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EXECUTIVE COMMITTEE OF THE HIGH COMMISSIONER'S PROGRAMME

Thirty-ninth session

SUMMARY RECORD OF THE 430th MEETING

Held at the Palais des Nations, Geneva, on Wednesday, 5 October 1988, at 3 p.m.

Chairman: Mr. JAMAL (United Republic of Tanzania)

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International Protection (continued)

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The meeting was called to order at 3.10 p.m.

INTERNATIONAL PROTECTION (agenda item 5) (<u>continued</u>) (A/AC.96/713; A/AC.96/709)

Mr. ARNAOUT (Director, Division of Refugee Law and Doctrine), introducing 1. the Note on International Protection (A/AC.96/713) said that the perception. for perhaps too long, of the refugee problem predominantly in terms of asylum and durable external settlement had directed international efforts mainly towards durable external settlement. That perception had also ensured that the content of the protection function of the High Commissioner had been largely to secure admission, humane conditions of stay and just treatment for the individuals involved. There would always be cases where durable asylum outside the country of origin was the only possible solution. In recent years, however, the Office had increasingly come to appreciate that the refugee condition was firstly exile and that there was need for an approach geared towards ending that exile and restoring to refugees their basic rights, including the right to return to their own countries. From that viewpoint, voluntary repatriation became the preferred durable solution and international co-operation to address root causes of refugee flows, in order to avert them at source and to restore conditions conducive to voluntary return, was of paramount importance. UNHCR's responsibility therefore extended beyond admission and terms of stay to promoting acceptable conditions for return in safety and dignity.

2. The Note on International Protection reflected an approach based on that twofold appreciation of the refugee problem. The introduction, highlighted certain of the basic rights and principles which were particularly relevant in a refugee situation and which determined the content of the High Commissioner's protection efforts. They were derived from instruments outside the basic refugee instruments, including the principal human rights declarations and covenants. The first truly international statement of basic human rights, the Universal Declaration of Human Rights recognized the dignity and worth of the human person and sought to promote justice, social progress and peace. The same considerations motivated international protection efforts on behalf of refugees. The introduction to the Note emphasized consistency of application and co-operative support for those basic principles: a formal legal régime did not guarantee that persons would not be exiled or that refugees would be treated humanely. In the final analysis that required co-operative practical effort on the part of all concerned, including the refugees themselves. That point was developed in the conclusions of the Note.

3. Multilateral consultations were one avenue for such co-operative efforts; the Office believed that recent progress on difficult issues through informal consultations in the European region or in working group discussions on particular groups of asylum-seekers had demonstrated their value. UNHCR had been encouraged by progress over the preceding year on two long-standing and complex situations which had generated large-scale exoduses. In such circumstances political will was an essential precondition for achieving durable solutions. The Oslo Declaration and Plan of Action on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa likewise contained a number of practical follow-up suggestions which he hoped would lead to decisive action to resolve the tragic problems faced by the countries concerned and the 6 million affected individuals. 4. In highlighting both the régime of applicable principles and the need for humanitarian practices by States, the Note endeavours to strike the necessary balance between principles and pragmatism which marked the day-to-day protection activities of the High Commissioner.

5. In its substantive sections, the Note considered in some detail specific problems under the headings of expulsion, detention, security of refugees and voluntary repatriation, in addition to sections on gainful employment and the problem of stateless persons.

6. Expulsion, including <u>refoulement</u> of refugees, was one of the more serious protection problems. The Note referred to instances of expulsion over the six-month period from August 1987 to January 1988 but information received subsequently suggested that the magnitude of the problem might have been understated. The Office looked forward to receiving suggestions from the Executive Committee as to what action it might take to contain that development. The Note referred specifically (para. 13) to the problem of push-offs of boat arrivals or interdiction on the high seas. There was a strong argument that in such cases refugees had been rejected at the frontier of the State concerned, an action increasingly recognized, as constituting <u>refoulement</u> when it led to expelling or returning a refugee to the frontiers of a territory where his life or freedom would be threatened.

7. The detention of asylum-seekers and refugees continued to be a matter of serious concern. UNHCR field offices in some countries had reported detention conditions that defied all standards of basic decency and common humanity. Moreover, long-term detention under harsh conditions without justifiable cause had increased without regard for the minimum restraints on that practice recommended by the Executive Committee. The Office had felt it necessary to reiterate the Committee's position in view of the discrepancies between it and the practices of a number of States.

It was also necessary to bring again to the Committee's attention the 8. problem of the security of refugees. Military and armed attacks on refugee camps and settlements continue to occur almost every month, in defiance of international law. The relevant chapter of the Note referred to some of the attacks which had occurred since the Executive Committee had adopted its conclusion on the subject in 1987. Much clearly remained to be done to improve the refugees' security and to deal effectively with such attacks. It was essential for the Office to be informed more rapidly and fully about attacks and to gain better access to affected areas. The Office was working both on its own and with other concerned parties to increase its capacity in that regard. A mechanism had been established in conjunction with the Secretary-General's Office to ensure better co-ordination within the United Nations system. The Note also referred to conscription of refugees and piracy attacks (paras. 35 and 36). The forced conscription of refugees into the regular or irregular forces of parties to a conflict was a complex protection problem which not only endanger the lives of the individuals concerned and their families but also put in question their continuing refugee status and the civilian character of the camps in which they lived. The matter required further concerted efforts by those concerned. Military attacks on camps illustrated the type of dangers which confronted refugees in the countries where they had sought asylum. They might also be jeopardized where their status in asylum countries was legally precarious and where detention, deportation or even refoulement was a likely response to illegal

entry. There was therefore a need in individual cases for a safety net for those facing immediate danger, which was provided through emergency resettlement. He urged States to give favourable consideration to requests for permanent asylum under such circumstances.

