunification systems for unaccompanied and separated children to enable identification, registration and effective durable solutions remains a major challenge. Gaps in protection systems expose unaccompanied and separated children to the dangers of abuse, neglect and exploitation.

B. Statelessness

46. Large numbers of people in the Muslim world continue to live with no formal bond to any State or do not enjoy an effective citizenship. These include, for example, ex-deportees or persons deprived of an effective nationality owing to State succession and subsequent changes in citizenship legislation as well as men, women and children affected by legislation relating to acquisition, loss and transmission of nationality in the event of marriages of mixed nationality. Preventing and reducing statelessness as well as guaranteeing the protection of stateless persons as provided for by the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness remain major challenges for many OIC Member States. While concerned States, for a variety of reasons, sometimes have been hesitant to address these issues, UNHCR has been requested by the United Nations General Assembly and its own Executive Committee to assist in protecting stateless persons and to provide technical and advisory services to concerned States in order to prevent and reduce statelessness. In conclusions adopted in 2004 and 2005, the Executive Committee of UNHCR specifically requested that the Office pay particular attention to protracted statelessness situations and explore ways together with States concerned to address the needs of stateless persons and bring these situations to an end.

C. Sharing burdens and responsibilities for refugees and IDPs

47. Many OIC Member States do not offer durable solutions to refugees and IDPs.

While some refugees have managed to integrate and even obtain citizenship and some IDPs may be able to return home, be integrated locally or settle in another part of the country, the overwhelming majority of the displaced remain on the fringe of society surviving on limited aid. This situation also has an impact on the local population. Refugees and IDPs are often located in fragile environments or communities with limited resources and infrastructure to sustain struggling local populations, much less the displaced. The competition for water, firewood, and grazing possibilities for livestock is a persistent scenario, and occasionally leads to tensions and incidents. In some settings, refugees, asylum-seekers and IDPs are portrayed as a burden, a cause for social and economic instability, or an outright threat to national security. The grant of asylum is at times viewed as a “political” act. As a result, asylum-related policies and decisions, as well as durable solutions for internal displacement are weighed against their potential impact on local security interests and political alliances. Other factors impeding the effective integration of refugees and IDPs include the fact that development policies and plans fail to target local host communities. This is compounded by weak coordination between humanitarian and development agencies.

48. Creative new approaches are called for to alleviate these negative effects and mitigate these misperceptions. Displaced persons can be seen as an opportunity rather than a problem. Their capacities can be recognized and they can be empowered to adapt to their new environment and work towards their own solutions. The anchoring of refugee and internal displacement issues within the development agenda reduces the gap between humanitarian assistance and development efforts and has to be one goal of any new approaches. Greater attention now needs to be paid to overcoming these difficulties so as to maximize the potential contribution of refugees and IDPs towards local communities, and ensure that they participate in the development of localities and regions. In addition, more work needs to be done to influence misperceptions about refugees and IDPs in the public mind. Public opinion in countries of the Muslim world hosting refugees and/or IDPs should be made more informed about their plight and more sensitive to their protection needs and for the need for durable solutions, including integration. This requires activities aimed at creating awareness, promoting refugee law and disseminating refugee and human rights principles among the public at large, academia, decision-makers and other influential audiences.

49. In refugee situations, resettlement serves three equally important functions. *First*, it is a tool to provide international protection and meet the special needs of individual refugees whose life, liberty, safety, health or other fundamental rights are at risk in the country where they have sought refuge. *Second*, it is a durable solution for larger numbers or groups of refugees, alongside the other durable solutions of voluntary repatriation and local integration. *Third*, it can be a tangible expression of international solidarity and a responsibility sharing mechanism, allowing States to help share each other’s burdens, and reduce problems impacting the country of first asylum.⁵

50. Resettlement of refugees should strengthen, not diminish, asylum and protection prospects for the entire refugee population. By offering an appropriate

⁵ Quoted from *Strengthening and Expanding Resettlement Today: Challenges and Opportunities*, Global Consultations on International Protection, EC/GC/02/7 of 25 April 2002, (4th Meeting).

solution to refugees with individual protection or special needs, UNHCR seeks to reinforce asylum in host countries by relieving the strain on them, thereby promoting durable solutions benefiting the entire refugee population concerned. More specifically, agreement may be sought with host countries to enhance their protection capacities for refugees who remain in their territory - e.g. by institutionalizing fair and efficient asylum procedures and granting adequate asylum conditions for refugees, in relation to resettling those with special needs to third countries. The interface with protection capacity building and burden-sharing aspects is evident in such settings.

