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Challenges to the Development of the Common European Asylum System
on the 60th Anniversary of the Adoption of the Convention relating to the Status of Refugees

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High Commissioner Guterres conveys his regrets for being unable to be here with us today, as he is undertaking an urgent mission in Ethiopia and Kenya. On his behalf I would like to thank the Government of Poland for organizing such an important event on asylum at EU level. It is especially timely since we are commemorating the anniversaries of the 1951 Refugee Convention and the 1961 Convention on the Reduction of Statelessness this year.

The history of Europe is also a story of large-scale population movements. We only need to recall the millions of people on the move in the wake of the collapse of Tsarist Russia and the Ottoman Empire or the upheaval caused by two World Wars. In the second half of the Twentieth Century, we witnessed significant refugee movements from countries in Central Europe, including Hungary, Czechoslovakia and Poland. Following the fall of the Berlin Wall, hundreds of thousands of refugees from Bosnia and Herzegovina and from Kosovo found protection in other countries in Europe. The last decade has seen falling numbers of asylum-seekers in the industrialized world as a whole, but significant ongoing challenges in terms of mixed migratory movements involving people crossing borders for reasons not related, or not limited, to protection.

Against this background, the EU has undertaken an enormous challenge -- and made great progress towards meeting it -- in the creation of the Common European Asylum System [which will be discussed in more depth over the next two days]. During this time, the EU has also started looking beyond its traditional concerns in this field, exploring asylum/migration nexus issues, resettlement and capacity-building for refugee protection in other regions. Over the years the EU has made a special contribution to resolving refugee and statelessness issues through positive State practice, the development of a regional legal framework, key jurisprudence and cross-cutting work on the external dimension of responding to forced displacement, notably in the form of political, financial and material support.

The international refugee protection regime is at the core of this ground-breaking work. The regime emerged from the political-offence exemption and the non-persecution

clause in extradition law, encompassed practical refugee group-based arrangements, such as the "Nansen passport", during the inter-war period, and led to the adoption of the 1951 Refugee Convention almost 60 years ago in Geneva.

Especially in the period immediately following the Second World War, there was a strong 'never again' sentiment. It is therefore not surprising that the Refugee Convention was rapidly adopted in tandem with key instruments such as the Universal Declaration of Human Rights and the Geneva Conventions on the Law of Armed Conflict. The moral and legal basis of the Refugee Convention is as important today as it was six decades ago. These values are in essence human dignity, the protection of the individual and international solidarity. Creating a refugee protection regime which was universal in its applicability and non-discriminatory in its application was, in fact, the principal object and purpose of the 1951 Convention together with its 1967 Protocol.

The Refugee Convention is the international community's response to the protection requirements of a particularly vulnerable group of people: refugees fleeing persecution, conflict and human rights abuses who are unable to return home and require international protection until a durable solution is found to their problems. During the sixty years that have elapsed since 1951, 148 States have acceded to the Convention and/or to its Protocol. Crafting a positive and coherent approach was the only possible response -- in practical and moral terms -- to the problems posed by the huge dislocation of populations at the time of its adoption. This approach remains acutely valid today, especially against a global backdrop of intolerance, human rights and other abuses, continuing armed conflict situations and ethnic strife. This response demonstrates that States deeply respect the long-standing humanitarian tradition of protection and appropriate standards of treatment for refugees.

The EU has been at the forefront of developing refugee law. In its quest to harmonize the asylum laws and procedures of its Member States, the Union has developed what is, in effect, a regional asylum system. The EU has built its work on the foundation of global refugee and human rights instruments. It is significant that the various texts and directives harmonizing asylum policy and practice within the EU explicitly foresee a role for UNHCR -- in recognition of UNHCR's supervisory function regarding the 1951 Convention and other refugee protection instruments. Another ground-breaking step was the adoption of the EU Charter of Fundamental Rights and conclusion of the Lisbon Treaty which brought it into force -- notably its Article 18, which states that the right to asylum shall be guaranteed with due respect for the rules of the 1951 Convention and its 1967 Protocol.¹ UNHCR considers that the system is being further bolstered by the establishment of the recently inaugurated European Asylum Support Office, with its important mandate to facilitate practical cooperation among States on asylum. In a welcome development, there is visible progress towards a joint EU Resettlement Scheme [although much remains to be done to achieve it]. Such a scheme would

