

**Fifty-seventh session of the  
Executive Committee of the High Commissioner's Programme**  
Agenda item 5(a)

Statement by Ms. Erika Feller  
Assistant High Commissioner for Protection

Mr. Chairman, Distinguished Delegates, Ladies and Gentlemen,

Allow me to begin, in a somewhat unorthodox way, with a small diversion. I have to admit I am provoked to do so by concerns expressed by certain delegations during the general debate as to the nature and scope of UNHCR's protection mandate. It is rare indeed that a state – party or not to the 1951 Convention relating to the Status of Refugees – would contest the authoritative character of the voice of the High Commissioner when it comes to the most fundamental of all protections, the principle of *non-refoulement*. In practice, respect for and acceptance of UNHCR's international protection activities is well established, oft acknowledged by this Executive Committee, and indeed rooted in state practice, deriving as it does from UNHCR's Statute, together with Article 35 of the Convention. Although UNHCR is accorded a special status as the guardian of the 1951 Convention and its 1967 Protocol, the Office is not limited, in the exercise of its protection functions, to the application alone of these treaties. Our competence to provide international protection – indeed to determine eligibility for such protection under our mandate – is exercised separately from a state's treaty obligations. The function and competence of UNHCR is determined by reference to the particular circumstances of the persons in need of international protection. UNHCR does not have to be invited to become involved in protecting refugees. This is an obligation, regularly recognized in this Committee, and it is what makes UNHCR's mandate distinct, even unique, within the international system.

Mr. Chairman,

To return more directly to the point of my presentation, I am asked to introduce to you this year's *Note on International Protection*. As many delegations are aware, the *Note* serves as the High Commissioner's annual account of the state of international protection for persons of concern to his Office. It is also an important analysis of how we, as an organisation, go about implementing our protection mandate. Inevitably, the document is in summary and narrative form. I am pleased to announce that, to complement it, UNHCR has for the first time this year produced a report which takes a more quantitative approach to protection developments. Titled "*Measuring Protection by Numbers*", it is a very provisional effort by us to provide measurement indicators for protection gaps and responses. Drawing extensively on the input of both DIPS and DOS, the report contains interesting material and I commend it to you, albeit with the caveat that it is still a text "in progress" and we look forward to your comments and suggestions as we proceed to refine it.

There is much to be learnt from this document. As regards basic physical security of refugees, for example, the document records that, in 2005, incidences relating to *refoulement* were reported by 50 per cent of UNHCR's country offices worldwide. Albeit smaller in scale, equally disconcerting is the material confirming on-going forcible recruitment of children in some 6 per cent of refugee camps. On a more positive note, in 75 per cent of all camps where SGBV problems have been identified, UNHCR succeeded in providing support and assistance to all victims. Much more, though, needs to be done by the responsible state, as well as the

international community in general, to prevent rape and sexual violence. As one indication of the level of threat to life and security of women, the document records that UNHCR intervened to resettle 3,338 women-at-risk worldwide.

*Measuring Protection* also has thought-provoking statistics about refugees' access to rights and services, or the lack thereof. UNHCR is a rights-based organization. Refugees and other persons of concern to us are victims of human rights abuses, or human rights deficits, and they lack a national government willing or able to redress their situation. Protection, at its most basic, means activities to restore rights – the right to life, the right not to suffer torture or discrimination, the right to respect for human dignity and family unity. Protection is also about the creation of an enabling environment so that these, and other rights, have a real chance of being enjoyed until a durable solution is found. It is disturbing to read, in *Measuring Protection*, the fact that as many as 30 per cent of all refugee children are not regularly attending school. An informal review of 82 country operations indicated that in over 50 per cent of these situations, refugees are not able fully to enjoy freedom of movement and the right to work.

Protection of rights is, in the first instance, a state responsibility. Nevertheless, under certain circumstances, UNHCR is also called upon to be the deliverer of protection. During 2005, UNHCR offices directly received more than 90,000 asylum applications worldwide, meaning that it undertook status determination, under its mandate, for some 14 per cent of the total global number of individual asylum claims. UNHCR RSD operations are principally carried out in 25 non-signatory countries. However, it is noteworthy that the Office was also required, in 2005, to take mandate decisions in more than 30 countries which have acceded to the 1951 Convention.