51. While strategic use of resettlement as a burden and responsibility-sharing tool can be promoted by a single State, coordination with other resettlement countries and UNHCR is likely to maximize derivative benefits. Such coordination may involve negotiation of mutually agreeable arrangements between the international community and the State of first asylum, possibly requiring a multi-year commitment by the international community to sustain the burden-sharing, as well as possible assistance to further local integration or enhance life for refugees in first asylum countries.⁶

D. OIC Member States need more support

52. Respect by States for their international obligations is enhanced by international solidarity and responsibility sharing. There is a growing perception among OIC Member States that refugee burdens are disproportionately spread. Many also feel that they do not have the tools to meet their international protection responsibilities. They believe that the international community is not supportive enough in helping them cope with the burden resulting from the presence of refugees and not active enough in seeking political settlements to resolve the refugee-producing crises that have affected the Muslim world for so many years. Many States in the Muslim world believe that their national concerns should be given more attention by the international community, and increased financial and technical assistance should be provided, commensurate with the burden they assume as host countries, in order to achieve more equitable responsibility and burden sharing on refugee issues. This would also relate to IDP situations in many instances. UNHCR is ready to foster more effective partnerships in support of the international protection system in the Muslim world. With many protection needs and resources not adequate, partnership-building is an indispensable priority and should involve a wide variety of actors both local and external, public and private.

E. More active search for durable solutions for refugees and IDPs

53. Focusing efforts more resolutely on the promotion and realization of sustainable solutions at the earliest possible opportunity is yet another challenge in many refugee and internal displacement situations in the Muslim world. There are many long-standing refugee situations resulting from conflicts which have not been resolved with the ending of the Cold War or which have taken on a life of their own, often fueled by the plunder of natural resources and/or illicit trade in small arms. Likewise, some OIC Member States have populations that have been internally

⁶ *The Strategic Use of Resettlement (A Discussion Paper Prepared by the Working Group on Resettlement)*, EC/53/SC/CRP.10/Add.1, 3 June 2003, section IV, p. 4 ff.

displaced for over 20 years. Endemic instability and insecurity often accompany displacement within and from failed States or States where the central government controls only part of the territory, hardly offering conditions for safe return.

54. UNHCR has consistently stressed the link between repatriation and the impact on peace and stability. It argues that in post-conflict situations involving the return of large numbers of refugees and internally displaced persons, there is a need for a balanced and integrated approach to make returns durable and part of sustainable peace-building. The World Bank recently estimated that one half of all post conflict situations relapse into violence because of the lack of sustainable recovery.

55. Many unresolved conflicts have the potential to generate humanitarian emergencies that can evolve at any time into major involuntary displacements. It is therefore essential for all concerned parties to be sensitive to such potential and to maintain an adequate level of contingency planning and emergency preparedness.

56. In efforts to **redouble the search for durable solutions**, the *Agenda for Protection* envisages that voluntary repatriation, local integration and resettlement be integrated into one **comprehensive approach to durable solutions for refugees**, which is to be implemented in close cooperation among countries of origin, host States, UNHCR and its partners, as well as refugees.⁷ In this connection, it also calls for the expansion of resettlement opportunities through enhancing the number of resettlement countries; through more strategic use of resettlement for the benefit of as many refugees as possible; through the development of capacity building programmes with new resettlement countries; through encouraging increases in resettlement quotas on part of resettlement countries and by diversifying the intake of refugee groups as well as by introducing more flexible resettlement criteria. For IDPs, the main solutions are voluntary repatriation to their areas of origin, integration in the area to where they have fled or to settle in a sustainable manner in another part of the country.