¹ Charter of Fundamental Rights of the European Union, 7 December 2000, OJ 2000/C 364/01, 18 December 2000, available at: <http://www.unhcr.org/refworld/docid/3ae6b3b70.html>.

recognize that resettlement is a key strategic tool in the search for comprehensive solutions, especially in protracted refugee situations but also in response to emergency situations, while enhancing the Union's role as a global partner.

The EU continues to draw to its borders those requiring international protection. In the first five months of 2011, 87,322 asylum claims were lodged in the EU. It is important, though, to look at these figures from a global perspective. At the end of 2010, UNHCR reported 10.5 million refugees worldwide, 837,500 asylum-seekers and approximately 14.7 million internally displaced persons (IDPs) of concern to UNHCR. In addition, millions of stateless people are also of concern to UNHCR worldwide. If we compare the asylum figures in the EU today to those of ten or fifteen years ago, we can see that the numbers have dramatically decreased -- from almost 700,000 applications for asylum in the then 15 EU countries in 1992, to 243,016 in 27 countries in 2010.

Let me now speak to some of the immediate challenges. Since December last year we have all witnessed a dramatic process of transformation in North Africa and the Middle East. The region is connected to Europe in myriad ways, historically, geographically and culturally. As High Commissioner Guterres noted in a recent editorial,² Europe's commitment to the success of North Africa's democratic transformation will be measured, first and foremost, by its willingness to meaningfully invest in the economies and institutions of these countries, but also by the humanity it displays toward those whose struggle has brought about such dramatic transformation.

In relation to the outflow from Libya alone, more than 1.2 million people have left the country since the outbreak of the violence earlier this year. IOM and UNHCR, together with States, responded to the crisis in Libya quickly. Through a humanitarian evacuation programme over 139,000 labour migrants were repatriated home. This joint humanitarian engagement could not have been accomplished without your active support. This exercise allowed the de-congesting of the border camps of stranded third country nationals and created vital protection space for the over 133,000 Libyans requiring international protection in both Tunisia and Egypt, as well as for the several thousand refugees from sub-Saharan Africa who require urgent resettlement solutions.

Compared to that figure of 1.2 million people leaving the country overall, only some 20,000 persons fleeing Libya took boats to reach European shores. This number is small compared to those who crossed into Tunisia and Egypt. A further 24,000 Tunisians arrived in Italy by boat in the aftermath of the Tunisian revolution. Most of them were young men seeking employment. We estimate around 1,500 people have perished at sea in trying to make the crossing from North Africa to Europe since the early part of the year, though the number will never be known for sure.

² Op-Ed published on 9 May 2011 in the International Herald Tribune
<http://www.nytimes.com/2011/05/10/opinion/10iht-edguterres10.html?scp=1&sq=Look%20who's%20coming%20to%20Europe&st=cse>.

I am just highlighting this particular situation given its proximity to Europe. There are emergencies elsewhere too. As we speak, we are witnessing an influx into Turkey, as well as a human tragedy unfolding in Ethiopia and Kenya sparked by the rapidly deteriorating situation in Somalia. Indeed, long-standing conflict, drought, lack of food and livelihoods and no functioning governance system in place, continue to be an explosive mix in Somalia. We estimate that one quarter of Somalis are now uprooted, with over 1,400 and 1,200 Somalis fleeing into Ethiopia and Kenya respectively every day, malnourished and traumatized, with many having walked for days and weeks and having lost everything.

What do we need to do in response? Solidarity, solidarity and, again, solidarity. The term has certainly demonstrated its value in Poland's quest to achieve freedom in recent decades.

Solidarity with the people attempting to cross the sea: What is happening on the Mediterranean Sea is a modern-day tragedy being repeated in the Gulf of Aden, in Asia and in the Caribbean on a nearly daily basis. While coast guards, fishermen and ship crews have done much to save people and bring them to safety, it is clear that the response is not enough, in light of the shocking numbers of people that we know have been lost.