The *Measuring Protection* report does not only focus on protection concerns. It also contains material on how well UNHCR is capacitated to respond to them. For example, UNHCR has 200 staff worldwide doing RSD. As of May this year, the Office had 1,454 protection and protection-related posts, an increase of some 30 compared with 2005.

Mr. Chairman,

Numbers can tell a lot about protection, but of course are not sufficient in themselves. The “why” behind them is as important as the “what”. A key statistic, currently much in focus, is the declining number of asylum-seekers, particularly in developed countries, which dropped to its lowest level in a decade by the end of 2005. To understand what this actually means, we need to know, for example, to what extent the numbers may mask the changing face of irregular migratory movements, with refugees and migrants alike choosing channels other than the asylum channel to seek entry and protection.

In addition, if protection can be quantified, it is also very much a qualitative outcome. The *Note on International Protection* details advances, but also setbacks, over the past year. It takes as its frame the *Agenda for Protection*, endorsed by this Committee in 2002. It seeks, this year, to set off implementation of the *Agenda* against a notion slowly gaining currency – that is, the notion of the “responsibility to protect”. To date, this concept has been brought into play in relation to extreme situations, such as genocide, and is not, yet, able to be separated from its still controversial connotation of “pre-emptive” intervention by force. The *Note* proposes that the responsibility to protect, if now developed flexibly by states, could offer a powerful advocacy framework for protection of rights more broadly, including for persons of concern to UNHCR. The responsibility to protect citizens is primarily that of state authorities. When, however, being able to protect is linked to the capacity to do so, the international community has its own responsibility to ensure that the capacity is there. Protection is furthered as much by cooperation as by critique. This is at the heart of international solidarity and burden sharing principles.

The *Note* shows that refugee protection is sub-standard in many situations, not least because of lack of capacity, and that programmes to assist refugees are under-funded against the needs. Hence, the *Note* advocates seizing the potential of the responsibility to protect as a useful framework within which to develop programmes to fill protection gaps.

The gaps in refugee protection do not derive, by and large, from the legal framework. It is replete with principles and guidelines. The gaps lie in implementation, with access to asylum, or its provision on adequate terms, not reliably enough guaranteed. This is the result of a number of factors. These include the insecurity prevalent in many refugee-hosting areas, the lack of freedom of movement, or of self sufficiency possibilities in closed-camp environments, and the precariousness of illegal or unregularised stay for urban refugees who live in marginalised communities around big towns. Furthermore, refugee situations are still too often protracted. *Measuring Protection* recalls that there are some 38 such situations worldwide.

In addition, refugee and asylum issues are now deeply mired in broader concerns about international security, transnational crime and terrorism. When an opinion piece in the prestigious *Washington Post* starts to speak of the need to prevent the cross-border flow of “dangerous people”, which it qualifies to include militias, foreign invaders, terrorists, and refugees, there is real cause for concern.

UNHCR agrees that the growth in people smuggling, human trafficking and terrorist violence calls for extra vigilance. We also appreciate the need to be sensitive to problems stemming from the mixed character of people movements. Our Ten-Point Plan, already discussed at this session, is one effort here. At a different level, UNHCR has successfully piloted, and is now consolidating, a Strengthening Protection Capacity Project to identify and address gaps in refugee protection by building consensus around capacity-building projects. This project has supported activities in Kenya and Tanzania, has promoted new approaches in Benin and Burkina Faso, and is being rolled out further afield in countries like Thailand, Armenia and Georgia. We are exploring how to adapt the project framework for use in IDP situations.

Mr. Chairman,

There are also serious protection gaps for other categories of persons of concern. The *Note* makes clear that there is still inadequate investment in making returns to countries of origin safe, viable and durable over the longer term. Insecurity, unresolved land issues, a fledgling law-and-order framework and no proper infrastructure, or subsistence possibilities, beset many reintegration programmes for returnees, from Liberia to Timor-Leste. Ensuring a sustainable return, which guarantees restoration of national protection, is not yet properly prioritized. As for stateless people, their plight is a “forgotten problem” at the international level. *Measuring Protection* records that, in a survey by the Office of 74 States on all continents, more than half confirmed that they encounter problems of statelessness. The recent accession of Belize to the 1954 Convention relating to the Status of Stateless Persons is welcome. However, the number of States parties, now at 60, is still too few. UNHCR’s mandate for stateless people, albeit of long standing and recognized over a number of years, including in this Committee, has encountered skepticism from some quarters. Yet, the protection gaps are glaring, with stateless people trapped in a legal and social rights void.

