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From standard setting to implementation:
Enhancing protection delivery for children in need

My thanks go to the Bureau for Population, Refugees and Migration of the US Department of State for inviting me to address this Conference on the Protection of Unaccompanied and Separated Children. The diversity of speakers and panellists, as well as a fully booked Conference, attest to the remarkable level of interest in the topic. It also shows the variety of skills there are to bridge the gap between the standards, and the realities of life for separated children. A coherent approach to their protection is one that avoids compartmentalised responses, and instead integrates the individual casework of practitioners with wider advocacy and capacity building. In this regard, the multi-disciplinary approach of this conference is very much the way to go, in our opinion.

We will be following carefully the discussions over the coming three days. We have much to learn, and need to do so. Unaccompanied and separated children are a feature of almost all our operations world-wide. It is difficult to know the true size of the problem, not least because few countries produce official statistics on it. A rough estimate suggests some 1.6 million children are unaccompanied or separated from their parents among populations of concern to UNHCR. This equates, for example, to the total number of children in the state of Virginia [or in Switzerland].

UNHCR’s own data suggests that around 4-5% of all asylum applications in industrialized countries are from children seeking asylum on their own, although this percentage can fluctuate dramatically between countries and years. Male children tend to comprise the majority, as indicated by a recent review of data available in Europe which recorded that some 72% were boys. On the other hand, young girls are increasingly being trafficked or smuggled abroad through the sex trade or for domestic servitude. This is distorting the pattern in a number of situations: in the UK for example, one study found that more than 50% of unaccompanied and separated children originating from certain states were female1.

Moving on from the figures, the circumstances in which these unaccompanied and separated children find themselves are as varied and complex as they are disconcerting. The need for more reliable baseline data is recognized and this is starting to have implications for a range of activities, from registration, through monitoring and alert arrangements, to the family support and community based mechanisms which are put in place. Insufficient attention has been paid both to causes of separation from adult caregivers and to preventing the separation in the first place. Many children are survivors of precarious journeys involving consecutive displacement from situations which have entailed persecution, human rights violations and generalised threat from conflict of high magnitude. Some are the victims of exploitation by

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1 Information from a draft UNHCR study on the protection responses to unaccompanied and separated refugee children in mixed migration situations, Anthony Macdonald, PDES
human traffickers. Others have been sent by caregivers, willingly or otherwise, to secure a better future in countries that appear to offer better prospects for their education and livelihood.

UNHCR field reports are replete with examples of situations that should not be. To take but one recent AGDM assessment by one of our European offices, it revealed numerous problems for displaced and separated children within the programmes of that office, including inaccessibility of local schools, the monotony and isolation of long-term accommodation in reception centres, and lack of access to information in a language and form they can understand. The report pinpoints as a particular challenge asylum and migration systems which have been created with adult beneficiaries in mind, leading to children in detention, newborn babies registered as of “unknown” nationality, or the absence of special welfare support arrangements for children over two years old.

The problem of legal assistance for children, notably for separated or unaccompanied children, is a perennial one. This is the case in the US, as much as anywhere else, where children are placed in removal proceedings which are adversarial in nature but lack government appointed legal representatives or guardians. The launch, last week, of a new initiative spearheaded by Microsoft to increase legal representation for unaccompanied children in the United States is a highly positive development which we hope will be underpinned through increased efforts by partner agencies including government.

There is strong evidence that the absence of representation to enable a child to navigate the legal hurdles of entry and proper assessment of protection needs is fundamentally detrimental to children’s best interests. In our experience here, state interests may well take priority over the best interests of the child. Only a few days ago, one European country established fast-track airport procedures in a deliberate effort to block the entry of an increasing number of children arriving alone to seek asylum. There are also documented instances of children being removed although they are at risk in their home countries, including a much publicised case in the US involving the return of a teenage boy to Guatemala. He had lodged an asylum claim based on fear of persecution by gang members, which is a complicated area of refugee law. His claim was rejected and, sadly, upon his return he was killed by the gang.

