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**Counter-Terrorism Committee
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INTRODUCTION

Excellencies, ladies and gentlemen,

The opportunity provided to UNHCR to address this Committee is much appreciated. It allows me to directly convey the Organisation's gratitude for the continuing emphasis placed by your Committee, and the Counter-Terrorism Executive Directorate, on centering counter-terrorism initiatives within a framework of Rule of Law, and in particular international refugee law where such initiatives meet refugee protection obligations. We are grateful for the support this provides to our own efforts to promote accession to and proper implementation of the international refugee instruments.

My presence here today is not the first contact between the Counter-Terrorism Committee and UNHCR. We have co-operated regularly with the Committee and its Executive Directorate, including within the framework of inter-agency initiatives. During the first four months of 2011 alone, UNHCR participated in meetings in Brussels, Bangkok, Dushanbe and Strasbourg, and only last week at the Greentree Estate in Long Island, New York.

UNHCR's interest in addressing this Committee is two-fold. It stems firstly from our responsibility to ensure that refugees and asylum are not mischaracterised in this age of heightened concern about transnational criminals and terrorism. Secondly it enables me hopefully to reassure you that UNHCR understands and indeed has acted upon the need for the organisation itself to contribute, in all mandate-compatible ways, to the global struggle to contain terrorism. My presentation will develop both these matters.

REFUGEES ARE IN AND OF THEMSELVES NOT TERRORISTS.

The refugee problem is, very centrally, an issue of rights – of rights which have been violated and of rights, as set out in international law, which are to be respected. A refugee, classically defined, is someone who is persecuted, denied security of person or freedom from discrimination on account of race or ethnicity, or is unable to exercise fundamental human rights like freedom of expression, association, political opinion or belief. A refugee is someone who is unable to continue to live in safety where he or she is, due to the dangers of war, generalized violence or serious civil disturbance, whether this is targeted or indiscriminate. Fleeing and seeking asylum is the only realistic option for these people and their families. This may seem self evident, but it is not so to everyone. It is an increasing fight to prevent refugees being mischaracterised as illegal immigrants, common criminals or, worse, potential terrorists in the minds of peoples and governments.

Refugees have been fleeing persecution and violence for centuries. What has altered dramatically over recent times, however, is the environment in which they are fleeing. From a perspective indelibly marked by the attacks of 11 September 2001, a prevailing belief is that irregular or unregulated asylum movements carry with them terror exported, transnational crime proliferating, national borders abused with impunity and host community ways of life under serious threat. These concerns have been magnified by a number of other high profile events, from the Bali bombings [in October 2002] or the Madrid train explosions [in March 2004] to the attacks on the London public transport system [in July 2005] or the Mumbai attacks. With increasing frequency, links have been made in the public mind between international terrorism and asylum systems. The belief that the latter may be used as channels by terrorists persists, even though, for example, none of the 11 September hijackers or the Bali, Madrid, London or Mumbai bombers was a refugee or an asylum seeker.

Another prevailing belief, which also does not stand up to detailed analysis, is that global criminal and terrorist networks are intensively involved in the smuggling of asylum seekers. In fact, there is very little evidence to support

such an assertion. Most human smuggling seems to be undertaken by relatively localized networks that may be linked to each other but which are not global in their reach or using smuggling of asylum seekers to export terror or to raise funds for terrorist activities.

If these are more perception than reality, perception is nevertheless important. The result has been increasingly restrictive, control-oriented and indiscriminate migration policies. We see rejections at the border, denial of admission into asylum procedures, harsh detention policies as a deterrent, and extradition or expulsion without minimum procedural guarantees or judicial review, often in breach of the principle of *non-refoulement*. UNHCR is concerned about restrictive approaches to applying refugee protection principles, and a lowering threshold when it comes to exceptions to the principle of *non-refoulement*. Such practices and developments risk tilting the balance away from core protection principles in ways which are not consistent with international refugee law.

There is a need for a better balance to be struck between protecting national security and combating terrorism on the one hand, and international refugee protection principles on the other. Finding this balance remains a challenge. Here the legal framework is not really the problem. Sixty years ago the drafters of the 1951 Convention were acutely aware of States' national security concerns, as well as the need to ensure that the refugee protection regime would not provide a cover for fugitives from justice. Accordingly, specific provisions in the 1951 Convention [Article 1(F)] provide a system of checks and balances which in effect demand the identification of persons engaged in terrorist activities, which foresee their exclusion from refugee status and which do not shield them against either criminal prosecution or expulsion.