It would be a great advance, from our perspective, if the responsibility to protect could serve to encourage higher prioritization being accorded to programmes to underpin restoration of national protection. It would also considerably assist if this notion were to be interpreted as imposing a

positive obligation on states to take steps to reduce statelessness, prevent its occurrence and redress the dire circumstances for those who have no national rights.

The protection of internally displaced persons has been a key theme for delegations at this session. Important steps to fill gaps here have been taken. The 1998 *Guiding Principles on Internal Displacement* are gaining currency as the reference point for IDP operations, not least due to their effective promotion by the Secretary-General's Representative on the Human Rights of IDPs, Walter Kaelin, with whose office UNHCR concluded a Memorandum of Understanding earlier this year. Then there are all of the efforts underway to improve UN coordination within the context of the "cluster approach", which UNHCR is actively supporting.

However, there is still a way to go, particularly to bridge the theory of clusters with the actual practice on the ground. Agencies still have to match paper commitments with physical resources in a number of situations where the cluster approach is being rolled out. Expertise has to be made commensurate with commitments undertaken, which remains only an aspiration in some situations. State sovereignty preoccupations are still an obstacle, particularly where protection is concerned, and the content and reach of protection programmes is not always as clear as it should be – for agencies and for governments. The responsibility to protect should imply that affected states, donor governments, and partner agencies alike, make all efforts to bring sovereignty, political will, mandates and resources into alignment with better protection for the internally displaced.

Mr. Chairman,

The High Commissioner mentioned in his opening statement that UNHCR's efforts to closer protection gaps will include review, not least together with ExCom Members, of certain key policy issues requiring adjustments in thinking or approach. I want now to add to the information in the *Note* by expanding briefly on these. Maintaining the civilian nature of camps and settlements remains pressing, and vexing. I am pleased to announce that the *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum* have been released for field testing. We envisage these Guidelines will be helpful in the context of the anticipated responses being put in place in Darfur and Chad under Security Council Resolution No. 1706. We will bring the results of this field testing to the Committee in due course.

We are re-examining our approach to the voluntary repatriation solution, when we promote or when we facilitate it, and are working at the same time to ensure our Resettlement Service makes a real difference to professionalising resettlement – not least in the areas of profiling needs and identifying and referring cases. This should help us to increase resettlement numbers which in 2005 stood at somewhat more than 38,000 persons. We hope to build this new thinking into our efforts to plan more comprehensively for solutions, notably for protracted situations. The realignment of functions as between DIPS and DOS is well underway, and should make a further contribution in this regard.

We are also re-assessing the Office's approach to cessation, with a view to determining whether there is a need to be more pro-active. For which situations, and against what criteria, we would like to discuss with this Committee at some point.

There has been a lot of talk over recent years about protection and exit strategies. We need to have clearer criteria than hitherto as to when we phase out, not only of assistance but also of protection. This is as important for refugee situations as for those of internal displacement. On the latter, we are looking, together with Mr. Kaelin's office, at considerations which should determine when a situation of internal displacement might be said to have ended.

UNHCR is progressing with the age, gender and diversity mainstreaming strategy. A further 33 countries have now been introduced to participatory assessments and mainstreaming analysis, bringing the overall total to 85. The new accountability framework is a crucial underpinning of this process, currently being tested in 20 countries and with Senior Management at headquarters. In 2007, UNHCR will undertake a global review of the work to date in the area of prevention and response to SGBV. We look forward to sharing the results with you at the end of next year.

Let me flag here, in the light of the budget cuts in 2007, a concern that one casualty might be activities to prevent sexual and gender based violence, and address the specific needs of vulnerable women. In fact, the protection generally of persons at heightened risk, such as the unaccompanied elderly, grandparent-headed households and people with disabilities, is vulnerable to budget reductions as it does not fall under the "life-saving category". So too, is the promotion of education, youth activities and community-based self-reliance.