Admittedly the mixed motivations and complexity of protection risks do present a challenge to asylum authorities and national policy makers. This is the more so when the asylum seekers are children. It is of course primarily the responsibility of the families and communities of these children to protect them. Also clearly, though, such normal safeguards or protective structures can and do break down, leaving children - mostly a very resilient group in society - more vulnerable to abuse, exploitation and persecution. In Mexico, at the southern border with Guatemala, where people smuggling and trafficking of women and children are endemic features, I had an emotional encounter with two girls in their early teens, sheltering in a centre for unaccompanied minors. They were having an uphill battle overcoming the stigma of having been abducted and held for sex by gang members. They had the double hurdle to confront of a legal case against their abductors and their own refugee claims to substantiate, in an environment used to violence against girls and sceptical about the force of a refugee claim because of gang violence.

Our work centres very much on fostering child protection frameworks which apply refugee law principles even-handedly, but in a way sensitive to child protection principles and the particularities of children in displacement. There is still a strong tension between law and policies designed to protect children, and the actual experiences of children confronting the
migration and asylums systems of national States. This quite possibly stems from the fact, noted in a September report of the Secretary General, that children are yet to be viewed as key stakeholders in rule of law initiatives, with work to implement child justice standards too frequently separated from broader justice reforms. Over the years numerous research papers, studies and conferences have drawn attention to the dilemmas. There is a growing set of useful guidelines, with many recommendations produced and disseminated. Improving inter-agency collaboration has led to the Separated Children in Europe Programme and the Inter-Agency Working Group on Separated Children, which in turn have produced a Statement of Good Practice and the Inter-Agency Guiding Principles on Unaccompanied and Separated Children outside their Country of Origin. The earlier mentioned note issued by the Secretary-General, on a United Nations Approach to Justice for Children, outlines measures to ensure children are better served by justice systems, including security and welfare sectors.

I also mention at this point UNHCR’s Guidelines on Determining the Best Interests of the Child (BID Guidelines), finalised in May this year. These Guidelines were the result of a collaborative process involving UNHCR staff and non-governmental organisations, and benefited also from inputs provided by interested States. Lack of trained social workers, limited capacity and resources, lack of reliable tracing mechanisms, limited options for solutions and inadequate preconditions to found the decisions, are among the problems the Guidelines consider. The Guidelines suggest ways to avoid or address such problems. They are intended to structure decisions on durable solutions for unaccompanied and separated children, on temporary care arrangements in the interim and on situations which may require separation of children from their caregivers. UNHCR is currently assessing how to best integrate the BID Guidelines into all aspects of our programmes. They are now in use, with some 54 UNHCR country offices having reported that best interests’ determinations were regularly being made, and with at least 12 operations having already established multi-agency BID panels. Last year, UNHCR made more than 1,100 submissions for resettlement under the criterion of children and adolescents at risk, where clearly BID considerations have a prime place.

I take this opportunity to register my appreciation to BPRM for their generous contribution to the joint project that UNHCR has recently developed with the International Rescue Committee (IRC) for capacity building of relevant staff on best interests determinations. This should also be to the benefit of our capacity building with governments, including our efforts with Argentina to establish a formal governmental BID procedure built around the Guidelines. As it seems that in the US there continues to be no formalised BID determination before a child is removed to his or her country, we might also look at how our joint project can help on home soil!

Another important guideline - and a welcome focus of this Conference - is UNHCR’s Executive Committee 2007 Conclusion on Children at Risk. This five-page document promotes some baseline interventions for children at risk. It outlines a framework for the identification of risk factors which particularly expose refugee children and a practical set of activities to respond to and diminish the risks.

The meaningful “operationalisation” of this Conclusion, the BID Guidelines, and indeed the many other relevant guidelines and recommendations, is now the challenge. At this point, let me try to break down this challenge into some sub-sets of issues which this Conference may want particularly to look at.
The central tenet of the Conclusion, of UNHCR’s BID Guidelines, and indeed of my presentation, is that the principle of the best interests of the child has to be the overriding determinant of how to manage the circumstances and claims of child asylum seekers and refugees. This principle has been recognised by the Committee on the Rights of the Child as one of the four general principles determining the interpretation of the Convention on the Rights of the Child [CRC] of which that Committee is the guardian. In the view of UNHCR, and our Executive Committee, this principle should be a primary consideration in all actions concerning unaccompanied and separated child asylum seekers, from their identification, reception and referral, through finding appropriate temporary care arrangements, to participation in asylum processes and the pursuit of durable solutions. The principle holds that it is not sufficient merely to consider the best interests of a child in reaching a decision, but that these must be accorded substantial weight. Article 3 of the CRC requires governments and public and private bodies to ascertain the impact on children of their actions, in order to ensure that the best interests of the child are prioritised. The implications of this for action taken on asylum demands are significant. For example, as the asylum needs of children and adults may well be different, in fact even conflict, a state is obliged to take cognizance of any conflicts of interest and make the child’s interests those which determine the outcome. Sometimes it can be a balancing act between a child’s interests and her wishes. There must be a possibility for the child to appropriately give voice to both. From the point of view of refugee status determination, this means that the best interests principle can only be considered to have been properly implemented when the child has an ensured voice in the refugee status process, even though, when it comes to deciding on the validity of a claim, it is the refugee definition of the Convention which has to be applied. I will return to this shortly.

