



**Symposium on “Advancing the Implementation of the United Nations Global Counter-Terrorism Strategy”
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**Background Paper by
The United Nations High Commissioner for Refugees (UNHCR)**

General Remarks

- On behalf of the United Nations High Commissioner for Refugees, I would like to thank you for providing me the opportunity to address this plenary today within the framework of Theme No. 5 of the Agenda. I would also like express my gratitude to the Austrian Government, the Executive Office of the Secretary-General of the United Nations, and the United Nations Office on Drugs and Crime (UNODC) for the organization of this Symposium on “Advancing the Implementation of the United Nations Global Counter-Terrorism Strategy”.

Excellencies, distinguished Delegates, representatives of International Organizations, ladies and gentlemen,

- UNHCR welcomes the adoption of the **United Nations Global Counter-Terrorism Strategy and its Plan of Action** on 8th September 2006, which represents a milestone in the efforts of the United Nations designed to resolutely prevent, combat and eliminate terrorism, and the commitments made by United Nations Member States to its goals and objectives.
- UNHCR acknowledges the work of **UNODC** and its leading role through its “Terrorism Prevention Branch” in assisting governments in implementing the Global Strategy and preventing terrorism through technical assistance, as well as the ongoing work of the Counter-Terrorism Implementation Task Force (CTITF) established in July 2005, in assessing the implementation of the Strategy.
- UNHCR notes that **positive steps** have already been taken since September 2006, to ensure overall co-ordination and coherence on counter-terrorism actions, in particular strengthening dialogue with relevant International Organizations and other actors, at both international and regional level. Today’s gathering is a proof of this.

UNHCR’s Involvement

- UNHCR has been mandated by the United Nations General Assembly and its Statute to provide international protection to refugees and to work with States to seek permanent solutions for their problems. As part of its functions, UNHCR seeks primarily to ensure that asylum-seekers, refugees and other persons of concern to its Office are treated in accordance with internationally recognized legal standards.

- As part of its mandate, UNHCR **assists and provides guidance to States** in fulfilling their obligations to refugees. These obligations also include States' responsibility to ensure that the **institution of asylum and core principles of refugee protection** are not eroded, undermined or ignored as a consequence of implementation of counter-terrorism measures, and that those who are in need of protection are not denied such protection.
- There is a growing perception among States that asylum is used to hide or provide safe haven for terrorists. Such perception would tend to undermine the institution of asylum as States increasingly adopt counter-terrorism measures which erode the principles of asylum. Such perceptions need to be changed.
- Although the *1951 Convention relating to the Status of Refugees* (the Refugee Convention) is not an anti-terrorist instrument, it incorporates a system of **check and balances** that takes full account of the security interest of States and host communities while protecting the rights of persons who, unlike other categories of foreigners, no longer enjoy the protection of their country of origin.
- In particular, the **Refugee Convention**¹ provides for the identification and exclusion of persons with regards to whom there are serious reasons to consider they have committed heinous acts or serious crimes, and to ensure that such persons do not abuse the institution of asylum in order to avoid being held accountable for their acts. The effectiveness of these provisions depends on the manner in which they are applied. In this context, we encourage States to apply scrupulously the exclusion clauses contained therein and to interpret them with caution, in a restrictive and exhaustive manner.
- It cannot be discounted that some refugee individuals may commit acts of terrorism. In this case, they should equally be subject to due process of law.
- To this end, UNHCR assists and advises Governments in the interpretation and implementation of the Refugee Convention. The Office regularly issues, or revises key policy documents on the relevant aspects of international refugee law, including guidance on the implementation of exclusion provisions. UNHCR has also commented on the impact of a number of United Nations Security Council Resolutions on counter-

¹ Specifically, the Refugee Convention contains the following relevant provisions: (1) Provisions on exclusion of refugee status pursuant to **Article 1F** of the Convention, of persons who have committed war crimes, crimes against humanity, crimes against peace, serious non-political crimes, as well as acts contrary to the purposes and principles of the United Nations; (2) The duty of a refugee under **Article 2** of the Convention to conform to the laws and regulations, as well as to measures taken for the maintenance of public order, of the country in which he or she finds him or herself; (3) The possibility of expelling a refugee to a third country on national security or public order grounds as provided for in **Article 32** of the Convention; and (4) Exceptional expulsion of a refugee to his or her country of origin under **Article 33(2)** of the Convention (exception to the principle of non-refoulement).

terrorism (Res. 1624, 1373, and 1377)². It also intervenes when national legislation and practice give rise to concern³.