Mr. Chairman,

Partnerships are ever more important. We are looking at possibilities for expanding asylum space through making use of a Protection Consortium, allowing for joint initiatives with protection mandated agencies, such as UNICEF and OHCHR. Each agency has different tools at its disposal; one may be better represented than another in one or other regions; the agencies, or their mandates, may enjoy different levels of acceptability with local partners. The Consortium idea would allow agencies to make best use of the different tools, and capacities available to each, pooling them as appropriate towards a common protection end. The notion extends as well to partnerships with IOM, ILO and NGOs, such as NRC and Save the Children.

A brief update, now, on particular responsibilities attaching to my post as Assistant High Commissioner. Over the early months of my appointment, my aim has been to realize the High Commissioner's ambition of more seamless, horizontal links on protection across the Office. To this end, I have, for example, been holding regular consultations, severally and jointly, with the Bureau Directors, on cross-cutting issues affecting protection delivery in the operations. Matters addressed have included the age, gender and diversity mainstreaming accountability framework and how to operationalise it; resettlement and refugee status determination issues and how to ensure consistency of approach across the operations; strategies to promote protection and build capacity for it in the context of mixed flows; and the protection information needs of our own offices, and of government counterparts, with a focus on how better to service them. It is worth underlining here that UNHCR is regularly requested by states for assistance to maintain the quality of their status determination processes through the provision of country-of-origin information which goes directly to the assertions of the asylum seekers. We fulfil this function by compiling information from publicly available sources, without pronouncing on the judgments therein. We are currently reviewing our practices in this regard with a view to minimizing, to the extent possible, the scope for inaccuracy or imbalances.

I have also discussed with the Bureaux how to bring protection advice and support, training and advocacy, closer to the point of protection delivery in the field. In this context, we are evaluating a pilot protection hub in Kuala Lumpur, as one important contribution to the field review process. At another level, we have reviewed how to make Headquarters more responsive to protection realities currently confronting field colleagues. To this end, I have taken the initiative to create a Field Reference Group on Protection. It consists of some 20 UNHCR Representatives in different country locations whose knowledge of protection is strong and whose experience is varied. The Group will serve as an important point of contact on protection policy thinking as it is evolving, just as it will be a channel through which new issues can surface. The Reference

Group should help to ensure complementarity between field priorities and those being followed up by the new Policy Development and Evaluation Service, about which you will be hearing more later in the session.

In conclusion, Mr. Chairman, there is a new protection dynamic in the Office with the DIPS-DOS restructuring and the creation of the Assistant High Commissioner for Protection post. This requires, not least, some reconsideration of the role of the Division of International Protection Services, and its relationship to the Executive Office. I am pleased to have beside me our new Director of DIPS, George Okoth-Obbo, who is a well known and respected protection colleague, with a strong track record in the field. We are already working closely together, including to ensure the necessary synergies between our respective positions.

This Committee regularly and rightly encourages UNHCR to show full commitment to “operationalising” its protection mandate. This is, though, a cooperative endeavour, not least with members of this Committee. We need to be able to rely on substantial “buy-in” from ExCom members, not only with our assistance activities, but as committed protection partners.

The current conclusions on, respectively, statelessness and women-at-risk, are useful in this context. UNHCR has recently provisionally released its *Handbook on Protection of Women and Girls*. The Women-at-Risk Conclusion complements the Handbook in important ways in that it adopts an operational approach, making it “field friendly”. The text represents in this sense a positive evolution in approach to the drafting of thematic Conclusions. On a less positive note, it would be a setback for protection if this Committee were to drop permanently the General Conclusion on International Protection. The Committee has virtually no other vehicle except this General Conclusion to express its views or concerns about protection developments.

At the upcoming March Standing Committee, our oral update on the *Agenda for Protection* will survey information not only on UNHCR’s implementation activities, but also those of States and NGO partners. We hope between now and then to receive the necessary additional information to complement that already received. We will of course also try to supplement this through our Annual Protection Reports. By the October 2007 session of this Executive Committee, we hope to have a comprehensive report on the *Agenda* five years after its adoption, in a form which, in a spirit of transparency, can move some way in the direction of a review process. It would be an advance indeed if this Committee could move to a situation where it serves as a forum for examining even-handedly specific refugee situations, as well as protection themes.