There are in fact many challenges which operationalising the best interest principle in the asylum context has to confront. I want to turn to some of these, now, in a little more detail.

Obviously, the principle is best served when it is operationalised integrally within a child-sensitive refugee protection system. This means firstly that children’s rights have to be properly provided for.

The Preamble to the 1951 Refugee Convention delineates the close linkage between human rights law and refugee law. Article 22 of the Convention on the Rights of the Child is an important reference point in this context, providing as it does for the applicability of articles in the CRC and in other human rights or humanitarian instruments specifically to refugee children. The CRC requires perhaps the most exacting standards for protection and assistance to minors under any international instrument. With its near universal acceptance, it is a valuable frame, from UNHCR’s perspective, for setting up protection systems for refugee children.

Another important consideration is that the refugee child protection framework be firmly embedded within a country’s national child welfare and child protection system, not built up as an exceptional arrangement for non-nationals. Should there not be a sufficiently developed system, at least the arrangements put in place must be such as to be able to tap into assistance and support from relevant national agencies.

One of the most, if not the most, important element in a proper functioning child protection framework is the early identification of children separated from their primary care givers. This has proven most challenging in the context of so-called mixed migratory movements. Children, and particularly girls, are frequently less visible than adults, they may not have the opportunity or feel able to voice their concerns, and they are often not adequately informed.
about their rights, including with regard to claiming asylum. This applies not only to children who arrive completely on their own, but also those who arrive with relatives, or with adults who by law or custom are not responsible for them. Especially children travelling with unrelated adults are at heightened risk. In the worst cases their company consists of smugglers or traffickers.

And identification is not a one time exercise taking place upon arrival only. Children may become separated in protracted situations as their parents or their remaining parent leave the camp to find work. Parents may return to their country of origin leaving the children alone or with relatives in the camp. In urban situations, unaccompanied and separated refugee children may only be able to be identified long after they have arrived in the country.

The ExCom Conclusion places emphasis on clear procedures to identify unaccompanied and separated children, and on adequate training of immigration officials and border police to implement them. Mexico offers some useful experiences here. UNHCR Mexico, with the support of Save the Children Sweden, has carried out several studies on the needs of children arriving as part of the mixed migratory flow across the southern border. These have confirmed that, even while only a small percentage of these children may require international protection, the mechanisms to identify these children and refer them to the appropriate procedures have been inadequate; so too the approach to best interest determination after their detection. Based on these studies, we catalysed a process of interdepartmental collaboration leading, for example, in November 2007, to the appointment by the Mexican Government’s National Institute of Migration (NIM) of 68 child protection officers particularly tasked to address the needs of unaccompanied young migrants. More recently, UNICEF, the National Family Institute and NIM have formally entered into an agreement to improve child protection in border areas, with a heightened focus on children travelling alone. Perhaps Conference participants could review the good practices in train in Mexico and the lessons they offer for replication elsewhere.

Identification is not only about finding the affected children, but also about being alert to the risk factors which render some more vulnerable than others. UNHCR has recently collaborated with a university research institute in NSW, Australia, to develop a Heightened Risk Identification Tool to enable identification of refugees, particularly children, at heightened risk within a generally vulnerable population. The tool uses a combination of community-based participatory assessments and individual assessment methodologies and is now underpinned by a user guide. I commend both the tool and the guide to the Conference panel on identification.

