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### EXECUTIVE COMMITTEE OF THE HIGH COMMISSIONER'S PROGRAMME

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#### NOTE ON INTERNATIONAL PROTECTION

##### I. INTRODUCTION

1. This year's Note on International Protection focuses on the mechanics of protection and shows how States, UNHCR and other actors have been using various tools to ensure that those in need of international protection can benefit from it. The Note has three main sections on operational, legal and policy, and promotional tools of protection and covers the period, from September 2002 to date. It reflects developments in different countries where they are indicative of broader trends, and sets out UNHCR's actions in response to protection challenges, which in many cases can also be seen as following up operationally on the Agenda for Protection,<sup>1</sup> resulting from the Global Consultations on International Protection.

##### II. BROAD OVERVIEW OF DEVELOPMENTS

2. By far the largest movement of refugees in 2002 was that of more than two million Afghans, including some 1.8 million refugees, who went back in a UNHCR-assisted voluntary repatriation operation, representing a major step towards resolving one of the world's longest-running refugee situations. Another 1.3 million returns are expected in 2003. UNHCR also devoted considerable resources during the reporting period to contingency planning for a potential influx of refugees from Iraq, although this ultimately did not materialize. It is to be hoped that the still volatile situation in Iraq will stabilize and that basic services will be restored, enabling the voluntary return of another significant refugee population. More generally, the effects of globalization and contemporary security concerns have brought to the fore problems

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<sup>1</sup> See EC/53/SC/CRP.10 for developments specific to follow-up to the Agenda for Protection, endorsed by the Executive Committee at its fifty-third session (A/AC.96/973 para. 21), and welcomed by the General Assembly (A/RES/57/187).

resulting from mixed migratory flows, and have prompted a number of proposals. In this respect, UNHCR has sought to suggest ways to develop a comprehensive framework for improving national asylum systems in destination States, establish cooperative, regional processing systems among destination States, and improve access to durable solutions in regions of origin.

3. The protection of refugees nevertheless faces significant challenges, especially in volatile situations of unresolved conflict, as for instance in West and Central Africa. There and elsewhere, lack of security remains an endemic problem, camps and settlements have been infiltrated by armed elements, refugees are intercepted, denied entry or forcibly returned shortly afterwards, are unable to gain access to effective asylum procedures, are not given papers, increasing the risk of arrest, arbitrary detention and deportation, face hostility from the host population, and frequently risk attack, rape or death. Such situations prevent refugees from finding effective protection and can result in further displacement especially where countries have limited capacity to host refugees for what can sometimes be decades. The Office is also concerned at the recent proliferation of international organizations describing their work as protection, which can lead to a confusion of roles and dilution of expertise ultimately detrimental to protection. Elsewhere, asylum processes have increasingly been tightened to the detriment of refugees and there was a strong tendency towards harmonization at the level of the lowest common denominator in the development of regional asylum systems.

### III. WORKING ON THE GROUND (operational tools)

#### A. Ensuring registration and documentation

4. The proper registration and documentation of refugees and asylum-seekers are not only important for assessing and monitoring assistance needs. They are also significant protection tools, notably against *refoulement* and arbitrary detention, facilitating access to basic rights and family reunification, enabling identification of those in need of special assistance, and supporting the implementation of appropriate durable solutions.

5. In many locations, lack of official documentation for refugees and asylum-seekers continued to impede access to residence permits, public healthcare and social assistance, and to result in incidents of *refoulement*, arrest and discrimination. A heightened focus on registration<sup>2</sup> did nevertheless serve to encourage efforts in many countries to register adult refugee populations individually, to provide more comprehensive demographic profiles of populations of concern, and to issue documentation on a more systematic basis. In Kenya, for instance, the government initiated a major exercise to issue 100,000 adult refugees with laminated photographic identity cards. In Ecuador, a shared government-UNHCR database paved the way for personal documents for all Colombian asylum-seekers and refugees. In other operations, such as those in Côte d'Ivoire, Georgia, Guinea and Yemen, UNHCR reached agreement with the government that photographic identity cards should be issued not only to all adult men but also to women, thereby enhancing protection of refugee women in particular. In Ghana, Sierra

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<sup>2</sup> See Executive Committee Conclusion No. 91 (LII) 2001, on registration of refugees and asylum-seekers. (A/AC.96/959, para. 23).

Leone, Uganda and the United Republic of Tanzania, new standards for ongoing verification of registration were introduced, allowing the constant updating of planning figures. In another positive development, UNHCR began in late 2002 issuing asylum-seekers documentation with the cooperation of the Egyptian authorities, helping prevent detention for illegal stay. In planned or ongoing voluntary repatriation operations, such as those to Afghanistan, Angola and Eritrea, (re)registration exercises helped ensure return was voluntary, reduce the number of “recyclers” (persons seeking repeated or unauthorized assistance), and assist returnee monitoring.

6. More generally, UNHCR completed a global baseline survey on registration practices. A *UNHCR Handbook on Registration*, already in use in operations, will be published in August 2003. Revised standards include appropriate methodology for interviewing and registering women and children at the point of entry, for comprehensively recording and updating information, in particular on special needs, and for verifying information already gathered.

#### B. Promoting physical security

7. Securing the physical protection of refugees is a central responsibility of States and a major concern for UNHCR. Especially in situations of mass influx, locating refugee camps and settlements at a reasonable distance from the border, maintaining law and order, and preventing their use for military purposes are important security measures. Furthermore, emergency preparedness measures and negotiations to secure access to border areas are essential initiatives, even before an influx takes place. Where armed elements have infiltrated camps, their identification, separation, disarmament, and internment are key to maintaining the civilian character of asylum.<sup>3</sup> Emergency evacuation and resettlement to save lives can also represent a vital, albeit exceptional, tool. The physical presence of staff is key to UNHCR’s ability to promote refugees’ physical security, both at borders, where access can be a problem, and in locations and camps prone to such risks, although resource constraints often considerably limit the extent of this presence, as can staff safety concerns.