The 2009 Stockholm Programme identified the need for action to avert tragedies at sea. Indeed we need the same enthusiasm that exists for border control to underpin an all-out initiative to prevent loss of life at sea, to ensure disembarkation and to put in place responsibility-sharing arrangements to unburden those countries which receive rescued people.³ As part of events commemorating the anniversaries of the refugee and statelessness conventions this year we will host an expert meeting during the second half of 2011 to discuss practical measures to better resolve such emergencies in a more cooperative manner with States, the International Maritime Organization and other interested actors. But this is not enough. We need action now to save lives and to act in solidarity with the ships that come to the rescue of those in distress and with the countries most directly affected. I learned from a Tunisian poet that the fishermen of the Mediterranean, irrespective of their origin or nationality, share a common language in which they manage to communicate. I wonder whether we can make this language heard, loud and clear, for those who attempt the crossing and whose lives depend on our action today.

Solidarity with Tunisia, Egypt and States neighbouring Somalia: One tangible way to show support is to offer resettlement places for refugees stranded in Tunisia and Egypt and to support ongoing humanitarian efforts in Kenya and Ethiopia. Families and local communities in these countries have opened their doors to refugees, confirming their strong tradition of hospitality. In response to the North Africa situation, UNHCR

³ In this connection, please see an interesting article, Stefanie Grant, 'Recording and Identifying European Frontier Deaths', *European Journal of Migration and Law*, 2011, pp. 135-156.

launched the Global Resettlement Solidarity initiative to gather support for additional resettlement places for non-Libyan refugees fleeing the country to Tunisia and Egypt. As of today, UNHCR has submitted the resettlement files of more than 1,300 refugees. We are very grateful to those countries that have responded positively and swiftly to our call but at the same time need to appeal to you again to support this initiative by offering additional resettlement places. We have also just launched an appeal to cover the urgent humanitarian needs of Somali refugees in the Horn of Africa which we hope you will also be able to support.

At the Annual Tripartite Consultations on Resettlement in Geneva last week, we also discussed the possibility of creating a pool of resettlement places which countries could sign up to in times of emergencies, outside the regular annual quota. This would ensure a rapid, predictable and sustainable refugee out-take in emergencies. It would avoid us facing a situation like the current Libya emergency resettlement operation, where we have to advocate continuously for places which the majority of States are making available from their regular resettlement quota, but in small numbers only. The advantage of such an emergency pool could also be to ensure expedited processing, including security clearances, to arrange for speedy departures [a serious problem in the current Libya emergency resettlement operation], and to arrange for an evacuation platform of much larger scale than the current facilities in Romania and Slovakia.

Solidarity with those countries within the EU that require most support: There is an unequivocal commitment, voiced at all levels and in many fora, to solidarity within the EU. This has its clearest expression in Article 80 of the Treaty on the Functioning of the EU, which now sets out this principle in binding form as part of primary EU law.

Yet despite the tools and initiatives which do exist -- including the European Refugee Fund and other solidarity funds, the EUREMA relocation project and other ad hoc actions, a solid burden-sharing mechanism does not currently exist within the EU. Such a mechanism would be particularly relevant in situations where one State is unable to manage a significant number, or particularly complex set of asylum applications or where other factors come into play, such as existing refugee and community ties. It is precisely in relation to the processing of applications in the EU, and the provision of solutions for those recognised as needing protection, that considerable steps could be taken to share responsibility more effectively.

Joint processing and collective responsibility for solutions, for example through a common key for distributing fairly persons in need of international protection, could be a viable future option. We would encourage you to consider exploring this option. For the EU to be true to its founding ideals, efforts must be devoted to exploring a mechanism which goes beyond allocation of responsibility based primarily on geography.

But why not go further? What about responsibility sharing schemes within the EU through the pooling of resources to provide for the reception, decision-making and

solutions for asylum-seekers and refugees. This could mean the processing of certain categories of asylum claims in EU Reception Centres within the European Union. Those determined to be in need of international protection in this process would be settled in participating EU Member States in accordance with agreed burden-sharing and protection criteria, whilst those found not to be in need of international protection would be returned promptly to their respective countries of origin under joint EU operations. These arrangements could be established in an incremental manner and become the embryo of a genuinely common system.