9. For the first time, UNHCR brought to the attention of the Executive Committee a problem in the area of social and economic rights, namely the possibility of refugees obtaining gainful employment. It did so mindful of the serious economic problems facing many host countries and accepted the legitimacy of policies which gave priority to the employment of nationals. UNHCR had therefore pursued projects of benefit both to refugees and to nationals as well as to the host country. Such programmes were partly designed to facilitate the gainful employment of refugees, which was essential to the achievement of self-sufficiency and to the process of finding lasting solutions to refugee problems. He urged all host countries to examine their laws and practices with a view to identifying obstacles to the employment of refugees and to taking measures to remove them as far as possible.

10. The section on stateless persons was included to highlight the close interrelationship between statelessness and refugee problems and to bring to the attention of States the possibilities and limitations of UNHCR's mandate in relation to refugee and non-refugee stateless persons. The Note encouraged a broader adherence to and compliance with existing instruments relating to stateless persons and suggested there was need for a further reflection on how the issues of statelessness could best be handled at the international level (para. 69).

11. Turning to the vexed question of international responsibilities towards asylum-seekers, an issue which complicated UNHCR's discussions with Governments over matters such as those raised in the Note, he said that a refugee became a refugee not by virtue of being formally determined as such, but at an earlier point when he was forced to leave his country because of the prevailing circumstances. It must therefore not be forgotten that many asylumseekers were also refugees even in the absence of the formal determination of their status. It was true that enjoyment by an individual of certain rights in a given country depended on recognition by that country of his refugee status, but there were fundamental rights, for example the right not to be expelled or returned, which could not be deemed to depend on the recognition of status. The Executive Committee had adopted a similar position in Conclusion 22 (XXXII) of 1981 which, inter alia stated that asylum-seekers forming part of large-scale influxes included persons who were refugees within the meaning of the 1951 Convention and the 1967 Protocol or who sought refuge for reasons recognized in the 1969 OAU Convention. The Conclusion reflected a significant measure of State agreement on responsibilities directly owed to The asylum-seekers regardless of whether their status had been determined. Executive Committee had on other occasions recognized that responsibilities similar in nature existed towards both refugees and asylum-seekers in respect of detention (Conclusion no. 44 (XXXVII)) and of physical safety, with particular reference to distress at sea. It had also recognized responsibilities with regard to the handling of the asylum claims even of those who were or might not be refugees. On the basis of such affirmations and as humanitarian considerations dictated, the Office accepted that certain international responsibilities to asylum-seekers existed and that they were a component of the protection functions of the High Commissioner. He was not however saying that all persons seeking asylum would remain the concern of

the Office or attract the whole range of responsibilities on the part of States. It was clear that the content of responsibilities towards asylumseekers required further definition and he looked forward to working co-operatively with States on that matter.

Two of the themes in the Note, in his view, deserved additional 12. emphasis. The first was the cardinal importance of dealing with the root causes of refugee flows, not only to avert new flows but to permit durable resolutions of existing situations. Some situations had existed for a number of years and solutions had foundered on the inability or unwillingness of States to work together to resolve political differences and to restore international peace based on full respect for fundamental human rights. The second theme was international co-operation in the multilateral context. The current major humanitarian problems, of which refugees were a product, were international in their causes, nature and dimensions. Multilateral diplomacy, as embodied in the United Nations and its organs, had come under criticism in the past for its failure to deal with particularly obdurate problems. But the United Nations could be as successful as its Member States would allow it to Over the preceding year, in face of repeated failures at the national and be. bilateral levels, there had been a conscientious effort by States to make multilateral diplomacy effective and the United Nations had emerged once again as a powerful force for restoring peace and respect for human rights. It was perhaps no exaggeration to say that prospects for international peace and understanding had never been brighter since the end of World War II. If the prospects for peace could be realized, refugees would be among the principal benficiaries. As part of the United Nations, UNHCR was happy to make its own contribution to those multilateral efforts. Subsequent to the Geneva Agreement of April 1988, UNHCR had signed bilateral agreements with Pakistan and Afghanistan to facilitate the voluntary repatriation of millions of Afghan refugees to their homeland. The Office hoped that progress with other peace efforts would similarly enhance the prospects of voluntary repatriation for large refugee groups.

13. He was gratified to see that more States than ever before were participating as observers at the Committee's current session. UNHCR's task would be greatly facilitated through the accession of more States to the international refugee instruments and through their active co-operation in the work of the Office.