UNHCR's Concerns in the Time of Global Fight Against Terrorism

- UNHCR fully supports all legitimate efforts by Governments to combat and prevent terrorism, as they may increasingly **face the challenge** of preserving the rights and values of democratic societies (of which the principle of asylum is a cornerstone), while ensuring measures to protect their citizens and institutions.
- In this process, one of our main concerns today is the **impact** of the global fight against terrorism **and counter-terrorism measures** on human rights and the integrity of the institution of asylum, the most basic mechanism for the international protection of asylum-seekers and refugees. There is often an automatic unwarranted **link** between terrorists and asylum-seekers and refugees. UNHCR has repeatedly stated that refugees and asylum-seekers are often themselves fleeing from persecution, violence, forced displacement and even terrorist acts, rather than being the perpetrators of terror.
- States' practices and policies to counter terrorism have become **increasingly more restrictive and critical**, often guided by global security imperatives and international pressure which result in restrictions on asylum policies, preventing those fleeing persecution from access to asylum, and to an increasing gap between the spirit in which the Refugee Convention and its Protocol were drafted, and the manner in which these instruments are applied and interpreted. In practice, some recent examples include:
 - A number of States that have been traditionally and generously hosting large numbers of refugees for many years have now adopted more restrictive policies. This has resulted in camp closures, restriction of movements and detention, and expulsion of asylum-seekers and refugees.
 - The **application of the exclusion clauses** of the Refugee Convention by some States have resulted in broadening their scope and narrowing their procedural rights. In particular, UNHCR is concerned that some States apply the exclusion clauses on collective basis, rather than based on individual assessment.⁴

² UNHCR's *Note on Addressing Security Concerns without Undermining Refugee Protection*, November 2001; *UNHCR's Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/05, 4 September 2003 and accompanying Background Note; UNHCR's *Note on the Impact of Security Council Resolution 1624 (2005) on the Application of Exclusion Under Article 1F of the 1951 Convention relating to the Status of Refugees*, 09 December 2005; UNHCR's *Note on Diplomatic Assurances and International Refugee Protection*, August 2006; UNHCR's *Note on the Cancellation of Refugee Status*, 22 November 2004; UNHCR's *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007.

³ UNHCR's comments on The Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004, United Kingdom, of November 2004; UNHCR's *Advisory Opinion on the "material support" ban under US Law of 15 June 2005*; and UNHCR's *Advisory Opinion on the scope of the national security exception under Article 33 (2) of the 1951 Refugee Convention*, 6 January 2006.

⁴ One example is the interpretation by the United States (US) of the "material support" provisions of the Immigration and Nationality Act. By virtue of this provision, anyone who has provided any form of assistance, however negligible or even under duress, to a group designated as "terrorist" by the US Government will be denied asylum or admission to the US. For instances, the application of this provision has resulted in the denial of resettlement for UNHCR mandate refugees from Myanmar and Colombia.

- Some States have begun to restrict the right to seek asylum, establish low thresholds to the **exception of the principle of non-refoulement (Article 33 (2) of the Refugee Convention)** and expand the scope of crimes deemed to be “particularly serious”⁵. This article is also being used in the eligibility process, often assimilated or used as an “exclusion clause” to exclude from refugee status.
- National security concerns have led to the creation or categorization by States of **terrorist-linked offences** defined within domestic criminal legislation in broad and ambiguous terms, which have the potential to result in injustice and to target non-citizens, including asylum-seekers and refugees. Asylum-seekers could then find themselves labeled as terrorists on account of their political, ethnic or religious affiliations or ties⁶.
- There is also an increasing trend of adopting national anti-terrorist measures which allow for the **detention** of terrorist suspects, some of whom may wish to seek asylum. These measures may result in denial of the right to seek asylum, violation of the principle of non-refoulement, or detention of asylum-seekers and refugees without access to minimum procedural safeguards or judicial review.
- We have confronted situations whereby **conventional mandate refugees** traveling outside their country of asylum, holding Conventional Travel Documents, are apprehended or detained abroad, without access to due criminal law process, unable to return to their countries of asylum, and subsequently finding themselves in “limbo”.
- Another State practice that gives rise to concern is the increasing use of **rendition and diplomatic assurances**. Such forms of removal are fraught with risk, and may be a violation of individual human rights. In regards to refugees, rendition to the country of origin would amount to refoulement.

UNHCR’s Views on the United Nations Global Counter-Terrorism Strategy

- UNHCR’s involvement in relation to international efforts, both multilateral and national, to eliminate and combat international terrorism has become more predominant since the terrorist attacks of 11 September 2001, and in particular as a response of a request, contained in United Nations Security Council Resolution 1377 of 12 November 2001, for the Counter-Terrorism Committee (CTC) to explore with international organizations the promotion of best practices in the areas covered by this resolution.
- UNHCR reaffirms in this context the importance attached in the Global Strategy to **States’ obligations to comply with international law**, including the United Nations Charter and relevant conventions and protocols, and in particular with **human rights**

⁵ This is illustrated by *the United Kingdom Nationality, Immigration and Asylum Act (NIA) 2000*, which states that a crime which carries with it a sentence of two years or more is considered “particularly serious”. It has categorized several offences, such shoplifting and graffiti as such crimes; it includes crimes committed abroad; and it has not time limitation.