F. The migration debate and heightened security concerns

57. The debate on migration in today's globalized world - often with asylum issues at its heart - has taken on a dimension of its own. Refugees are increasingly part of movements including both forced and voluntary departures and may resort to smugglers in order to leave and reach their chosen destination. Refugees may also move to other countries either because they do not enjoy effective protection or for other reasons. At the same time, people not in need of international protection and lacking legal migration options may resort to asylum channels in the hope of gaining temporary or permanent stay abroad. As a result, the line between migrants and refugees is blurring in the public mind, as is the distinction between migration control and refugee protection in the policies of many States.

58. Refugees do not lose their protection needs and entitlements just because they are part of a mixed flow. What changes is the context in which protection and solutions have to be realized. It is therefore important for all partners to be sensitive to the inter-linkages between migration and asylum flows, so that the management of

⁷ *Agenda for Protection*, introduction to Goal 5 "Redoubling the search for durable solutions".

this “asylum-migration nexus” respects the differences between the various groups and interests at stake, and approaches are adopted which recognize these differences. The real challenge here is to foster the development of a protection perspective onto the migration control agendas of governments. Such an approach would take account both of the right and needs of individuals of concern to UNHCR, and of the legitimate interests and constraints that the concerned governments face.

59. Loss of lives of people attempting to cross the Mediterranean brought to focus on the complexities of managing large scale irregular population movements and, combating smuggling and human trafficking. In some situations, countries of transit and destination reacted to increased migration pressures through interceptions and expulsions risking *refoulement* of refugees and asylum-seekers. Effective responses to irregular maritime movements, especially given the added complexity of threats to life on the high seas, require clarity with regard to State responsibilities, comprehensive multilateral cooperative approaches and political will. Whether in the Mediterranean, the Caribbean, the Gulf of Aden or the Pacific, safeguarding the “Search and Rescue” (SAR) regime is critical, not least because of the human tragedies often associated with irregular maritime movements. In this regard, it is worth mentioning that UNHCR presented a 10-Point Plan of Action to Address Mixed Migratory Movements during the Euro-African Ministerial Conference on Migration and Development, held in Rabat in July 2006. It calls upon governments and regional, international and non-governmental organizations to work together to ensure that refugees traveling in mixed migratory movements are protected and that the rights of migrants are upheld.⁸

60. The report published in October 2005 by the Global Commission on International Migration⁹ exhorts States to respect their existing obligations under international law with regard to the human rights of migrants, the institution of asylum and the principles of refugee protection, and calls for an objective, informed and responsible public discourse on migration and asylum issues. The High-Level Dialogue (HLD) on International Migration and Development, to be held in New York in September 2006 is hoped to contribute to devise a multilateral approach to the management of mixed flows respectful of the basic principles of refugee protection.

61. Moreover, security concerns since the attacks in the United States of America on 11 September 2001 have dominated the debate, including in the migration area, and have at times overshadowed the legitimate protection interests of individuals. A number of countries have, for instance, designed their asylum systems from a security angle and have, in the process, tightened procedures and introduced substantial restrictions, including on admission to safety. Of grave concern is the shrinking space for safe and unhindered humanitarian action as a result of direct attacks on the United Nations and on humanitarian personnel. These attacks are stark reminders that the United Nations and other humanitarian personnel are increasingly being targeted for political reasons as they seek to deliver protection and assistance. Indeed, the United Nations itself, together with the emblems which for decades have symbolized non-political, humanitarian action, are now themselves under attack in a deliberate effort

⁸ The 10-Point Plan of Action is available on www.unhcr.org.

⁹ Global Commission on International Migration, *Migration in an interconnected world: New directions for action*, Geneva, October 2005. The full report can be found on the Commission’s website at www.gcim.org.

to destabilize humanitarian work. Threats and insecurity have curtailed operations to assist refugees, returnees and internally displaced victims of persecution and conflict in several countries.