14. He also wished to stress the importance the Office attached to co-operation with non-governmental organizations, on which much progress had been achieved over the preceding year through more regular contacts and more frank and objective exchanges.

15. In conclusion, while the problems of refugee protection remained critical in many areas, the Office was hopeful that recent multilateral co-operation to resolve international disputes, which often lay at the source of today's large-scale refugee problems, could only have a beneficial effect on finding solutions to those problems.

16. <u>Mr. GROTH</u> (Sweden) said his country fully supported the reaffirmation of the universality of UNHCR's mandate in the conclusions on refugee protection. Noting that since the previous year there had been only two additions to the number of States which had ratified the 1951 Convention or the 1967 Protocol, he said that his Government would like to appeal to countries which had not yet done so to ratify those instruments.

17. His delegation welcomed the conclusions relating to the dissemination and promotion of refugee law, particularly insofar as they pertained to the development of practical application of that law.

18. It was important to find solutions to the problem of stowaway asylumseekers: although the proposed guidelines were a step forward, much more needed to be done through continued work, perhaps in a smaller working group.

19. His delegation was concerned with the deterioration in the protection of refugees, as described in the Note on International Protection (A/AC.96/713), particularly the continued attacks on refugee camps and the abuse of refugee children and women. The exercise of the careful formulation of conclusions for adoption by the Executive Committee was obviously futile if those conclusions were not subsequently respected by Governments and raised the question of the seriousness with which Governments regarded their commitment to protect refugees.

20. Mention should also be made of the costs of the reception and integration of asylum-seekers and refugees. Sweden's annual expenditure under that head, more than SKr 3 billion (about \$500 million), approximately equalled UNHCR's total budget.

21. His delegation welcomed the guidelines prepared by UNHCR on refugee children and hoped that all those responsible would endeavour to ensure that such children were not victimized. It also hoped that in due course the special working group on refugee women established by the High Commissioner would produce a set of guidelines. UNHCR must devote serious and continued attention to the highly vulnerable groups of refugee women and girls.

22. Sweden and the other Nordic countries were becoming increasingly concerned by the fact that unaccompanied children were arriving in a number of European countries. In view of the difficulties of taking proper care of them, as well as from the emotional and psychological viewpoint, repatriation, where possible, would seem to be the most humane solution.

23. His Government commended UNHCR for arranging a seminar in 1988 on speeding up asylum procedures and hoped that similar practical seminars would be arranged covering other topics of interest. Finally, since international protection was the primordial function of UNHCR, the work of the Sub-Committee of the Whole on Protection was of great importance; his delegation proposed that future meetings of the Sub-Committee should be prepared in broader consultations with Governments.

24. <u>Mr. INDER</u> (Australia) said that the Committee's priority task should be to ensure the continuation of an international régime which offered protection to refugees, and to ensure that nothing was done to dilute international response to their needs. It was true that asylum-seekers required protection until such time as their status was determined, but the fundamental responsibility was to ensure the protection of refugees from refoulement.

15. He had therefore been concerned to learn from the High Commissioner's pening statement that a number of cases of <u>refoulement</u> had occurred since the ommittee's last session. There was regrettably no doubt that many people ade use of the asylum opportunities offered by certain countries for

migration purposes, with the consequence that it was more difficult for those countries to respond to those with legitimate refugee claims. He had also been concerned to learn that immigration control mechanisms were being introduced by some countries to check the flow of asylum-seekers. Immigration procedures, which were a necessary dimension of the exercise of sovereignty of States, were not intended to keep out asylum-seekers or refugees, but rather to regulate migratory flows from one country to another. The real issue which the Committee needed to discuss was how to ensure that those with legitimate refugee claims could enjoy international protection. That being said, his delegation fully supported the draft conclusion on the issue (page 11, document A/AC.96/717), as well as the Chairman's proposal for the deletion of paragraph 4.

26. He urged that improved public information campaigns should be launched to make the international community aware of the plight of refugees. Heightened public awareness, together with improved training for all those involved in refugee determination procedures, could not but enhance the protection capacity of member States. He welcomed the renewed emphasis that UNHCR was giving to those efforts.

27. At the request of the High Commissioner, consideration was currently being given to ways of improving responsiveness to emergency cases, and notably to the needs of refugee women. A comprehensive account of the problems of such women was given in the Note on Refugee Women (A/AC.96/XXXIX/CRP.1), and he trusted that UNHCR's internal guidelines on the question would ensure that they were given more effective protection.

28. He hoped that the Committee would reach some conclusions on the problem of stowaway asylum-seekers at its current session. Although the draft conclusions did not take any position on the responsibilities of port or flag States, they nevertheless offered a practical means of resolving that sensitive issue.

29. All the countries present at the session of the Executive Committee whether countries of asylum, countries of resettlement, or donor countries should work together to ensure that the different types of action they were taking served the best interests of those with genuine refugee claims. In the last analysis, however, his delegation concurred with UNHCR's view that voluntary repatriation, whenever feasible, remained the preferred solution.