8. There were shocking reports during the reporting period of killings among people of concern to UNHCR, for instance, in northern Uganda, western Ethiopia, southern Sudan and Liberia, as the displaced became the targets of intra-State and cross-border conflicts. In several West African countries, refugees were left little choice but to return to insecurity in their home country, rather than face new fighting in the country of asylum. The situation of those affected by the ongoing turmoil in the Great Lakes remained of great concern, while recent developments in Afghanistan, Central Africa, Colombia, the Northern Caucasus, and Iraq seriously impaired the general security environment for refugees and returnees.

9. Where armed groups crossed borders and displaced refugees along with the local population, as was the case in countries bordering Colombia, UNHCR appealed to them to respect the rights of the civilian population. It sought to strengthen protection by maintaining its presence and that of its partners in border areas, persuaded the authorities to investigate incidents and where necessary to guard shelters housing vulnerable refugees. A good example of

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<sup>3</sup> See Executive Committee Conclusion No. 94 (LIII) 2002, on the civilian and humanitarian character of asylum (A/AC.96/973, para. 23). For measures to address problems of sexual and gender-based violence, see section III.F.

partnering to ensure physical protection was the deployment in Guinea since January 2003 of two Canadian police officers to work alongside their counterparts and improve camp security. Where peace was in the process of being established, as for instance in Angola, Sierra Leone or Sri Lanka, education on the dangers posed by unexploded ordnance and demining programmes represented vital tools of physical protection. Full demobilization of soldiers and their rehabilitation, including of child soldiers, also proved important endeavours to consolidate the peace and return process. More generally, UNHCR is developing an “enhanced refugee security project” to strengthen its capacity to respond to tense refugee situations. Collaboration with the Department of Peacekeeping Operations (DPKO) was strengthened with the arrival of a DPKO liaison officer in UNHCR’s Emergency and Security Service.

10. The security of refugees is closely related to the level of security for humanitarian workers and UNHCR staff, who have themselves in recent years increasingly become the targets of violence.<sup>4</sup> In March 2003, UNHCR issued a basic security awareness learning course for all staff entitled “Basic Security in the Field: Staff Safety, Health and Welfare”, in the form of an interactive CD-ROM.

### C. Tackling the asylum/migration nexus

11. There are no evident, simple or quick solutions to resolve increasing migration pressures and congested asylum systems. Poverty and the effects of globalization are likely to continue to contribute to the acceleration of migratory movements. Repressive regimes, human rights abuses and war are equally likely to continue to force people to flee. And these combined factors mean that people seeking to move from one country or region to another will continue to do so as part of mixed flows. States have legitimate concerns to control entry and stay on their territory and to prevent asylum systems from being misused for immigration purposes. Efforts to manage migration, address these issues and combat trafficking and criminal human smuggling encounter many challenges and have to take into account numerous overlapping, sometimes even conflicting policy interests. The focus of these efforts is more directly related to trade, employment, development cooperation, poverty reduction, law enforcement and international conflict management. From the perspective of refugee protection on the other hand, which forms a small, albeit important, part of the whole, the primary challenge is to respond to the concerns of States in a refugee protection-sensitive manner.

12. Providing access to fair and efficient asylum procedures, which are well-resourced and informed, is a key tool in this respect, since it helps to disentangle the various components of composite population flows. Under certain circumstances and with appropriate guarantees in the individual case, the transfer of responsibility for assessing an asylum claim to another country may be an appropriate measure.<sup>5</sup> In addition, endeavours to strengthen protection capacities in refugee-receiving countries in regions of origin, to enable refugees to enjoy effective protection, and improve their self-reliance can reduce secondary movement pressures and make viable the

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<sup>4</sup> A policy to enhance the management of staff security in the field was issued by UNHCR in November 2002.

<sup>5</sup> See Executive Committee Conclusion No. 15 (XXX) 1979, (A/C.96/572 para. 72, 2) on refugees without an asylum country and Conclusion No. 58 (XL) 1989 (A/AC.96/737, para. N) on the problem of refugees and asylum-seekers who move in an irregular manner from a country in which they had already found protection.

conclusion of readmission arrangements for persons who have found “effective protection”. Readmission agreements with countries of origin to facilitate the swift return of asylum-seekers whose claims have been finally rejected in a full and fair procedure are likewise important. Finally, comprehensive durable solutions arrangements need to be pursued in tandem with better managed individual asylum systems.

13. States continued to be preoccupied with strengthening the regulation of both regular and irregular migration. In particular, they focused on more effective mechanisms to control mixed flows at entry points and beyond, including through visa requirements, carrier sanctions, interception measures, readmission agreements, and efforts to curtail the trafficking and smuggling of persons. States concluded an increasing number of bilateral and occasionally multilateral readmission agreements concerning persons residing without authorization to ensure the rapid and effective identification and return of those entering or remaining illegally. Concerns arise where such agreements are not accompanied by adequate safeguards to identify those in need of international protection. This is especially so where these agreements cover the return not only of nationals but also of third country nationals. The resolution of the situation at the Sangatte camp in northern France, used by irregular migrants including *bona fide* asylum-seekers primarily as a point of departure for the United Kingdom, represents a recent positive example of international cooperation. UNHCR offered its good offices to facilitate discussions on burden-sharing arrangements concerning the camp, although the final agreement was made on a bilateral basis. The Office assessed the entire population in the centre and identified practical solutions for specific cases of concern.