⁶ The *United Kingdom Nationality, Immigration and Asylum Act (NIA) 2000* extends the definition of “terrorist” as anyone who has “links” with an international terrorist group. Links are defined as existing if the person supports or assist such group. The ambiguity of such term could lead to categorize asylum-seekers as terrorists on the above grounds.

law, refugee law and humanitarian law when undertaking measures to prevent and combat terrorism.

- The Global Strategy's Plan of Action devotes an entire chapter on measures to ensure the **adoption and promotion of respect for human rights, criminal justice and the rule of law**. UNHCR fully supports such measures, which are fundamental not only to the fight against terrorism, but to safeguard the institution of asylum. Establishing effective mechanisms to bring to justice terrorists and other criminals is crucial to refugee protection, as it prevents international terrorists to find safe havens. It would also prevent States from having to resort to sweeping definitions of terrorism, and instances of expulsion, deportation, or indefinite detention of those who deserve international protection.
- This is also of particular relevance to UNHCR as, by doing so, we would contribute indeed to eliminating and diminishing some of the **root causes of forced displacement and conflict prevention**, often caused by the mere absence of rule of law and criminal justice, and violations of human rights.
- The **reform and modernization of border management systems** is also stressed in the Global Strategy as a means to build States' capacities to prevent and combat terrorism. UNHCR emphasizes the importance of developing and strengthening sound border management systems, which are also an essential component of any functioning asylum system, and in particular to safeguard the right to seek and enjoy asylum from persecution as provided in Article 14 of the Universal Declaration of Human Rights, full access to asylum procedures by those who are in need of protection, compliance with the fundamental principle of non-refoulement and non-rejection at the borders, as well as identification of those who are excludable from international protection.
- In the fight against terrorism, the **exchange of information** is very important. However, when it comes to personal information regarding individual asylum-seekers and refugees, sharing of information with the country of origin may increase the risk to the individual concerned, their families, friend or associates.
- UNHCR's expertise in providing technical assistance and guidance to States in complying with their refugee obligations and to establish fair and efficient asylum systems through **capacity-building is a primary tool** by which UNHCR can contribute to the implementation of the Global Strategy.

UNHCR's Involvement in United Nations Counter-Terrorism Initiatives

- The Office has already established close co-operation with the **Counter Terrorism Executive Directorate (CTED)**, by sharing its expertise on asylum standards and practices. In particular, it has been requested to assess whether States' measures taken to implement certain provisions of UNSC Res. 1373/2001 are in conformity with human rights law, refugee law and humanitarian law. We have also assisted the CTED in preparation of some of their country visits. We participated in the 4th CTC Special meeting held in Kazakhstan in 2005 and have committed to participating in the forthcoming 5th Special Meeting on the CTC on "Prevention of Terrorist Movements and Effective Border Security", to take place on 29-31 October 2007.
- UNHCR also initiated collaboration with **UNODC** and recently participated at the UNDOC "Meeting on Draft Manual on International Co-operation in Criminal Matters" held in this very forum in April 2007, focused on providing guidance to practitioners on

extradition, mutual legal assistance and international co-operation. UNHCR provided extensive comments on the manual. There is possible future assistance with UNDOC in developing the asylum and international refugee law component of training materials.

- UNHCR collaborates with the **United Nations Special Rapporteur** on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Mr. Martin Scheinin.
- UNHCR is preparing its contribution to the CTITF “United Nations Counter-Terrorism On-line Handbook Questionnaire”.
- It also participates in **international and regional fora** (UNHCR recently participated in the OSCE “Workshop on Enhancing Legal Co-operation in Criminal Matters to Counter-terrorism”, March 2007) and promotes and advocates for the inclusion of relevant principles of international refugee law in various international and regional instruments adopted to combat international terrorism. UNHCR noted from these fora that there is an increasing need of clarification to those involved in counter-terrorism on the international refugee law regime and the importance to preserve its core principles while countering terrorism. UNHCR acknowledges the importance therefore of today’s meeting.

Closing Remarks

- To sum up, let me say that human rights must be at the heart of the war on terrorism. Providing effective refugee protection and assuring security are both complementary components of the same objective: ensuring a world where all can live in dignity and security in the full enjoyment of their human rights.
- While understanding the imperative of security of states and the fight against international terrorism, a proper balance has to be found to protect the rights of those who deserve international protection. Counter-terrorism should not undermine the core principles of the international refugee regime, neither the right to seek asylum, nor the principle of non-refoulement.
- International refugee law provides an effective system to identify those undeserving protection, foresees their exclusion from refugee status and does not shield them against criminal prosecution, extradition or expulsion. However, the challenge today remains how States implement and interpret their provisions in their fight against terrorism, without undermining the protection of those who deserve it.
- Finally, let me conclude by saying that international co-operation is essential to achieve this objective. The framework provided by the Global Strategy on Counter-Terrorism is an excellent example of this.
- UNHCR remains committed to assist States, within this operational framework, to comply with their human rights and refugee law obligations in the implementation of the Global Strategy.

Thank you for your attention.

United Nations High Commissioner for Refugees
17 May 2007