30. His delegation had already suggested that the Sub-Committee of the Whole on International Protection might make a closer study of some of the important elements inherent in the issue of solutions, notably preventive and remedial measures, the basic solution of return, the elements included in the Principles on Voluntary Repatriation adopted in 1985 and the relationship of protection to solutions. Such a study would need considerable preparation, and he suggested that a series of open-ended working groups might be established to prepare the ground for a more formal consideration of the issues by the Committee.

31. As the Note on International Protection had pointed out, UNHCR's protection efforts were supported by a wide range of international human rights instruments. Those instruments served as a reminder of the unique human personality of each refugee. The protection of the individual refugee deserved the Committee's continuing commitment and efforts.

32. <u>Mr. HUSLID</u> (Norway) said that his country remained deeply committed to the protection of refugees, in accordance with the principles laid down in the 1951 Convention and the 1967 Protocol. UNHCR's protection role gave it its distinctive position among the United Nations agencies.

33. His delegation had been particularly concerned to learn of an increase in violations of the principle of <u>non-refoulement</u>. It was also disturbed to see that despite the recommendations on the subject adopted by the Committee, detention under harsh conditions for long periods and without justifiable cause had recently increased. In addition, military and armed attacks on refugee camps and settlements had continued. He hoped that such practices would be unanimously condemned by the Committee.

34. His delegation agreed with UNHCR that the best solution to refugee problems was to remove the root causes of refugee movements, and was pleased to note that the Office was closely following the work of the Commission on Human Rights and of other human rights bodies, so as to be able constructively to address the question of root causes as well as the question of the responsibilities of States.

35. There was broad agreement that voluntary repatriation, whenever feasible, was the preferred solution to any refugee situation. The recent favourable developments in various conflict areas greatly improved the prospects for a return home in dignity and safety for millions of refugees, and the repatriation effort would need further support both by UNHCR and by individual Governments.

36. The highest priority should be attached to programmes for the protection and assistance of refugee women and children, and in that connection he welcomed the publication of UNHCR's guidelines on refugee children. He commended the Office on establishing a Steering Committee on Refugee Women, and for the comprehensive note on the subject that had been submitted to the Committee. He agreed that further action, both at the national and international levels was essential. Violations of the physical safety and integrity of refugee women should be condemned, and preventive and corrective action taken whenever necessary. He stressed the need to create opportunities for enhancing the self-reliance of refugee women, thereby limiting the risk of exploitation and enabling them to play their full part in socio-economic life.

37. Norway supported the draft conclusions contained in the report of the Sub-Committee of the Whole on International Protection (A/AC.96/717). In particular, it supported Sweden's proposal that the Secretariat should consult more closely both with States and with non-governmental organizations on the issues to be included on the Sub-Committee's agenda.

38. <u>Mr. HADORN</u> (Switzerland) said the Note on International Protection (A/AC.96/713) rightly reaffirmed the High Commissioner's fundamental humanitarian responsibility towards refugees in danger. UNHCR's protection role was an exacting one, in that the problems requiring its intervention differed from one continent to another, and also evolved with time. In view of the multiplicity and complexity of those problems, the Office should concentrate on its primary objective of refugee protection, which should enable it to take more effective humanitarian action.

39. The most essential aspect of the High Commissioner's protection role was the safeguarding of the life and liberty of refugees, and the preservation of their human dignity. Respect for those basic rights depended to a large extent on how far the authorities were aware of them, and it was for that reason that his delegation supported the draft conclusion on the promotion and dissemination of refugee law proposed by the Sub-Committee of the Whole on International Protection. That conclusion had recommended a strengthening of practical promotional activities, and the recent seminar on establishing procedures which were both effective and respected the rights of refugees was a good example of such an activity.

40. Lack of information was also in part the cause of the problem of the influx of asylum-seekers, which was now becoming increasingly like a migratory movement. Most asylum-seekers were claiming to be exercising their right to leave their own country, and were taking advantage of the easy availability of international transport in order to do so. However, they were unaware that every State had a sovereign right to determine whether or not foreigners should be permitted to enter its territory.

41. The levels of acceptance in a large number of States had shown that in nine cases out of 10, asylum procedures were undertaken by persons who were not entitled to protection under the 1951 Geneva Convention. There was a certain danger inherent in that situation. First, the overburdening of the authorities responsible for implementing the procedures meant that there were delays of several years. Secondly, legislation on asylum was becoming increasingly discredited in the eyes of the public, thus undermining the foundation of any positive policy of asylum, namely the willingness of a large part of the population to simplify the admission of refugees.

As he saw it, the dilution of the concept of "refugee" would not solve 42. the dilemma, although it would have the short-term effect of reducing administrative problems and raising levels of acceptance of refugee status. However, it would at the same time weaken the basic principle of non-refoulement, which was to be avoided. A refugee, as defined by the Geneva Convention, should be able to count on protection in a host country That did not mean that other foreigners might not also against persecution. be permitted, for humanitarian reasons, to remain in a country at least on a temporary basis, but their acceptance would not be based on an obligation enshrined in the Convention to respect the principle of non-refoulement; it would rather be based on considerations of humanitarian law or international solidarity, in other words, on a free decision by the State concerned. In his view, a clear distinction between refugees and other categories of foreigner could strengthen protection against persecution. Accordingly, measures to combat abuses in regard to asylum-seeking should not be seen as signs of insularity or of lack of international solidarity, but rather as a means of protecting refugees and of ensuring the continuation of an active and liberal asylum policy.