As to practical arrangements, those in place on Lampedusa, which link up UNHCR with the Italian Red Cross, Save the Children and the International Organization for Migration (IOM), also merit review at this Conference. Among the some 21,000 persons who have arrived on this Mediterranean island in 2008, more than 1,300 have declared themselves as unaccompanied minors. UNHCR’s agreement with the Italian Government gives us a specific role for unaccompanied minors seeking asylum. They are treated as a priority caseload and special arrangements are in place for their reception, care and passage into and through the asylum process. Through monitoring and dialogue, UNHCR and its partners have been able to pin-point concerns with regard to age-determination, delays in decision making and insufficiently qualified staff in reception centres. Improvements are resulting as information materials on the specific needs of unaccompanied minors are made available to all involved. Not least the level of knowledge among juvenile court judges is on the increase. Last year, the Italian Ministry of Interior issued helpful guidelines on age certification and,
acknowledging the potential for errors in the process, the judges are now working with a presumption of minor age in case of doubt.

**Age determination must be among the more vexing questions which a child protection framework has to address.** Determining the age of a person is part of the identification process. The process is key to decisions on who must benefit from age-appropriate asylum procedures and who gains access to any preferential treatment for those of minority age, including as regards residence possibilities which might be open, even to rejected asylum seekers.

Age determination can be complicated, lengthy and often contentious. It is rarely possible with absolute certainty, even through the more sophisticated methods, and certainly not with the unreliable techniques resorted to by many countries. Certain techniques are not at all child-friendly. These include over-reliance on x-rays, or on intrusive, culturally insensitive and frightening body examinations. The fact that many unaccompanied and separated children travel without documents (or with false documents) is a complicating factor.

The consequences of wrong assessments can be potentially very harmful for children. A recent UNHCR overview of unaccompanied minor trends in Europe brought to light some disturbing issues. In Austria, for example, in some 55 cases this year the asylum authorities did not believe the age of the asylum seeking children and declared them to be adults after having their age assessed by a doctor who used widely criticized methods [sonography of organs]. As these cases were mainly dealt with under the admissibility procedure as Dublin Convention cases, this meant that, after having been found to be “adults”, there were no obstacles to detaining them, then deporting them.

There is clearly a need for a more holistic and inter-disciplinary method, as employed for example in the UK. Some practical recommendations from this Conference on minimum standards regarding age determination, making space for a more flexible extension of the benefit of the doubt, would be useful.

The same UNHCR study just mentioned brought out untoward connections between age assessment and detention. In Malta, where the detention regime for asylum seekers is punitive, some groups of claimants actually try to avoid declaring the minors among them in an effort to limit time in detention. Age assessment procedures are so lengthy and cumbersome that a minor declaring to be an adult actually has a somewhat better chance of earlier release as the claim will be processed more rapidly. This means, though, that the claim will then be assessed wholly through the adult lens, without the benefit of child-specific protections.

**Detention more generally as a feature of the response framework for separated refugee children, certainly deserves reflection by this Conference.** The ExCom Conclusion highlights the negative and often severe consequences that detention can have on the physical and mental well-being of children. It calls for States to refrain from detaining children, or to do so only as a measure of last resort and for the shortest appropriate time, considering the best interests of the child. Nevertheless, resort to detention, including of unaccompanied children, as a deterrent and a response to irregular entry is still quite prevalent in a number of countries. There are many places of detention used, from waiting zones in airports, to immigration detention centres, police cells or prisons. In some instances, children may not even have had a chance to apply for asylum due to immediate detention upon arrival. At other times, children may suffer long delays before asylum claims are determined, leading to
prolonged detention. In other instances status is recognized but detention is nevertheless the rule. Witness for example the Nong Khai detention centre in Thailand which holds 158 Lao Hmong refugees, including some 90 children, crammed into two dark, dank rooms. Resettlement countries have offered them a new home, but the refugees remain confined after many months, as a legacy of a period of history that ended long before any of them were born.

In Australia, once heavily criticised for children held in detention, there are now very welcome efforts made to reverse the earlier policies and provide alternatives to detention which respect the integrity of families and the physical and psychological well-being of children. This Conference may choose to reflect on and promote such alternative approaches.

An independent guardianship arrangement should be one of the core elements of any comprehensive child protection system. Regrettably it is still the case in many countries that guardianship systems do not exist at all, or if they do, then only in an inadequate and incomplete manner. The Europe study highlights the different practices and policies both within and among countries. In a number of countries, the guardianship system for national and non-national children has been found to be qualitatively different. Shortcomings in terms of training and monitoring have been uncovered. Similarly, provision of legal representation is often inconsistent, and when provided it is often inadequate.