14. In situations where asylum-seekers and refugees move on, often clandestinely, from countries of first asylum, a better understanding of what constitutes “effective protection” is central to the development of appropriate strategies. UNHCR held an expert roundtable on “effective protection” in Lisbon, Portugal, in December 2002. Participants identified a broad framework for a set of principles to assess whether protection can be said to be effective in any given situation and whether or when it may be appropriate to apply the first country of asylum concept or the “safe third country” notion.<sup>6</sup> These issues were again addressed in April 2003, at a joint UNHCR-Czech regional conference in Prague following up on a 2001 Global Consultations regional meeting in Budapest, Hungary.

15. Drawing on these discussions, UNHCR presented proposals to both the European Union and to the “Bali II” meeting in April 2003,<sup>7</sup> setting out some elements of an international framework to address the question of secondary flows of asylum-seekers and refugees. These elements revolved around reinforced national asylum systems; strengthening protection capacities in regions of origin; comprehensive durable solutions arrangements for targeted

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<sup>6</sup> Lisbon Expert Roundtable, “Summary Conclusions on the Concept of “Effective Protection” in the Context of Secondary Movements of Refugees and Asylum-Seekers”, 9–10 Dec. 2002. See also, Executive Committee Conclusion No. 58.

<sup>7</sup> Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, Bali, Indonesia, 29–30 April 2003.

refugee groups; a cooperative multilateral approach to handling asylum applications; and collaborative partnership arrangements to underpin the international framework.<sup>8</sup>

16. UNHCR has actively contributed to deliberations in other migration-related fora including the Swiss “Berne Initiative”, the Inter-governmental Consultations (IGC), and various regional processes such as the “Puebla Process” in the Americas, the Asia-Pacific Consultations (APC), and the EU’s Community Assistance for Reconstruction, Development and Stabilisation (CARDS) programme in South-Eastern Europe. UNHCR’s cooperation with the International Organization for Migration (IOM) continued through the Action Group on Asylum and Migration (AGAMI), which has met five times since its formation at the end of 2001. The Office also contributed to a report (the “Doyle report”) which analyzed and advised the UN Secretary-General on contemporary migration challenges and the UN system’s response. The Secretary-General has requested UNHCR to explore additional areas for inter-agency co-operation and the Office initiated consultations with the agency heads of the Office of the High Commissioner for Human Rights (OHCHR), the International Labour Organization (ILO) and IOM. In the area of norms, UNHCR welcomes the entry into force in July 2003 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, as helping to regulate the position of other categories of migrants apart from refugees.

#### D. Strengthening protection capacities

17. Strengthening the capacity of host countries to protect refugees is often a largely invisible function, but it is crucial to the establishment of effectively functioning asylum systems, including in particular in countries with limited resources and in emerging countries of asylum.

18. Given their cross-cutting nature, individual capacity-building initiatives are reported throughout the Note. More generally, the recent completion of a first review of national protection capacities in 11 African countries by UNHCR and the African Union represents an important effort to address protection capacity issues more systematically on the continent. The African Union will shortly issue a broad set of recommendations in this regard, while UNHCR will follow-up with country-specific activities. Particular challenges arise in countries where UNHCR has no presence due to funding constraints. In such situations, the Office has sought to ensure some measure of protection through “protection networks”, including in State bodies, religious institutions, and non-governmental organizations (NGOs), or through the system of “honorary liaison officers”, as in the Caribbean. In Pakistan, a recent innovation has been the establishment, though a network of international and national implementing partners, of eight advice and legal aid centres across Pakistan. They provide legal aid and counselling to refugees. UNHCR’s Surge Project has also proven a useful tool to respond to sudden temporary protection staffing needs. Since the programme became operational in January 2002, it has deployed 44 protection officers to Afghanistan, Angola, Cambodia, Chad, Colombia, Côte d’Ivoire, Ecuador, Ghana, Guinea, India, Liberia, Malaysia, Nauru, Rwanda, Sierra Leone, Sri Lanka, and Venezuela.

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<sup>8</sup> See UNHCR, “Co-operation to Address the Irregular Movement of Asylum-Seekers and Refugees: Elements for an International Framework”, April 2003.

19. Capacity-building has been particularly relevant at the point where large-scale assistance operations begin to be phased out, as is, for example, now the case in South-Eastern Europe. UNHCR has boosted its efforts there to assist governments in building effective asylum systems and to foster civil society. It is envisaged that these efforts will also contribute positively to the better management of the significant migratory flows in the region, which are largely in transit to the European Union. In the same vein, UNHCR has continued to work with the EU to ensure due attention is paid to asylum and return issues in the context of the EU Stabilization and Association Process, as well as with the Stability Pact for South-Eastern Europe to assist the establishment of priorities for legal reform and the development of national action plans.

#### E. Preventing the need for flight

20. Measures to prevent human rights abuses, destabilization and armed conflict which can lead to forced displacement are fundamentally political issues, which require international attention and cooperative resolve. Among the many preventive initiatives relevant in this context are efforts of the wider UN system to reduce the number of countries and people affected by the proliferation of and illicit trade in small arms and key natural resources such as “conflict diamonds”, which are fuelling conflict in many places. If tackled successfully, progress in these areas could contribute significantly to conflict prevention and directly benefit numerous refugees. The potential for displacement is also reduced if those who commit genocide, war crimes, and other crimes against humanity do not enjoy impunity. In this respect, the establishment of tribunals or truth commissions in a number of countries and the entry into force of the Statute of the International Criminal Court in July 2002 represent significant steps towards the ending of impunity for such crimes.

21. A particular concern to UNHCR is statelessness, which can be one of the factors provoking displacement, or inhibiting durable solutions to refugee problems. In this respect, the 1954 and 1961 statelessness conventions provide an important framework for avoiding and resolving cases of statelessness and UNHCR continues to promote accession to them. In addition to the Office’s ongoing provision of technical support and advice on nationality legislation, treaties and agreements, it is also conducting a global survey requesting that States report on steps they have taken to reduce and avoid statelessness.<sup>9</sup> More generally, in repatriation and reintegration situations, UNHCR’s field presence, protection interventions, reconciliation efforts, and support for relevant civil society initiatives are useful tools which can prevent the need for renewed tension and flight.