43. It was for that reason that his delegation endorsed the conclusions proposed by the Sub-Committee of the Whole on International Protection. The Committee's decisions on the matter, as well as its views in regard to uncontrolled migratory movements, would provide a useful basis for dialogue between European countries and the High Commissioner's Office.

44. <u>Mr. Yishan ZHANG</u> (China) said the Sub-Committee of the Whole on International Protection had held a very fruitful session. It had not only discussed such important issues as international solidarity, but had also adopted conclusions which were crucial for the strengthening and improvement of future work on refugees, as well as for the enhancement of refugee protection. The conclusion in regard to stowaway asylum-seekers was particularly noteworthy.

45. He was heartened to note that the international community had always seriously endeavoured to apply the principle of international solidarity. Although there was still room for improvement, the world's 10 million refugees were at least being given basic humanitarian treatment, and were being saved from the threat of starvation and disease. In the interests of international solidarity, further efforts should be made by countries of first asylum, donor countries, resettlement countries and UNHCR, and those countries which were directly responsible for the creation of refugee problems should in their turn not shirk their responsibilities.

46. Despite some positive developments in the field of refugee protection over the past year, there were still serious problems which gave cause for concern. Military and armed attacks against refugee camps and settlements had taken place in southern Africa, Asia and the Middle East, causing enormous casualties among refugees, many of whom were innocent women and children. There was need for the international community to condemn such attacks in the strongest possible terms, and the Committee should take action accordingly.

47. Since the overwhelming majority of the refugee population consisted of women and children, special attention should be paid to their need for protection. He appreciated the work done in that field by UNHCR in the past year; the establishment of the Steering Committee on Refugee Women, and the formulation of guidelines on refugee children, were valuable initiatives. UNHCR should strengthen its co-operation with relevant United Nations agencies, to ensure that the special needs of refugee women and children were met.

48. The recent progress in settling regional conflicts should be conducive to the solution of the refugee problem, and he urged the international community to make its contribution by a further display of solidarity.

49. <u>Mr. WRENCH</u> (United Kingdom of Great Britain and Northern Ireland) said his country attached considerable importance to UNHCRs protection role. He welcomed the report of the Working Group on Refugee Children at Risk, which highlighted the special protection needs of a vulnerable group, and urged all countries to work together to ensure that the principles of the 1951 Geneva Convention and the 1967 Protocol were upheld.

50. The reports of continuing armed attacks on refugee camps and settlements were a source of concern. More extensive training to educate armed groups, including both irregular and regular forces, in humanitarian principles was to be encouraged. Equally, it was important to ensure that refugee camps were not used as the breeding ground for further violence.

51. The United Kingdom remained fully committed to its obligations under the Geneva Convention and Protocol. There was no question of the United Kingdom turning away genuine refugees. However, it was concerned by the continuing

abuse of the asylum process. There had been a very great increase in the numbers of applications in recent years, a large proportion of which were unfounded. It was vital to establish procedures which would ensure proper protection for genuine refugees, while at the same time avoiding any undermining of overall immigration control.

52. His delegation was also concerned by the frequency of irregular movements of asylum-seekers from one potential country of refuge to another. There was no provision in the Convention, or in any other international instrument, which entitled asylum seekers who were no longer at risk to travel the world in search of a more congenial location for settlement.

53. With reference to paragraphs 9 to 15 of the Note on International Protection (A/AC.96/713), his delegation wished to confirm that the United Kingdom intended fully to honour its obligation not to <u>refoule</u> refugees. However, it was important to be clear what was meant by <u>refoulement</u>: it did not include such actions as the return to the country of failed asylum-seekers after completion of refugee determination proceedings, or the return to country of embarkation of asylum-seekers who had come from a safe third country. Those were actions which could be taken at the discretion of individual States, and the United Kingdom reserved the right to take such actions when appropriate.

54. With reference to paragraphs 16 to 23 concerning detention, he stressed that in the United Kingdom asylum-seekers were only detained when absolutely necessary. The aim of the United Kingdom authorities was to complete the consideration of claims by detained asylum-seekers as quickly as possible, and the need for continued detention was regularly reviewed. Long periods of detention were rare, and usually occurred in cases where an asylum-seeker who had not been granted refugee status sought to reverse that decision by protracted secondary representations and legal action.

55. His delegation did not accept that the steps taken to reduce abuse of the asylum process, such as the introduction of visa requirements and penalties for carriers of improperly documented passengers, were to the detriment of genuine refugees. His country remained ready to consider application from third countries by refugees for whom the United Kingdom was the most appropriate country of refuge.

56. Over the past 10 years, the United Kingdom had granted asylum to over 8,000 refugees, had allowed more than 9,000 asylum-seekers to stay on on an exceptional basis, and had also admitted over 20,000 Vietnamese refugees. The United Kingdom supported the conclusions of the Sub-Committee of the Whole on International Protection, and was pleased to reaffirm its commitment to the protection of refugees, both in regard to its own policy and in regard to UNHCR's work worldwide.