Article 2 of the 1951 Convention stipulates that refugees are bound to abide by the laws of their host country. They are not immune from prosecution for any crimes committed on its territory. Moreover, Article 32 permits the expulsion of a refugee on grounds of national security or public order. In exceptional circumstances, Article 33(2) even permits the return to the country of origin of a refugee who poses a serious danger to the security of the host country or to its community.

In spite of all this, the tendency persists to view asylum systems as porous processes enabling terrorists and individuals who are security threats to access countries undetected. This is also exaggerated. In fact, asylum processes are among the most closely regulated entry channels and therefore among the channels those wishing to enter a country without attracting undue attention would be less likely to choose. Asylum seekers are routinely finger-printed, checked on security databases, detained and monitored upon release, making them among the most closely scrutinized migrants.

In short, properly functioning asylum systems assist States to comply with their obligations to deny a “safe haven” to persons responsible for terrorist acts, and to ensure that refugee status is not granted to asylum-seekers who were involved in such acts, as required under Security Council resolutions 1373 (2001) and 1624 (2005).

Put another way, compliance with international refugee law can well serve States’ security and law enforcement concerns; hence, not least, our efforts to promote accessions and support national implementation. We provide assistance to States through institutional development and capacity building, training, advocacy, providing legal and interpretive guidance and expertise in the international refugee law regime, monitoring and other interventions based on UNHCR’s supervisory role.

UNHCR AND COUNTER-TERRORISM EFFORTS

All this is not to suggest that asylum systems are immune to abuse. They cannot be; there can never be an iron-clad guarantee against subversion of their aims and terms. The 1951 Convention and 1967 Protocol are, of course, not counter-terrorism instruments as such; nor is UNHCR a counter-terrorism agency. The organisation has been mandated by the UN General Assembly to provide international protection to refugees and other persons of concern, to supervise the application of international refugee protection instruments, particularly the 1951 Convention, and to work with States to seek permanent solutions for the problem of refugees. In addition, UNHCR

has specific responsibilities for persons forcibly displaced inside their own countries and stateless persons.

While the vast majority of persons of concern to us are not involved in terrorist acts, there is a need for collaborative action to ensure that this continues to be the case. We cannot take this always as a given and vigilance is clearly a necessity. UNHCR acknowledges that terrorism poses a threat to the security of all and fully supports legitimate efforts by Governments to safeguard national security. We accept that we have a responsibility, indeed an obligation, to make our own contribution here.

In many regions of the world, refugees and others in need of international protection are part of larger movements of people traveling for many different reasons. A number of years ago UNHCR developed a *10 Point Plan on Refugee Protection and Mixed Migration*, which provides practical suggestions for management strategies and entry systems. While not specifically concerned with terrorism and security issues, the *10 Point Plan* is nevertheless interesting from a counter-terrorism perspective in that its proposals cover procedures which would enable States to profile arrivals and make distinctions between them, allowing for the early identification of people who may constitute a security risk.

Internally we have taken some important steps to reduce the vulnerability of our own procedures to infiltration and misuse. This is especially the case when it comes to UNHCR refugee status determination and resettlement referrals. We have recently been faced by some quite serious challenges of this sort, and have responded. Let me briefly mention some important internal initiatives in this regard.

In March 2010, a new Protection and National Security Unit was established within UNHCR's Division of International Protection to lead UNHCR's efforts to ensure that counter-terrorism measures and international legal obligations are able to be reconciled and that UNHCR processes contribute to this. The Unit acts, for example, as focal point for legal and policy questions related to exclusion from international refugee protection, including where UNHCR carries out refugee status determination under its mandate. Our guidelines on the interpretation and application of the

exclusions clauses of Article 1 F of the 1951 Convention and on cancellation of status are under continuous review. They cover for example situations where refugees or asylum-seekers are found to have been colluding with and substantially contributing to groups practicing violence in their countries of origin. Such activities are incompatible with the civilian character of asylum or bring the persons concerned within the scope of an exclusion clause to the point where cancellation or revocation of status becomes a serious issue.