#### F. Adopting an age and gender-sensitive approach

22. Standards promoting an age and gender-sensitive approach to refugee protection have become well developed over the last decade. The challenge remains to operationalize them more fully by further mainstreaming age and gender into policy making and by implementing them more effectively in the field. Partnerships involving States, UNHCR, NGOs and relevant international organizations are essential to this endeavour.

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<sup>9</sup> See EC/53/SC/CRP.11.

23. The question of how to address the problem of sexual and gender-based violence (SGBV) against refugee women and girls has remained high on the agenda. UNHCR has adopted a multifaceted approach, investigating allegations of sexual abuse and exploitation in camps in West Africa, United Republic of Tanzania, and Nepal and setting in place specific programmes to address the problems arising there. In addition, a global training and capacity-building strategy has included regional training for field-based UNHCR and partner teams in Abidjan, Pretoria, Lusaka and Kathmandu, followed by workshops at national level. Further training planned in 2003 will draw on UNHCR's recently issued revised Guidelines on preventing and responding to SGBV.<sup>10</sup> UNHCR also put in place a Code of Conduct for staff in September 2002 and instituted related measures to ensure implementing partner staff abide by similar standards. In addition, an Inter-Agency Plan of Action on Protection from Sexual Exploitation and Abuse has been developed.

24. This range of approaches is not sufficient, however, since the issue cannot be addressed in isolation. It is often linked to other protection problems, such as lack of access to essential services and problems created by family separation. Broader initiatives to implement the High Commissioner's "five commitments" to refugee women are therefore equally relevant tools.<sup>11</sup> Progress to date has included improved registration of women refugees; enhanced women's leadership skills including by their election to leadership positions in camps; increased appointment of female UNHCR field officers in camps to act as focal points for female refugees; and collaboration with the World Food Programme and other partners to increase the participation of women in the distribution of food and other items. A "Gender Training Kit and Resource Book on Refugee Protection" has also been published, bringing together the core information and training materials on integrating the gender perspective into protection.

25. With regard to refugee children, education is an especially useful tool to protect them from dangers such as military recruitment, sexual exploitation, abuse, violence, and trafficking. Education raises refugee children's awareness, provides a viable alternative to harmful options that may present themselves, and enables intellectual development and psycho-social recovery. Recent provisional UNHCR education statistics<sup>12</sup> indicate that school enrolment is not equal between grades, with 50 per cent of all children enrolled in the four lowest grades and only 12 per cent in the four highest grades. Refugee girls account for 46 per cent of enrolments and are more concentrated in the lower grades. Among the many recent initiatives have been careful consideration of the lay-out of refugee schools in Uganda to provide separate toilets for boys and girls, helping pre-empt harassment by male pupils; provision of financial support to allow selected refugee girls in Kenya and Uganda to attend secondary boarding schools, providing them with a place to study and relieving them of domestic chores; enabling refugee girls in Pakistan to attend schools from home; initiatives in Guinea and Kenya to enable girl mothers to continue their education; and the establishment of girls' groups and a mentoring system in Namibia to encourage girls go to and be able to stay at school.

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<sup>10</sup> UNHCR, "Sexual and Gender-based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response", May 2003.

<sup>11</sup> See the 2002 Note on International Protection, A/AC.96/965, paras. 78–83.

<sup>12</sup> UNHCR, "Education Statistics Report, 2002–2003", providing provisional data on refugee education for the academic year 2002–2003 in 45 countries for which data was available in mid-April 2003. The report mainly covers educational programmes funded by or through UNHCR.



26. In terms of partnerships with other organizations, a key initiative has been the drafting of Inter-Agency Guiding Principles on Unaccompanied and Separated Children as a joint project with the UN Children's Fund (UNICEF), the International Committee of the Red Cross (ICRC) and various NGOs, which is to be published imminently. The Guiding Principles seek to ensure that all actions taken concerning separated children are anchored in a protection framework and respect the best interests of the child. In addition, UNHCR's collaborative efforts included cooperation with the UN Development Fund for Women (UNIFEM) to advance implementation of Security Council resolution 1325 on the protection of women and children in situations of armed conflict, and with ILO to enhance economic activities targeting refugee communities. Ongoing partnerships with NGOs led to pilot projects in Guinea to empower refugee women and support refugee-initiated activities. Examples included Men's Association for Gender Equality there, as well as stand-by arrangements with numerous NGOs for community services in emergencies.

#### G. Working with communities

27. A community-based approach to refugee protection involves working with refugee and returnee communities to help improve their capacity to meet their own needs and solve their own problems. Techniques and approaches developed in the fields of social work, education, and training and community development are key to such efforts. This social dimension of protection presupposes that all refugee individuals, groups and communities are resourceful actors in their own right to be engaged at all stages of programming and decision-making. In an adverse development, funding constraints have in recent years led to a reduction in the number of UNHCR community services field staff.

28. During the reporting period, youth clubs have, for instance, provided a forum for discussion, sports and cultural activities, through which issues such as child rights and HIV/AIDS could be broached. In another example, the women's group in one Namibian camp increased its membership tenfold in 2002, encouraging self reliance through training in tailoring, and securing funding to construct a women's community centre. Where the refugee population is primarily urban, as for instance in much of North Africa and the Middle East, UNHCR has adopted a community-based approach to identify needs and appropriate support structures.