57. <u>Mr. DANNENBRING</u> (Federal Republic of Germany) endorsed the choice of international protection as a major topic at the Committee's current session. He concurred with UNHCR's declared intention to pursue a policy of pragmatism, realism and universal respect for international norms, while at the same time seeking solutions which would not further expand its mandate.

58. His delegation shared the concern expressed in the Note on International Protection (A/AC.96/713) that an increasing number of States were taking

measures which violated the basic principle of <u>non-refoulement</u>. He urged all States concerned to refrain from taking such measures, and, to accede, if they had not yet done so, to the 1951 Geneva Convention and other relevant instruments, so that the principle of <u>non-refoulement</u> would acquire the status of international law throughout the world.

59. His delegation also shared the concern of UNHCR regarding the continued detention of refugees under conditions which violated minimum standards, and also regarding armed attacks on refugee camps and settlements. He urged States to refrain from such violations of the basic rights of refugees.

60. His Government would continue to support all steps by UNHCR to promote voluntary repatriation and local resettlement of refugees in their region of origin, since it regarded that approach as the most likely to achieve a humane and durable solution.

61. Paragraphs 46 to 58 of the document, concerning gainful employment of refugees, were of particular interest. However, problems could well arise in practice, notably when refugees arrived in a country with high unemployment or restricted work opportunities. Similarly, his delegation had read with interest the views expressed in regard to the question of stateless persons in paragraphs 59 to 69 of the document. It would appreciate more details in regard to the existing numbers of non-refugee stateless persons. It considered that the problem could best be solved if more States acceded to the 1954 Convention relating to the Status of Stateless Persons, and also to the 1961 Convention on the Reduction of Statelessness.

62. In conclusion, he urged all countries to assist the High Commissioner in his efforts to find a humanitarian solution to the ever-more complex problem of refugees.

63. <u>Mr. DEMIRALP</u> (Turkey) said that UNHCR was only able to carry out its primary function of providing protection for refugees with the support and co-operation of States, and that in view of the dimensions of the refugee problem, increased co-operation was needed, not only between UNHCR and States, but also among States.

64. In spite of a broad consensus as to the need for such an approach, there had been increasing evidence in recent years of confusion in the public mind between the situation of refugees and that of other aliens who were trying to gain entry into developed countries. That confusion had been to the detriment of refugees. It was essential to make a distinction between genuine and abusive asylum demands, since granting asylum to persons in the latter category only created a negative attitude to refugees in general. Furthermore, the allocation of available material resources to such persons might deprive asylum-seekers waiting in first asylum or transit countries of resettlement possibilities.

65. A distinction should also be made between immigration and refugee issues. Measures designed to control immigration should not adversely affect the rights of asylum-seekers awaiting resettlement.

66. The heavy burden on the developing countries could only be alleviated if developed countries adopted more flexible resettlement policies. The continuation of restrictive measures in developed countries might leave the developing countries with no other choice than to adopt restrictive measures in their turn in order to control refugee movements. Needless to say, such a situation could lead to the erosion of the fundamental principles on which international protection was based.

67. <u>Mr. FATTAL</u> (Lebanon) said that the lack of precision and the shortcomings in the texts of instruments of humanitarian law made it possible to restrict the law and apply it in a negative manner. It was against that background that the UNHCR's role was played out. While the UNHCR should be congratulated on reminding States of their responsibilities and obligations, one might be surprised at its adoption of a style that was perhaps too diplomatic, its use of allusion as well as its reluctance to identify those who perpetrated violations of refugee law.

68. The problems of implementing humanitarian law were often due to ignorance of the law, which should be disseminated in as many languages as possible and towards as many people as possible; in particular the public in the donor countries and in the countries of asylum, Governments that had not acceded to the Conventions and those that were not members of the Executive Committee.

69. The non-governmental organizations also had a role to play in illustrating and defending refugee law; they were working for a more liberal interpretation and could take part in drafting legislation. The difficulties in achieving a more liberal interpretation were reflected in the problems experienced by the Sub-Committee of the Whole on International Protection in inserting a reference to that concept in the draft conclusions on international solidarity and refugee protection.

70. The Note on International Protection described the alarming problems relating to the employment of refugees. Work was a way of enabling a refugee to secure a certain autonomy and a link with a community. It was therefore necessary to set legal issues in a wider perspective of development and promotion of human rights.

71. <u>Mr. BENHIMA</u> (Morocco) said that the Note on International Protection of Refugees (A/AC.96/713), contained a warning against the emerging trends that threatened to dismantle or distort the international instruments in force and eventually to erode the authority of UNHCR. To avert that twofold danger, there must be an awareness of the need for strict compliance with the internationally-recognized rules.

72. The co-operation of States was the keystone for enabling the UNHCR to discharge its task of refugee protection, and that co-operation must be reflected in financial, political and moral support by Governments for UNHCR activities.

73. Although most of the States parties to the 1951 Convention and 1967 Protocol complied with their provisions in respect of protection, in other traditional host countries refugees and asylum-seekers were sometimes subjected to violations of the basic principles of international protection. Those included deprivation of freedom of movement, detention, attacks on physical security and sexual violence. A special effort and increased understanding based on solidarity was required of host countries.