As of December 2010, UNHCR now requires biometrics to become progressively a feature of registration procedures throughout our operations. We hope that this will safeguard integrity by preventing registration fraud and allowing us to better track secondary movements of persons registered with UNHCR. This said, when it comes to identifying persons involved in terrorists activities, biometrics is certainly not the answer in itself, largely due to issues with the inter-operability of systems, as well as prohibitive costs. In addition, a humanitarian organization such as UNHCR does not have access to relevant and reliable information in the same way as a Government. Where States are not willing to share intelligence with UNHCR, our ability to assess possible involvement in terrorism or other criminal acts in an individual case may be severely limited. We are, however, piloting ways of improving information-sharing with Governments and other relevant entities.

Another initiative UNHCR is currently engaged in, together with the Counter-Terrorism Executive Directorate, is a project to ensure that Convention Travel Documents issued by States to refugees and stateless persons are ICAO compliant. This should minimize the risk of document fraud, while ensuring that refugees and stateless persons may enjoy their right to freedom of movement without undue restrictions.

We are also taking pro-active steps to make sure that our operational response in mass influx situations, such as those related to Libya or Cote d'Ivoire, includes appropriate screening mechanisms, including targeted exclusion triggers so that potential security and exclusion issues can be addressed at an early stage, circumstances permitting. We have increased staffing, particularly in regions confronted most often with exclusion issues,

and implemented additional review and clearance requirements for decisions on refugee status or resettlement. On occasion we have temporarily suspended RSD for particular groups about which there are heightened apprehensions. Operationally, we have introduced tools, such as the Post-distribution Monitoring (PDM) tool, to lessen the possibilities for diversion of food and non-food assistance to non-intended beneficiaries, such as terrorist-linked groups.

All this said, UNHCR is increasingly concerned about the nexus between the conditions in refugee – or IDP – camps and security risks, including threats of infiltration. These risks are particularly high when some or all of the following factors are present:

- protracted displacement
- absence of realistic solutions
- impoverishment
- location of camps in sensitive areas or proximity to sensitive borders.

Primary responsibility for providing security to persons on its territory, as well as preventing the abuse of refugee camps, lies with the host State. This State in practice may lack capacity, or even willingness, to take the necessary measures. This renders refugees and displaced persons vulnerable to exploitation by criminal groups and organizations, and heightens the danger of radicalization and the creation of conditions conducive to terrorism. Too many refugees are forced to return to countries emerging from long, drawn-out war, where peace is fragile, infrastructure weak, the human rights situation not yet stabilized and the basic necessities of life in uncertain supply. There is a shared interest, not only but also not least in the context of counter-terrorism, for States and other partners to invest in sustainable solutions for the long-term displaced and avoidance of breeding grounds for radicalisation and desperate acts.

IN CONCLUSION

This is a link we believe needs to be more widely understood. We hope this Committee can assist here. The year 2011 marks important anniversaries. In July, it will have been 60 years since the adoption of the 1951

Convention Relating to the Status of Refugees. In August, we celebrate the 50th anniversary of the 1961 Convention on the Reduction of Statelessness. And it will be ten years, in September 2011, since the adoption of Security Council Resolution 1373 (2001), which established the Counter-Terrorism Committee and called upon Member States to implement a number of measures intended to enhance their legal and institutional ability to counter terrorist activities.

In this regard, we hope to be able to count on the continued support of your Committee for accession to the international refugee instruments as well as through encouraging greater awareness of the need to invest in more sustainable solutions. As part of the commemorations of the anniversaries of the 1951 and 1961 Conventions, a Ministerial Meeting will be held in Geneva on 7 and 8 December 2011. There will be a treaty event during which States may commit and sign up to the Conventions or remove restrictions on their application. I hope that the number of States willing to do so will increase in the course of the year, not least as a result of advocacy and lobbying by the Counter-Terrorism Committee and its Executive Directorate.

For our part, I confirm UNHCR's continued readiness to work with the Counter-Terrorism Committee and all relevant partners in assisting Member States in the implementation of their obligations under Security Council resolutions 1373 (2001) and 1624 (2005). In doing so we believe resolutely that effective counter-terrorism measures and the protection of human rights are not conflicting, but complementary and mutually reinforcing goals, and that human rights and the rule of law are the fundamental basics of the fight against terrorism.

Thank you for your attention.