29. HIV/AIDS has continued to be an issue of grave concern. UNHCR has sought to counter perceptions that refugees equate with an increased risk of HIV and to prevent discriminatory practices in relation to admission procedures, registration, and standards of treatment. In a growing number of countries where HIV/AIDS is widespread, UNHCR has encountered numerous cases of single refugee parents dying of AIDS and sought to find solutions for the orphans, including by tracing other family members or foster care. In addition, UNHCR continued to oppose mandatory testing of asylum-seekers and refugees, since this does not prevent the spread of the virus and may be at variance with human rights standards. In a positive development, in one country, the immigration authorities lifted an otherwise mandatory medical examination requirement in the case of asylum-seekers and refugees following UNHCR's interventions. Where refugees with HIV/AIDS are barred from resettlement, UNHCR continues to promote waivers to avoid indefinite "orbit".

#### H. Working towards durable solutions

30. In a world where the consequences of conflict and crisis can extend far beyond national borders, resort is increasing to multilateral and comprehensive solutions arrangements. These draw on a range of tools to enable agreement on and implementation of appropriate combinations of resettlement, local integration and voluntary repatriation, tailored to the particular situation.<sup>13</sup> Effecting such solutions nevertheless also requires the active engagement and resources of other responsible actors at national and international level.

31. Determining voluntariness lies at the heart of UNHCR's protection responsibilities in voluntary repatriation situations. Key tools include UNHCR's unhindered access to refugees and refugees' access to UNHCR; information campaigns and counselling to ensure free and informed choice; "go and see" visits; and registration. Tripartite agreements between the country of origin, that of asylum and UNHCR have proven important in building confidence, securing readmission, resolving differences, and managing the repatriation in a protection-sensitive manner.

32. These tools have been central elements in the planned repatriation to Angola from neighbouring countries, which is due to begin in mid-2003, although some 90,000 refugees repatriated spontaneously in 2002, leaving around 215,000 refugees in camps in neighbouring countries. This was also so in UNHCR's major refugee return operations which took place in 2002 to Afghanistan (1,802,000 returns), Sierra Leone (76,000), Burundi (53,000), Rwanda (38,000), Bosnia and Herzegovina (37,000), Somalia (32,000), East Timor (32,000), Liberia (22,000), and Eritrea (19,000). With regard to the Afghan operation, by far the largest in the reporting period, one feature was three tripartite agreements concluded for the first time between countries of asylum outside the region of origin (i.e. France, the Netherlands and the United Kingdom respectively), Afghanistan and UNHCR. These provided for the phased and orderly voluntary repatriation of Afghan nationals irrespective of their legal status in the host country, with alternatives to voluntary repatriation in certain defined cases and always options of last resort. They complemented similar tripartite arrangements in place to facilitate return with neighbouring countries (Islamic Republic of Iran and Pakistan).

33. The core of voluntary repatriation is a return to conditions of physical, legal and material safety, with physical safety a critical initial concern, especially if return is taking place to conditions where peace may be fragile. The responsibility to assure physical safety lies primarily with the authorities, supported if necessary by the international community. UNHCR's role is to identify obstacles to return, assist in overcoming them, monitor the treatment of returnees, identify their protection problems, and undertake appropriate interventions. Negotiations to remove legal barriers to return, as in cases of loss of documentation or nationality, or where nationality is not clear, and to secure amnesties are important tools to ensure legal safety. Land, housing and property issues have increasingly proved to be serious obstacles to return. In Sri Lanka, UNHCR fostered a cooperative process bringing together national and international actors in efforts to remove barriers to the equitable restitution of property. This produced recommendations in 2003 on the inclusion of property matters in the final peace accord, the

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<sup>13</sup> See also Section III.B.

creation of a commission to resolve property issues, and appropriate legislative and policy reforms.

34. The High Commissioner has proposed a strategy to address repatriation issues more comprehensively which he has called the “4Rs” – repatriation, reintegration, rehabilitation and reconstruction. This approach was piloted during the reporting period in Eritrea, Sierra Leone and Sri Lanka. In Timor-Leste, which gained independence in May 2002 and where UNHCR issued a general declaration of cessation in December 2002, UNHCR continued to monitor areas of return and promote reconciliation. In another south-east Asian country, UNHCR monitored the situation of returnees, in part through a network of locally recruited community development workers, including as regards issues such as compulsory labour. In a number of operations, UNHCR’s presence also enhanced the reintegration of women by ensuring they were issued with birth certificates and marriage certificates as necessary.

35. Capacity-building programmes to assist reintegration, rehabilitation and reconstruction played an important role in situations where the country was recovering from conflict and lacked adequate infrastructure, judicial and governance structures. In this respect, the slow pace of stabilization in Afghanistan posed a major challenge to UNHCR and others in helping the Transitional Government restore effective national protection. Actions included the loan of staff to key ministries and facilitating the establishment in early 2003 of a national Return Commission to help displaced Afghans return to their communities. Partnerships with key development actors have also proven crucial, as exemplified by development agreements between UNHCR, UNDP and the Ministry of Rural Rehabilitation and Development in Afghanistan in early 2003.

36. Although voluntary repatriation generally represents the preferred solution of States and for the majority of refugees, this is not always possible and local integration or resettlement may be appropriate depending on the particular situation. Local integration is achieved when refugees are able to acquire permanent residency status, nationality or citizenship in their country of asylum. The possibility of acquiring such status both legally and practically represents a crucial protection tool but one which is not often available. Many countries remained reluctant to make use of it, even for long-standing populations for whom no other solution was likely in the foreseeable future. Problems remained in one south-eastern European country which continued to require refugees from the former Yugoslavia, who were of a different ethnicity from that of the host population, to live under “temporary protection” arrangements after nearly a decade there. In Slovenia, however, legislative amendments approved in the second half of 2002 provided for permanent residence and integration assistance for some 2,300 Bosnian refugees. In another positive example, over 2,300 or around 25 per cent of the ethnic Kyrgyz Tajik refugees remaining in Kyrgyzstan were granted Kyrgyz citizenship in 2002 with further naturalizations taking place in 2003. The process was of particular importance to those among the group who were stateless. Citizenship gave them the right to own land, as was vital since the majority were farmers living in rural areas. To take another example, in Mexico, some 1,500 more Guatemalan refugees received naturalization documents in 2002, bringing the number of Guatemalans naturalized as Mexicans since December 1996 to over 7,600.