The ExCom Conclusion emphasises the need to facilitate the appointment of a guardian as well as qualified free legal or other representation for unaccompanied and separated children in asylum procedures. Recommendations on how to adequately implement a system of guardianship and legal representation are still needed.

The ExCom Conclusion has an understandable focus on how to ensure proper access to asylum procedures for child asylum seekers. This begins with referral. Once newly arrived unaccompanied and separated children have been identified and registered, an initial determination will have to be made as to who they are, why they have left their countries and what their intended destinations are. This initial “pre-screening” and referral phase presents an opportunity to establish whether a child wishes to seek asylum or whether it is more appropriate to identify other available options. A system to ensure that the rights of trafficked persons - including access to international protection - are respected is one important element here.

Many of you will be aware of UNHCR’s 10-Point Plan. Tailored to ensure a protection-sensitive management of movements in which refugees and migrants move together, its philosophy is that the best response is one which is geared not to the phenomenon of migration as such, but to the people themselves who are moving, different and various as they are. Proper identification and channelling of individual claims, including from separated and unaccompanied children, is a central tenet of this approach. We are currently finalising a ‘user’ guide which draws directly on good working examples of how to accomplish this. Your suggestions on the topic could be a further contribution to the guide.

Following referral, access for separated children to the asylum process in their own right becomes the challenge. While unaccompanied and separated children should be treated as children first, refugee status is as much a means of protection for children as for adults. Asylum procedures or systems have more often than not been developed with adults in mind. Many still lack procedural safeguards, respecting circumstances such as the child’s stage of development or their possibly limited knowledge of conditions in the country of origin.
As mentioned earlier, the right of children to express their views and to participate in a meaningful way in the asylum procedure is fundamental.

Substantively, the same definition of "refugee" applies to all individuals, regardless of age. Children can also flee on account of a fear of persecution based on one of the five Convention grounds of race, religion, nationality, membership of a particular social group or political opinion. This may not always be immediately apparent because of the way children experience persecution, or express and manifest their fear. There are child-specific manifestations and forms of persecution which procedures have to accommodate. Ensuring that the child has the opportunity to meaningfully participate in the asylum process requires the involvement of experienced staff with age-appropriate interviewing and communication skills, which is not always a given. This in part accounts for a low recognition rate in many states. UNHCR is currently finalising guidelines on this particular issue, addressing both unaccompanied asylum-seeking children as well as children who are the principal applicant in an asylum procedure.

Should there be any lingering doubts as to the importance of such guidelines, I would only draw your attention to another interesting finding of the European study mentioned earlier. In Sweden it seems that whether or not an unaccompanied minor’s claim will be recognised depends less on the substance of the claim and more on where it is lodged. Applications are processed in three cities. Statistics from the Swedish Migration Board show that 73% of all claims by unaccompanied minors in one city were accepted, in another some 52% and in the third only 34%. And this is not a feature of the origin of the claimants. To take claims only from Iraqi children, the range was from 92% in one city to 2% in another.

This Conference would make an important contribution if it were to come up also with practical recommendations which would make such discrepancies impossible.

To conclude: We have a way to go before we can assume that child sensitive protection frameworks are in place and functioning as a routine aspect of broader asylum and migration management systems. No matter their status, children must be treated as children first and their best interest professionally identified and respected. This means that they must have access to child and gender-sensitive identification, referral and asylum arrangements which are professionally resourced and take into account child-specific manifestations and forms of persecution. A child friendly, not only adult oriented, lens has to be turned to border controls, interception on the seas, detention of irregular arrivals or access to and process through the asylum systems. Age assessment approaches, appropriate legal advice and provision for guardianships need to be reviewed in many situations.

To recognise this is to do little more than repeat what many pronouncements already encourage and guidelines promote. The tools exist. This Conference will hopefully go beyond reconfirmation of existing standards and instead take a level headed look at some of the practices which abound - both good and bad.

Identifying how to combat the undesirable and build the will and capacity to reinforce or replicate the good practices needs just the sort of multidisciplinary input this Conference can make.

Thank you.