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Agenda item 2: International Protection

Statement by Volker Türk, Assistant High Commissioner (Protection)

Madam Chair, distinguished delegates, ladies and gentlemen,

I am pleased to introduce the protection item of the June Standing Committee. To inform the discussion, we have made available online the annual *Note on International Protection*, as well as conference room papers on specific aspects of protection, including statelessness, resettlement, community-based protection, and education, which my colleagues will introduce later during this session.

To begin our discussion, I would like to offer some additional reflections on the theme of this year's *Note on International Protection*, which focuses more broadly on human mobility, including the interface between asylum and migration. The impetus behind the New York Declaration of last September was the need for the international community to address more concertedly the needs of people who are on the move – people searching for safety from persecution and conflict; people hoping to reunite with their family members; and people seeking better economic and social opportunities, particularly in the face of poverty and deprivation or the adverse impacts of climate change. Human mobility is of course not a new phenomenon, and displacement and migration have been central features of human history, spurring – when well handled and supported – economic and social development, contributing to the richness inherent in diversity, and facilitating cultural exchange. Let us also not forget that whole economies have long depended upon labour migration in both sending and receiving countries.

Yet, what we see in today's increasingly globalized world, where disparities between those with wealth and power and those without continue to grow, is the movement of some of the most vulnerable and disenfranchised people on an unprecedented scale. With regard to people who have been displaced as a result of conflict, violence, and persecution, *UNHCR Global Trends: Forced Displacement in 2016*,¹ released this month, speaks to the enormity of the situation globally. Some 65.6 million people are displaced around the world, of whom 22.5 million are refugees,² and nearly two-thirds are internally displaced. It is clear that conflict, violence, and severe abuses of human rights continue to exact a high toll, particularly in the regions and countries that neighbour today's conflicts in the global south, where 84 per cent of the world's refugees reside. Conflicts in South Sudan, where now a fifth of the population is displaced, and in Syria, where more than half of the population has been uprooted, continue to affect the highest numbers of people.

In spite of these figures, it is important to remember that displacement comprises only a small fraction of movements overall. Yet, a growing focus on deterrence and border control and damaging narratives around people on the move have had a direct impact on refugees, tainting and, in some instances, undermining the institution of asylum. With few options for safe, regular pathways, some refugees and migrants resort to irregular means of travel, often with the assistance of smugglers or traffickers, and are then stigmatized as people trying to circumvent the law. Also, with limited migration possibilities available, some migrants try to access legal status or stay by requesting asylum, which can place enormous pressure on asylum systems, and feed into negative perceptions.

A number of States have responded to large-scale movements of refugees and migrants in a myopic way with tougher, unilateral enforcement measures in an attempt to stem or divert the flows or contain them

¹ Available at <http://www.unhcr.org/statistics/unhcrstats/5943e8a34/global-trends-forced-displacement-2016.html>.

² 17.2 million are under UNHCR's mandate, and 5.3 million are Palestine refugees registered with UNRWA.

elsewhere, but this addresses only the symptoms of a deeper problem and can never be a solution in itself, most certainly not for a matter that is of international concern. It is incongruous for some States to pursue such policies, while at the same time expecting others, who are much closer in proximity to the countries of origin, to shoulder most of the responsibility without sufficient support. Rather, it is best to work together on the humanitarian and protection dimensions of mixed movements, ensuring protection-sensitive, humanely managed borders – rather than barricades – that can ensure both protection and security. These are not incompatible goals. There is also a need to join efforts in external engagement, including to address some of the underlying causes of displacement and migratory pressures, to respond effectively to smuggling, and to ensure sustainable return where possible. We have already seen positive steps in this direction with greater attention to protection-sensitive border management in some countries in Central Asia, North Africa, and parts of Europe, to name a few.

The New York Declaration provides an opening for this kind of constructive engagement. It calls upon UNHCR to apply a comprehensive refugee response framework in different situations and to develop a global compact on refugees in 2018. Working with key host countries, starting in eastern Africa with Uganda, Ethiopia, and the Somalia situation, we are building upon a foundation of current good practices to develop comprehensive refugee responses to ensure that host countries have the resources they need to support refugees. The lessons learned in implementing these responses, together with our consultations with States, various organizations and institutions, refugees themselves, civil society, and the private sector, will inform the development of the global compact on refugees in 2018. The compact will include a programme of action setting out the kinds of generic commitments needed to make it a meaningful reality in the lives of refugees around the world. This is all the more critical now, as the needs of refugees remain high in an increasingly challenging financial environment.³ In an era of waning resources, the New York Declaration also presents an opportunity for all of us to work smarter – through new and innovative partnerships, linking up initiatives, and leveraging our respective strengths to have the widest impact.