37. The High Commissioner has sought to make local integration a more viable option by promoting the idea of “development through local integration” (DLI). In essence, this approach views refugees and their local integration, supported by development assistance, as an important stimulus for local development. In this respect, the pilot programme in Zambia mentioned in last year’s Note has managed to attract funding additional to regular development assistance. UNHCR is now seeking to extend the approach to other countries.

38. Resettlement remains a vital tool of protection for thousands of refugees each year. The number of people resettled since the attacks in the United States of 11 September 2001 has, however, been significantly curtailed. Several States have introduced additional security checks and some have reduced quotas, which together with other security-related measures has considerably lengthened procedures. The number of refugees who departed under UNHCR’s auspices for resettlement in 2002 fell by more than a third as compared to 2001, although processing appears now to be picking up and the United Kingdom inaugurated a resettlement programme with 500 places. During the reporting period, UNHCR set up two regional resettlement hubs in Ghana and Kenya to extend the use and strengthen the management of the resettlement solution.

39. The recent slowing of individual resettlement processing has to be set alongside a new impetus from both UNHCR and States to make more strategic use of this tool as part of comprehensive solutions and more effective burden and responsibility sharing. UNHCR is seeking to strengthen the use of resettlement as a durable solution through the proactive, systematic and coordinated identification of refugee groups for resettlement, for instance in Côte d’Ivoire, Guinea and Kenya, and of refugees in protracted refugee situations. Such strategies have been applied in the long-standing refugee populations in Kenyan refugee camps, as most clearly evident in the project to resettle some 12,000 Somali-Bantu refugees living in Dadaab since the early 1990s. Risking severe discrimination as former slaves if returned to Somalia, the United States agreed to resettle the group from mid-2003.<sup>14</sup> More generally, UNHCR’s resettlement capacity has been augmented thanks to generous contributions from Canada, Norway, and the United States, both financially and through the provision of human resources.

#### IV. DEVELOPING LAW AND POLICY (legal and policy tools)

40. The 1951 Convention and 1967 Protocol relating to the Status of Refugees do not prescribe the manner in which the rights and obligations they contain should be respected in practice. States have therefore developed an increasingly sophisticated range of legal and policy tools to enable them to do this. For its part, UNHCR has the responsibility to supervise the application of international refugee instruments, as is inherent in its international refugee protection function.

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<sup>14</sup> See *Refugees Magazine*, issue 128, September 2002.

A. International refugee law

41. The tools to uphold international refugee law begin with accession to the 1951 Convention and 1967 Protocol. National asylum legislation and the establishment of decision-making bodies, which implement these obligations fairly and effectively, are the next steps. UNHCR's role is special in that it is the only UN organization directly involved in national law-making, procedures and decision-making on asylum matters. Collectively, States provide more detailed guidelines on protection matters in Executive Committee Conclusions, while the Global Consultations and resulting Agenda for Protection have established a global programme of action to strengthen protection.

42. Since the last Note on International Protection, Ukraine and Timor-Leste have acceded to the 1951 Convention, while Timor-Leste also acceded to the 1967 Protocol, bringing the number of States party to either one or both instruments to 145. Countries where refugee legislation was approved for the first time during the reporting period included the Democratic Republic of Congo, El Salvador, Moldova, Paraguay, and Peru. In other countries, legislation had been passed but had yet to be implemented or implementation has been suspended and UNHCR was obliged to undertake refugee status determination under its Mandate. At a time when many States were in the process of amending existing legislation or introducing new laws, UNHCR has expressed concern at their frequently restrictive nature, as evident in measures curtailing access to substantive procedures and/or focussing primarily on immigration control.

43. Policy-making on asylum and immigration has also been increasingly coordinated at the regional level. Such harmonization of approaches and policies represent a useful tool to reduce differences in State practice, which can otherwise lead to secondary movement between participating States in search of more favourable outcomes. At the same time, harmonization sometimes tends to reinforce restrictive measures or may become less effective with the inclusion of too many exceptions.

44. With respect to asylum systems themselves, their effectiveness depends not only on commitment at the highest political levels to responsible management, but also on there being an appropriate capacity. Significant strides were taken in many regions including central, eastern and south-eastern Europe, Latin America and Africa to set up national institutions, ensure access at entry points, and establish properly functioning procedures. Tools to enhance this process have included UNHCR training and technical support, for instance, to the Mexican authorities in taking up their status determination responsibilities, and cooperation agreements with local universities, for example in Argentina and Costa Rica, to support national asylum procedures. UNHCR continued to provide assistance to reduce backlogs of asylum applications including in Argentina, Cyprus, Egypt, Gabon, Ghana, Hong Kong SAR, Kenya, Lebanon, Malaysia, Slovenia, Sudan, and the Syrian Arab Republic, although sometimes new backlogs accumulated, due to a structural lack of capacity resulting from inadequate resources.