Such a system -- though it raises many questions and would need careful examination -- could address a lot of problems. It could, for example, reduce the pressure placed on certain asylum systems and countries, including on the external border of the EU. It could help address irregular onward movement within the EU and thus limit its scope. It would also contribute to attenuating the effects of vastly divergent practices.

'People to people' solidarity: Unfortunately, answers to questions surrounding admission, reception, detention, integration and resettlement are too often coloured by populist politics that use the foreigner as the scapegoat. Despite the lower numbers of asylum applicants in many States over the last decade, heated public debate continues in some quarters. In a number of countries, media reporting about the 'other', the 'foreigner', the 'asylum-seeker' and the 'migrant', fuels hostility towards and rejection of all foreigners, including refugees. But we cannot let our debates be held hostage by those who occupy the extremes of the political spectrum. We need to find better ways of curbing the influence of those who only focus on our differences, instead of our commonalities.

We must do more, collectively, to make progress in this area, especially through stronger partnerships. In just such an effort, last month UNHCR signed a new agreement with the OSCE's Office for Democratic Institutions and Human Rights that foresees closer cooperation and capacity building between our agencies to combat discrimination and xenophobia.

Amidst all the dramatic, at times populist reporting, I was moved by the ample coverage in Italy that was given to the decision of the Mayor of Pantelleria Island to offer hospitality and a job to an asylum-seeker from the Democratic Republic of Congo who was saved together with his five children during a shipwreck in April, in which his wife lost her life. The Mayor has personally intervened with the Government for the granting of refugee status. The Mayor said, "I have decided to send a message to the rest of Italy; if each of the 8,100 Italian municipalities adopted one refugee family, we could give hospitality to 40,000 refugees". Such political leadership clearly exists but we do not hear it loudly or often enough.

Every day we also encounter officials all over Europe on the front lines of refugee protection work who are deeply committed to humanitarian and human rights principles, and to fair outcomes based on the application of the law. We need to pay

tribute to border guards and police officers who ensure that asylum-seekers are properly identified and admitted, to officials in asylum and migration offices or tribunals, to staff in reception centres, schools and hospitals. I could continue and continue. Their work often passes unnoticed and unrecognized, yet they literally change -- and in some cases, save -- lives every day. It is important to honour them, their dedication and positive attitude. It is vital to ensure that they are given the tools, including the training, the structures, the resources and the legal norms that they need to do that job. Perhaps most importantly of all, they must also receive clear signals from their political leadership that their work is valued as an integral part of the long-standing European human rights tradition.

Let me conclude by stressing that we have high hopes for the Ministerial Meeting which High Commissioner Guterres will convene on 7 and 8 December, at the end of this commemorations year. The commemorations process is already spurring an increase in the number of States which are becoming parties to the statelessness instruments or are considering action at national level to prevent or respond to statelessness, including through the institution of determination procedures for stateless persons.

Precisely in a year marked by so much conflict, upheaval and displacement, it is also particularly fitting for States to make a strong statement in support of the core principles underlying the protection of refugees and stateless people. The Ministerial Communique will therefore be an important milestone.

A significant outcome of the Ministerial Meeting will be a process through which States and other participants are invited to make pledges in a whole array of areas affecting refugees, asylum-seekers and stateless people. Pledges could, for example, cover better integration of refugees, improving legislation, offering resettlement places, exploring alternatives to detention, not least in light of a study that we issued in May, twinning up with countries requiring support as well as demonstrating leadership on promoting a favourable protection environment by, for example, countering xenophobia and racism.

At the end of the day, refugee protection is much broader than meets the eye. It is an unequivocal stance against indifference and for a better society, indeed for a better world. It brings home to us the dire living conditions of the vast majority of humanity and reminds us of our responsibilities, both global and towards future generations. I trust that the European Union will make a significant contribution this year to this noble cause.

Thank you for your attention.