The New York Declaration also envisions that stakeholders with expertise on migration will contribute to developing a global compact on safe, orderly and regular migration, as well as elaborating principles on the treatment of migrants in vulnerable situations. UNHCR is contributing to this process on issues that directly concern our responsibilities or on which we have extensive experience, such as protection, reception and assistance, mixed migration, and xenophobia. UNHCR is working closely with the Office of the Special Representative of the Secretary-General for International Migration, the International Organization for Migration, and other partners to ensure that the two compacts, while being developed through distinct and independent processes, are complementary.

In the New York Declaration, there are several areas where commitments for refugees and migrants come together. There is, for instance, a need to provide for adequate reception, develop systems to determine specific needs, and reduce stigmatization. There is also a need to take measures to combat sexual exploitation and abuse and provide support to victims of trafficking. Of course, there is the overarching need to save lives and cooperate, notably in strengthening search and rescue. And alternatives to detention of children are essential, as is birth registration to prevent statelessness.

As we approach the development of both global compacts, it is timely for us to consider how we can most effectively build upon these common commitments and meet the needs of people on the move, be they refugees or migrants, in accordance with international standards, and in respect of their rights, dignity, and humanity.

In a number of situations around the world, we see refugees and migrants moving side-by-side, which requires that we find ways to respond to both their unique and common needs. Refugees have specific rights and needs because of their particular predicament. They require international protection because they are unable to return home due to serious threats in their country of origin, as recognized by international law. The key question that drives UNHCR's responsibilities and the concept of international protection is whether or not one can return home safely and in dignity. This was the intention of the drafters of the

³ A more modest spending authority has been granted to UNHCR operations in 2018, although with increases for statelessness programming and cash-based assistance.

UNHCR Statute, and it has been elaborated upon in subsequent General Assembly Resolutions and mirrored in treaty law, regional arrangements, and evolving State practice over decades. Unfortunately, in several parts of the world, we have seen some egregious instances of *refoulement* in contravention of fundamental international obligations, in spite of our interventions to prevent them. It is deeply concerning that this core of international protection is being undermined. I am particularly concerned about an incident we became aware of this morning in which 800 refugees were returned to Nigeria from Cameroon. We are looking into this situation and hope to find a way forward out of this conundrum.

While refugees and others who are forcibly displaced across borders and who cannot return home are distinct in their need for international protection, both refugees and migrants face common challenges due to their individual circumstances or the situations in which they are traveling, which may place them at risk. When moving along irregular routes, they may be tortured, exploited, or physically and sexually abused by traffickers, smugglers, or corrupt officials. They may risk death in harsh deserts or in unseaworthy vessels. They may be kidnapped for ransom, detained in extremely poor conditions, or sold to criminal networks. They frequently lack documentation or the support of their communities or families. They could be unaccompanied children. They may have disabilities or serious medical conditions, or be survivors of torture and trauma. In such circumstances, it is essential that we protect their human rights and put in place mechanisms to meet their individual needs.

In the face of growing numbers of people on the move today, responding in any meaningful way may seem like a daunting proposition. The figures for forced displacement are significant, but we must remember that we also saw high numbers as recently as the 1990s, with large-scale displacement from Afghanistan, the Great Lakes, Iraq, and the former Yugoslavia. What is fundamentally different today is that we have many more tools at hand – not least of which are the New York Declaration and the comprehensive refugee response framework – more countries engaged, and many more partners who want to contribute to assist States in addressing refugee situations, which places us at an advantage.

Recognizing and embracing the realities of both displacement and migration today require a shift in mind set. We need to move from perceiving such movements as simply threats and crises, to understanding that they are phenomena that we can manage and respond to responsibly and with humanity. Perhaps the most effective way to achieve this shift is to show concretely what can be achieved with the right systems in place and sufficient political will. I would like to set out several ways in which we can accomplish this shift in approach, many of which are already being implemented in different parts of the world.

First, we need to ensure the protection and humane treatment of people at all points along the routes of movement. We can start by building upon good practices for dealing with mixed refugee and migrant flows. UNHCR recently updated the *10-Point Plan in Action* on refugee protection and mixed migration,⁴ which provides good practice examples from around the world and a variety of tools for timely and effective responses at all stages of the process – from rescue, to entry, reception, screening, referral, and differentiated procedures. This update also contains guidance on addressing specific needs, such as facilitating family reunification, identifying and protecting victims of trafficking, creating protection support hubs for women and children, facilitating access to medical and psychosocial assistance, and linking individuals with national or consular services.

Protection along the routes also requires robust search and rescue capacity, as mixed flows by sea continue across the Central Mediterranean and across the Red Sea and the Gulf of Aden to Yemen. Saving lives, timely rescue, and safe disembarkation continue to be of paramount importance. Many States and private actors have made vital efforts to rescue people in distress at sea. UNHCR has been working with the European Union Naval Force ATALANTA operations to train coast guards and immigration authorities, and is present at six disembarkation points and also monitoring detention centres in the West, East, and South of Libya.