45. In many countries, the legislative process and operation of the asylum system involved close and constructive cooperation between UNHCR and governments. In other situations, however, the Office's input and recommendations, if sought at all, were called for too late in the

legislative process if at all, which may not be consistent with a State's obligation to cooperate with UNHCR under Article 35 of the 1951 Convention. The lobbying tools which UNHCR and other actors employed in these situations included interventions with governments, public advocacy, issuance of general and situation-specific policy guidelines on such issues as eligibility and exclusion, etc. *Amicus curiae* briefs and court submissions represented valuable tools to promote the proper interpretation of national and international refugee law. During the reporting period, such interventions resulted in judgments improving access to full reception benefits, ruling out detention solely on the grounds of absence of documentation, increasing recognition that persecution by non-State actors as well as gender-related persecution should be considered under the 1951 Convention.

46. UNHCR has also developed a comprehensive set of procedural standards for refugee status determination under its mandate. These provide guidelines to assist UNHCR offices in incorporating uniform standards on refugee status determination into their own operating procedures. In addition, the expert papers and Summary Conclusions from the "second track" roundtable meetings of the Global Consultations will be published in June 2003 as *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*. Finally, UNHCR continued issuing its Guidelines on International Protection, the most recent one being on cessation of refugee status.<sup>15</sup>

#### B. Convention Plus

47. A particular focus of the Global Consultations process was on the tools of protection: those presently available to the international community, and those in need of development for better global management of refugee problems. One outcome was a call for the development of new arrangements to complement the 1951 Convention, an initiative which the High Commissioner termed "Convention Plus". Special multilateral agreements including in the form of comprehensive plans of action to address both particular refugee situations and more generic protection dilemmas are the anticipated outcome. Such agreements could cover comprehensive burden-sharing approaches, secondary movement situations, resettlement, or improved targeting of development assistance to countries hosting large refugee populations over many years. The High Commissioner has called the latter approach "development assistance for refugees" (DAR) and advocated it as a tool to improve burden sharing in protracted refugee situations.

48. It is envisaged that the content and form of such special multilateral agreements will be debated in the High Commissioner's Forum, the composition of which will be flexible and depend upon the subject matter under discussion. After a preparatory meeting in March, the Forum's first session is due to take place immediately after the twenty-seventh Standing Committee meeting. It will examine the more strategic use of resettlement and its use in the Convention Plus framework, as well as a programme of work in cooperation with States volunteering to facilitate "special agreements".

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<sup>15</sup> UNHCR, "Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the 'ceased circumstances' clauses)", HCR/GIP/03/03, 10 February 2003.

### C. Human rights

49. The refugee problem is in many respects an issue of human rights – of rights which have been violated, for which respect must be reinstated. Ultimately, the entire refugee experience, from forcible displacement, through the search for asylum, to the securing of a durable solution, is an important indication of the respect accorded to basic human rights principles worldwide. The by now extensive array of international human rights instruments, together with their monitoring mechanisms, offer important complementary tools for enhancing refugee protection.

50. At the international level, UN human rights treaty bodies have adopted numerous conclusions touching upon refugee protection issues ranging from the detention of foreigners to the treatment of national security risks. In addition to continuing cooperation with these bodies, UNHCR also worked at the regional level during the reporting period to strengthen its relations with various regional human rights bodies, including for instance, the inter-American human rights system, the Council of Europe, and the African Commission on Human and People's Rights. UNHCR also issued a Manual on refugee protection and the European Convention on Human Rights, in April 2003.

51. National human rights institutions offer useful mechanisms to promote refugee protection. In Bosnia and Herzegovina, for instance, the Human Rights Chamber continued to address questions of citizenship, property rights and access to health care or pensions central to the viability of return. In Mexico, UNHCR signed a collaborative agreement with the National Commission for Human Rights in December 2002, to strengthen refugee law and human rights through joint promotion and training activities. In addition, UNHCR has become increasingly engaged in protection activities with a strong human rights dimension in many of its in-country protection activities with internally displaced persons (IDPs), returnees and other vulnerable groups, where increased awareness of human rights instruments has had a direct impact on refugee situations. A recent positive example in this respect was the cooperation agreement signed by UNHCR with the Human Rights Commission of the Colombian Senate in May 2003.

52. Human rights law has proven particularly relevant where asylum-seekers and refugees may be detained, especially since there has been a tendency in some countries to hold increasing numbers of asylum-seekers, including children, in detention, often on a discriminatory basis and/or grounds of national security. Human rights law sets important standards as to the extent to which such measures may be permissible. In this respect, UNHCR remained committed to promoting the use of tools such as reporting obligations for asylum-seekers or restrictions to a certain location in the country of asylum as useful alternatives to detention which nevertheless maintain the credibility of the asylum system. One positive outcome achieved in close cooperation with the authorities in India, has been the release from detention for illegal stay in the country of all mandate refugees on whose behalf UNHCR has intervened.

### D. International humanitarian law

53. Armed conflict has probably been the main cause of refugee flows in the latter part of the twentieth century. When refugees are caught up in such conflict they are protected not only by

international refugee law but also by international humanitarian law as a complementary source of protection. If someone is forced to flee armed conflict in their country because of human rights violations and breaches of humanitarian law, these factors will be part of what determines that person's refugee status. Both areas of law play an important role in many situations of internal displacement or where camps or settlements have become infiltrated by armed elements.<sup>16</sup>

54. The protection afforded by international humanitarian law is particularly important for IDPs. In the absence of a binding instrument, the UN Guiding Principles on Internal Displacement reflect and are consistent with existing international law and offer a basis for protection and assistance to IDPs.<sup>17</sup> In Colombia, for instance, UNHCR has worked with the Office for the Coordination of Humanitarian Affairs (OCHA) to produce a Humanitarian Plan of Action as a joint planning framework strengthening complementarity between the UN agencies' response to internal displacement in the country. In Somalia, the UN Country Team, including UNHCR, worked to familiarize all actors involved in peace negotiations with applicable international humanitarian law and the Guiding Principles. The resulting truce (a formal peace accord has still to be concluded) included a commitment to enhanced safe access to aid and a guarantee of the security of humanitarian and development personnel and installations. In the context of the Iraqi crisis, UNHCR has also enhanced cooperation with the ICRC. The two organizations reached a joint understanding in March 2003, clarifying their respective roles so as to enhance the protection of persons affected by the conflict and provide for closer cooperation between both organizations.