62. Bona fide efforts, multilateral or national, to root out international crime and effectively combat terrorism effectively are supported by UNHCR. An important point of departure for UNHCR, however, is that genuine refugees are themselves escaping persecution and violence, including terrorist acts. They are not the perpetrators of such acts. A second starting point for UNHCR is that the international refugee instruments should not be characterized as providing a safe haven for terrorists. On the contrary, they provide for their exclusion from international protection. They do not shield from either criminal prosecution or expulsion. While there may be persons in both categories associated with serious crime, this is no justification for the majority being damned by association with the few. Equating asylum with a safe haven for terrorists is not only legally wrong and unsupported by the facts, but it serves to vilify refugees in the public mind and promotes the singling out of persons of particular races or religions for discrimination and hate-based harassment.

63. It is imperative that the combination of security fears and confusion with economic migrants does not weaken international commitments to protect genuine asylum-seekers and refugees. UNHCR hopes that the OIC Ministerial Conference will give States the opportunity to reflect upon the specific challenges posed by mixed movements of populations, including not only refugees but also armed elements seeking sanctuary in neighbouring countries, posing security concerns for the host communities and refugees alike. The civilian and humanitarian character of asylum is among the basic tenets of both international and regional refugee instruments.

VIII. The Agenda for Protection: A way to address the challenges and improve asylum in the Muslim World

64. There was hope that the end of the Cold War would result in the strengthening of multilateral approaches to address international problems. In the area of forced displacement, developments in the 1990's did not, however, fully realize this hope. On the one hand, concerns over irregular migration, smuggling and trafficking, abuse of asylum procedures increasingly dominated the international debate. On the other hand, protracted refugee situations, massive refugee outflows, complex internal displacement situations, elusive durable solutions and lack of genuine will to engage in burden sharing frustrated many countries in the developing world. Advancing protection standards in such a context posed difficult challenges for UNHCR, but also offered opportunities for revitalizing the international protection system.

65. It was against this background and in the context of preparations for the 50th anniversary of the 1951 Convention, that UNHCR in June 2000 embarked on a process of broad consultations on the international refugee protection framework, known as the Global Consultations on International Protection. The Global Consultations proved highly effective in bringing together the different stakeholders and succeeded in raising awareness of the key challenges facing refugee protection today. Two concepts kept recurring throughout the Consultations: the need for international cooperation on refugee issues in a globalized world and the importance

of realizing durable solutions. The most important outcome of these Consultations is the Agenda for Protection, consisting of a Declaration and a Programme of Action. The Agenda for Protection reflects a wide cross-section of concerns and recommendations of States, inter-governmental organizations, NGOs, as well as refugees themselves. It recognizes the enduring importance of the 1951 Convention and its Protocol, reaffirms political commitment to upholding the values and principles they embody, and urges all States to consider ways to strengthen their implementation. It also affirms the need for closer cooperation between States and UNHCR to facilitate the latter's duty of supervising the application of these international instruments.

66. The Agenda for Protection was the product of a multilateral process to which a significant number of OIC member States actively contributed. It addresses those elements of protection which stand to benefit from strengthened multilateral cooperation. It has helped to mainstream concepts and to improve ownership of and accountability for the performance of protection. It has also served to promote more coherent and globally consistent policies, by offering a planning framework, which is not region or country specific, within which countries can develop their own more locally tailored protection strategies. It promotes partnerships for protection, built around burden sharing.

67. The Programme of Action has six goals:

1. strengthening implementation of the 1951 Convention and its 1967 Protocol;
2. protecting refugees within broader migration movements;
3. sharing burdens and responsibilities more equitably and building capacities to receive and protect refugees;
4. addressing security related concerns more effectively;
5. redoubling the search of durable solutions; and,
6. meeting the protection needs of refugee women and refugee children.

68. UNHCR believes that the variety of tools offered by the Agenda for Protection is adequate to address the protection challenges confronting the Muslim world.

IX. Conclusion

69. The Ministerial Conference comes at a critical juncture for the Muslim world which is going through profound political, social and economic changes. UNHCR hopes that the Conference will make a significant contribution to further improving the protection of and securing durable solutions for refugees and IDPs in a part of the world with a long and generous asylum tradition, but where refugee flows and displacement are an ever present, daily human tragedy.