Second, we can use the refugee protection experience as a catalyst to address broader questions of protecting people on the move. The international community has broadly understood the refugee

⁴ UNHCR, *The 10-Point Plan in Action: 2016 Update*, December 2016, www.refworld.org/10pointplaninaction2016update.html.

definition to be inclusive, rather than restrictive, in keeping with the fundamental objective of ensuring protection for all who need it. Decision-makers, courts, and State practice over the years have demonstrated that the 1951 Convention is a time-tested, resilient, and adaptable tool for meeting the evolving challenges related to refugee protection that were not necessarily visible or anticipated at the time of its drafting. The initial gap between UNHCR's mandate responsibilities and the obligations of States has been used to good advantage for the further development of international refugee law, for instance in areas of gender, sexual orientation, serious public disorder, gang violence, trafficking, non-state actors, and indiscriminate violence.

Most recently, in December 2016, UNHCR issued guidelines on people fleeing armed conflict and violence.⁵ Drawing upon a comprehensive analysis of State practice and legal developments, the Guidelines confirm that the refugee concept applies to those fleeing armed conflict and other violent crises. This was inherent in the 1951 Convention, but its application has been inconsistent. Some countries erroneously have required a person to be individually targeted to be considered a refugee, or they have limited the notion of persecution to State actors. Yet, most conflicts today involve non-state actors and target whole groups of civilians for their perceived ethnic, religious, social, or political affiliation. In-depth legal analysis confirms that persons fleeing situations of armed conflict and violence are indeed refugees.

UNHCR's mandate to prevent and resolve statelessness is also a manifestation of its protection role envisioned by the drafters of its Statute. To ensure progress towards the *#IBelong* campaign goal of eradicating statelessness, UNHCR has prioritized and increased its statelessness budgets for 2018. As the campaign is approaching its mid-point, UNHCR will convene a high-level meeting in 2019 to take stock of our progress and provide an opportunity for States to make further commitments towards this goal.

Protection principles can also help define and guide our response in specific situations. For instance, natural hazards, humanitarian crises, and famine linked to conflict, as we are witnessing in South Sudan and Somalia, can exacerbate risks of returning to one's country, and present areas where protection principles can be applied in keeping with the spirit and intent of the 1951 Convention. Also, more broadly, the 1951 Convention still serves as the basis for considering persons in need of international protection as refugees under UNHCR's mandate who should be protected from *refoulement*, regardless of whether a State is a signatory to the 1951 Convention or has a domestic legal framework for refugees.

Third, we need to draw upon lessons learned from both the fields of refugee protection and migration to consider how they can be mutually beneficial. UNHCR's protection expertise, derived from both its normative focus and long experience in working with displaced people in operational contexts, can inform approaches to mixed migration situations. For example, we are lending our experience to building national and regional systems with States and partners to identify and support refugees and migrants with specific needs and vulnerabilities along routes of transit and across borders, such as victims of trafficking and survivors of sexual and gender-based violence [SGBV]. We all know well that women and children on the move often risk sexual assault, physical violence, exploitation, and abduction.

UNHCR is also drawing upon its experience in child protection to find practical ways with partners to identify and protect unaccompanied and separated children on the move to ensure that they are treated first and foremost as children, regardless of their legal status. This was the theme of last year's High Commissioner's Dialogue, which focused on children on the move. With more than 63,300 unaccompanied and separated children having arrived in Europe in 2016 alone, and a surge in arrivals from Central America to neighbouring countries in the region, experience has taught us that protection systems based upon regional cooperation are key. They need to include family tracing, early identification and registration, Best Interests Assessments, and a common and holistic approach to age assessments. They also need to provide these children with appropriate care arrangements and community-based support and should not detain them for immigration purposes.

⁵ See UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions*, 2 December 2016, HCR/GIP/16/12, available at: <http://www.refworld.org/docid/583595ff4.html>.

Complementary protection mechanisms and temporary protection or alternative stay arrangements are tools that have been used to meet the urgent protection needs of refugees in large-scale movements, and could conceivably also provide a temporary solution for individuals who are not refugees, but are unable to return to their countries, for example in cases of natural hazards, climate change-related displacement, or public health emergencies. Also, temporary permission to stay could be granted to unaccompanied children awaiting the outcome of family tracing, students needing to complete their academic year, victims of trafficking who do not fall within the refugee definition, or individuals with medical needs and survivors of abuse and trauma for the duration of their treatment.