74. His delegation hoped that the Committee would adopt the recommendations of the Sub-Committee of the Whole on International Protection relating to international solidarity and protection. It also welcomed the rapid implementation by UNHCR of the Conclusion on women refugees adopted at the thirty-eighth session. In conclusion, his delegation continued to support the claims of the Palestinian refugees to international protection in the framework of the High Commissioner's mandate, in conformity with article I, paragraph D, of the 1951 Convention.

75. Mr. STEWART (Canada) said that the year 1988 had seen both new hope for refugees in many areas, and new despair in others.

76. This contradiction of success combined with new problems served as a reminder of the enduring and global nature of the challenge which the international community and UNHCR faced, and of the need to adhere to the principles enunciated in the Convention and in the Protocol if the protection of refugees was to be assured.

77. Canada had long advocated a co-operative and international system for the identification and protection of refugees, and had itself made co-operation with other countries and UNHCR the basis of its refugee programmes. The year 1988 had been the tenth anniversary of the proclamation of Canada's immigration law which, developed with the co-operation and advice of UNHCR, had incorporated into Canadian legislation the refugee definition from the 1951 Geneva Convention. The country had since developed a refugee programme that was world-wide in scope.

78. His delegation strongly endorsed the High Commissioner's call for better promotion and dissemination of refugee law. As individuals, refugee-assisting agencies, and Governments became better informed regarding refugee law, and regarding UNHCR policies and programmes, they would be better able to ensure respect for the basic principles of <u>non-refoulement</u> and protection. Pragmatic, but honourable and practical solutions would then be found to the problems facing countries of first asylum and countries of permanent resettlement alike.

79. Protection must start with international solidarity to attack root causes. Where root causes could not be addressed, it fell to States to ensure respect for the principle of first asylum and subsequently an adequate international response. Out of respect for those principles, Canada had frequently responded to requests from the UNHCR for special assistance in many areas, including, recently, Turkey.

80. Canada had always been particularly responsive to the difficulties faced by developing countries which found themselves in the role of countries of first asylum, and has assisted them through the permanent resettlement in Canada of large numbers of refugees. It has also responded to internationally recognized needs through highly specific responses within such programmes as DISERO and RASRO, and in response to UNHCR appeals on behalf of highly-sensitive individual protection cases.

81. Canada had also sought innovative solutions to new resettlement problems, for example by establishing, with the assistance of UNHCR's Settlement Branch, a special programme designed to help refugee women and children who faced unusual difficulties in re-establishing themselves in a new country. 82. International solidarity went together with international responsibility. Despite population flows of unprecedented scale, States had a legal and moral obligation to see to it that scarce national resources were directed to persons genuinely meeting the refugee definition. That could only be done through faithful adherence to the standards and precedents set by UNHCR itself.

83. Not all asylum-seekers were refugees. That being said, the scrupulous but humane application of UNHCR refugee selection guidelines by national authorities was the only way to ensure that efforts on behalf of genuine refugees were not diluted to the point of inadequacy.

84. Canada welcomed the conclusions of the report of the Sub-Committee of the Whole on International Protection and was pleased that 101 countries had acceded to the Convention. Practical applications of the promotion and dissemination of refugee law and principles must be elaborated through intensified efforts to provide training to persons involved in the daily application of refugee law.

85. With respect to the Conclusion on international solidarity and refugee protection, Canada agreed that all States must reaffirm their commitment to adhere to the basic principles of <u>non-refoulement</u> and protection in a co-operative spirit. Canada fully supported that Conclusion and the Conclusion on Stowaways.

86. <u>Mr. ADJABI</u> (Algeria) said that the international protection of refugees continued to be UNICEF's <u>raison d'être</u>. Unfortunately, at a time when UNHCR needed the assistance and support of the entire international community, the world was witnessing a failure of international solidarity and a deterioration in international protection. The restrictive asylum policies adopted by some countries and the insufficient assistance given to the economically weakest countries of first asylum contrasted sharply with the recognized principle of burden-sharing and were leading to the erosion of the international protection system.

87. The situation was no less alarming in a number of regions in the world where a large number of refugees continued to be subjected to violations of their physical integrity and security, and the armed attacks against refugee camps were even more serious. In that connection, the section on the security of refugees seemed to equate the responsibilities of the countries of asylum and those of the aggressor. It would be appropriate if that section of the report could be improved and the facts re-established. The role of UNHCR in the security of refugee camps should also be stressed. He congratulated UNHCR on the elaboration of the document on guidelines for refugee women and children.

88. The solution of the problems of international protection of refugees and asylum-seekers devolved upon the international community as a whole and entailed compliance with the obligations deriving from the international legal instruments and international customary law, the adoption and implementation of liberal asylum policies, and the full realization of international solidarity. The latter was particularly important for the African countries, which continued generously to offer hospitality to the increasing numbers of refugees despite crushing economic and social constraints.