## V. PROMOTING RESPECT AND TOLERANCE (promotional tools)

### A. Public awareness and advocacy

55. Refugee protection is not delivered in a vacuum. The effectiveness of the many protection tools outlined above, also depends in large measure on the political and social environment in which policy is made and implemented. The current sense of crisis in industrialized countries is partially fuelled by a sense that arrivals of asylum-seekers are ever increasing. The overall facts do not bear this out. Asylum applications in industrialized States fell by 5.4 per cent in 2002 as compared with 2001. The sense of crisis is also stimulated by a perception of lost control over illegal migration, notably but by no means exclusively in the new security environment after 11 September 2001. In this climate, public awareness raising about the character and plight of refugees – the persecution and conflict they flee, the contribution they make to society, the value of living in open, diverse and tolerant societies – and responsible reporting on refugee issues are equally important protection tools. There is a particular onus on the media and on political figures to report on these issues more responsibly and to shun xenophobic rhetoric. Otherwise policy-making is too often driven by domestic political considerations and media agendas.

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<sup>16</sup> See Executive Committee, Conclusion No. 94 (LIII) 2002 (A/AC.96/973, para. 23).

<sup>17</sup> "Guiding Principles on Internal Displacement", UN doc. E/CN.4/1998/53/Add.2.



56. The problem is not confined to industrialized countries but extends also to developing States, which host the majority of the world's refugees. Xenophobia has been compounded by the deteriorating political, economic and social environment in some countries. Côte d'Ivoire stands as a clear example here. Once known for its vibrant economy, ethnic and religious diversity and hospitality towards refugees, the current conflict is characterized by clear hostility towards foreigners, including refugees. In addition to efforts directed at securing better physical protection of refugees, UNHCR has been involved in measures to tackle xenophobic attitudes, working closely with civil society, including religious leaders and popular personalities. Initiatives included the release of CDs with songs by popular Ivorian artists, radio and television advertisements, and a television soap opera.

#### B. Promotion and training

57. Initiatives to promote knowledge and understanding of refugee protection issues have taken many forms, from internet displays to direct contact training, although UNHCR's capacity to deliver the latter was curtailed by budget cuts in both 2002 and 2003. UNHCR's public website (<http://www.unhcr.org>) and the new edition of the RefWorld CD-Rom published in April 2003 are valuable tools for raising awareness of refugee issues and disseminating UNHCR manuals, guidelines, policies and training materials. Also important has been the Inter-Parliamentary Union handbook for parliamentarians on refugee protection, which has now been translated into more than 20 languages.<sup>18</sup> Events to promote the book have drawn on cooperation with both the IPU and regional bodies, such as the African Parliamentary Union, and have been directed at sensitizing parliamentarians to refugee related issues and stimulating inter-State dialogue.

58. The promotion of links with and training of ministries, judges (in particular the International Association of Refugee Law Judges<sup>19</sup>), immigration authorities, border officials, police officers, and peacekeeping forces constitute important protection tools to promote awareness and better handling of refugee protection problems. Building links with universities, fostering research and including refugee law on study programmes are likewise standard activities for many UNHCR offices. To take two recent examples, in Yemen, UNHCR signed an agreement in late 2002 with the Minister of Human Rights to provide regular training in refugee and human rights law to government officials. It signed another in 2003 with the University of Sanaa to inaugurate a refugee and human rights law course for law students. In Myanmar, the first-ever UNHCR training programme in international refugee and human rights law for government, police and judicial officials was held in April 2003.

59. With regard to UNHCR's own staff training activities, the Protection Learning Programme (PLP) first launched in 2000 has now reached almost 500 staff members. In 2003, two new Thematic Protection Learning Programmes for senior managers were launched on protection strategies in the context of armed conflict and in broader migration movements and involved partnerships with external facilitators from other international organizations and

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<sup>18</sup> UNHCR and IPU, "Refugee Protection: A Guide to International Refugee Law", Handbook for Parliamentarians, 2001.

<sup>19</sup> E.g. 5th Biannual IARLJ World Conference, Wellington, New Zealand, 22–25 October 2002.

NGOs. Other programmes included piloting a refugee status determination learning programme with two workshops in Africa, a joint refugee status determination/resettlement training programme, and protection management workshops for Representatives and Senior Protection Officers in all regions to ensure protection management and accountability were improved in operations. In addition to the training on SGBV issues mentioned above, the training and capacity building programme "Action for the Rights of Children" (ARC) also proved a useful tool to increase knowledge of children's rights and enhance a multi-sectoral as well as inter-agency approach to child protection.

## VI. CONCLUDING OBSERVATIONS

60. This Note has demonstrated the operational nature of protection and the manifold tools available to make it work. For its part, UNHCR has been seeking to tackle current problems operationally on the ground, through the Global Consultations process, the Agenda for Protection, and now "Convention Plus". Not least in view of the funding constraints that the Office is currently facing, it is important to recall that the delivery of international protection is a staff-intensive specialized service that cannot be equated with or quantified in the same way as the distribution of relief items. This function is more difficult to measure, but it is in fact the *raison d'être*, the added value of UNHCR. It is what makes the Office unique in the United Nations family. It is also a legal responsibility conferred by States upon UNHCR and a function which many States consistently advocate should be enhanced further. Strengthening protection capacities in host countries will require more protection staff and the same is true if the manifold and complex issues that beset refugee protection today are to be tackled resolutely. The current environment within which protection tools have to work is complex and poses considerable challenges which need to be addressed in a spirit of international cooperation and solidarity.