Temporary protection mechanisms have great potential for responding to displacement arising from sudden-onset natural hazards in particular. Natural hazards have led to the internal displacement of 26.4 million people per year since 2008, largely due to the fact that areas prone to disaster are often home to some of the world's poorest and most vulnerable people. Some of those displaced may be or become refugees, especially in situations of sudden onset disasters and disasters linked to conflicts where they may face a serious risk of harm or hardship should they return to their countries of origin. In most cases, however, people displaced in the context of the adverse impacts of climate change are not covered by the international and regional refugee instruments.

UNHCR has been working closely with States, notably Switzerland and Norway in the launch of the Nansen Initiative, and Germany and Bangladesh – as well as involved organizations – in the Platform on Disaster Displacement, to offer its protection perspective in addressing the gaps we are seeing, for example in the Lake Chad Basin region, Nigeria, Somalia, South Sudan, and Yemen. UNHCR is also drawing upon its field presence and local knowledge to identify the triggers for displacement and inform contingency planning. It is further working with communities to reduce risks of disasters. When disaster strikes, it has developed planned relocation [including evacuation and transit] and deployed emergency response teams. UNHCR is also lending its expertise to strengthen legislative frameworks for protection and assistance, which may include instituting temporary protection mechanisms, and to improve data collection.

Finally, we need to address mixed movements from a holistic solutions perspective. This requires that we focus not only on our response to these movements, but also on the drivers behind them. Demographic changes, population growth, climate change and environmental degradation, labour market changes, and advances in communications all contribute to population movements. When linked to conflict, violence, and poor governance, they can contribute to flight and forced displacement. A holistic perspective also requires that we focus on solutions that can benefit refugees, migrants, and host communities and stabilize their situations. More specifically, refugees need to be able to access functioning asylum systems or group-based protection. They need to feel safe, be able to access their basic rights, and have a regular legal status. Everyone needs to be able to send their children to school and to support themselves and their families through work and livelihood opportunities. Without these stabilizing elements in place, people may feel compelled to move onward to other countries.

With this in mind, there are a number of areas in the New York Declaration, as well as in the Sustainable Development Agenda, where measures taken for refugees or migrants for that matter could be mutually beneficial. Through poverty eradication, environmental protection, development and humanitarian assistance, particularly in the areas of education, health, livelihoods, and public services that benefit both refugees and the communities that host them, we can strengthen the support and opportunities for refugees wherever they may be living. And we can demonstrate how the presence of refugees presents opportunities for social and economic growth.

Partnerships with international financial institutions such as the World Bank, and international organizations such as the Organisation for Economic Co-operation and Development and the International Labour Organization, also help generate employment opportunities and facilitate greater participation in economies. The improvements in infrastructure and connectivity, labour laws, and market access required for the success of these initiatives benefit all workers.

When refugees have access to the resources needed to get on with their lives, they are better equipped not only to participate in and contribute to their host communities, but also to support post-conflict

reconstruction efforts in the event that they will one day be able to return to their home countries. We know that resilience is a strong element in refugee communities. When I was recently in El Salvador, I met former refugee communities who had returned to El Salvador and are living without violence, presenting an element of stability for the country.

Importantly, the commitment of States to expand opportunities for safe, regular pathways is significant for both refugees and migrants. In the case of refugees, resettlement and humanitarian admission remain of course critical protection tools and durable solutions. When provided in meaningful numbers, resettlement could help open opportunities for other solutions or ease some of the pressures on larger host countries. When considering how best to protect people on the move, countries of transit could, for example, host transit facilities, as we have recently seen in Costa Rica, where the most vulnerable refugees in need of resettlement could reside while their cases are being processed, rather than continue on dangerous onward journeys. Also, as a part of a comprehensive refugee response in a large-scale influx, the availability of a significant number of resettlement places from the outset of an emergency could be a life-saving option for some refugees with acute needs.

At the same time, measures employed to regulate migration could be leveraged more to provide temporary or even longer term solutions for refugees, such as labour mobility schemes, private sponsorships, or student scholarships. Moreover, the development of migration processes and pathways more adequately equipped to respond to migrant arrivals would help to foster better integration in local communities. It would ease pressures on the asylum system and at the same time widen space for both refugees and migrants. Access to labour, in particular, offers ways to regularize movements, create opportunities, fill labour shortages, and reinvigorate economies, and we have seen positive initiatives in this direction in a number of countries, including through private sector initiatives. Measures to regularize the stay of temporary migrant labourers, for instance, have also been applied to refugees in countries not party to the 1951 Convention, but with proper additional protection safeguards in place.

In closing, I would like to recall that refugee protection will remain an international responsibility. At this time of soaring levels of displacement, no country in the world can say this issue is not their concern. Human mobility is a fact of life, and even a necessity, and the responsibility is on every one of us to respond with empathy and compassion, based upon a solid legal tradition and good practices, and to recognize the unique opportunities that it can bring for us all.

Thank you.