89. The promotion and dissemination of refugee law should have a special place in UNHCR's efforts to find solutions to refugee problems. His delegation endorsed the draft conclusion on the promotion and dissemination of refugee law as contained in the report of the Sub-Committee and particularly hoped that paragraph 4, which in its view adequately reflected the concerns expressed in the Committee, would be maintained.

90. He regretted that it had not been possible to adopt the conclusions on stowaway asylum-seekers at the current session. In that connection, his delegation considered that until their status was determined, stowaway asylum-seekers should be protected against a forcible return to their countries of origin. The port State where the asylum-seeker's application was submitted should request UNHCR co-operation with a view to seeking a satisfactory durable solution.

91. <u>Mr. BENEDETTI</u> (Italy) said that there were clear signs of a trend towards a progressive erosion of certain refugee protection principles. It was therefore imperative for the States present in the Executive Committee to reaffirm their commitment to internationally recognized principles, bearing in mind that even isolated cases of erosion of those principles could have negative repercussions.

92. As stated in the Sub-Committee of the Whole on International Protection, solidarity was the key-word. States must assume their responsibilities within the clearly defined limits of the precise international instruments from which their obligations derived.

93. There had indeed been changes in the characteristics of refugee populations since the 1950s. In his delegation's view, however, although there were still gaps in the legal régime, the international instruments provided the necessary principles and criteria to secure adequate protection levels. The waning sympathy for refugee causes should be counteracted by the pursuit of real solidarity on the part of the members of the international community.

94. Formal legal régimes were necessary but not sufficient, as the continuing military and armed attacks on refugee camps attested, despite the adoption of the relevent Conclusions in 1987. What was essential was the political will and commitment of all concerned. The way towards creating a more positive environment for refugee protection also lay through a wide-ranging campaign of awareness and goodwill-building based on dissemination and promotion of basic refugee protection principles.

95. On the basis of the foregoing considerations, his delegation was prepared to give full support to the draft conclusions on international protection.

96. <u>Mr. TLILI</u> (Tunisia) said that, in view of the steady increase in the number of refugees, the international community must take resolute action to eliminate its basic causes. The promotion of international peace, political stability and economic and social development was the only means. When there were prospects of long-term solutions, as was fortunately the case at the moment in some parts of the world, UNHCR should do its best to take advantage of them and to promote extensive voluntary repatriation. When that was not possible, States, non-governmental organizations and UNHCR should co-operate to find temporary and partial solutions with a view to preserving existing ethical and legal standards. A continuous erosion of the right of asylum was a serious matter which called for frank discussion. Any violation of the internationally recognized rights of refugees constituted a challenge to existing standards. Moreover, any limitation on the rights of refugees in one region of the world led to subsequent limitations in neighbouring regions. It was difficult to justify the local settlement of refugees to a host country when the right of asylum and the principle of <u>non-refoulement</u> were unequally respected in different regions, or to uphold the right of asylum in countries with limited resources if the possibilities of resettlement were becoming more and more infrequent and the countries of first asylum were abandoned to their fate.

97. There was consequently a need for international recognition of a corpus of legal and ethical rules and for the harmonization of national legislations and practices. The minimal rules already existed, being provided for in the 1951 Convention and the 1967 Protocol as interpreted in the conclusions reached by the Sub-Committee on International Protection and consolidated in relevant human rights instruments. It was, however, important that those rules should be solemnly reaffirmed by the international community. In order to do so and to fill the gaps which undoubtedly existed in present refugee law, UNHCR could play a central promotional and co-ordinating role. There was no need to enlarge the High Commissioner's mandate. It would be sufficient if that mandate could be fully carried out and if States really were willing to co-operate. For example, paragraphs 35 and 36 of the 1951 Convention had not been implemented. The reports provided for in paragraph 35 were not furnished. In his delegation's view, the full co-operation of States parties with UNHCR, in conformity with the provisions of the Convention, would be sufficient to improve the work done to protect refugees.

98. The Note on International Protection also raised other questions, including military attacks on refugee camps and settlements, to which UNHCR should react whenever and wherever they occurred, including in cases of attacks on Palestinian camps. UNHCR should give special attention to the most vulnerable groups, such as women, children and asylum-seekers at sea, as well as to stateless persons whenever they fell within its mandate. The passage in the Note concerning refugees' right to work was appreciated. Nevertheless, without a substantial increase in financial assistance, whether humanitarian, emergency or developmental, in many poor countries the right of asylum would suffer from the lack of material means essential for its exercise.

99. Finally, the Director of Refugee Law and Doctrine was to be congratulated on the quality of his Note, and UNHCR on the attention which it continued to give to international protection.

100. <u>Mr. KUSSBACH</u> (Austria) said that, from all the information available to it, his delegation took comfort in the importance being given to international protection but deplored the violations of basic principles which seemed to be occurring in many parts of the world. The edifice of international protection appeared fragile, and the international community must, together with UNHCR, explore ways and means to consolidate what had been achieved so far. One practical step might be to intensify contacts between formal sessions of the Executive Committee. His delegation therefore hoped that UNHCR would take the necessary steps to initiate action in that regard.

101. Austria was experiencing a considerable increase in the number of asylum-seekers, mainly from Eastern Europe, which could not, on the whole, be attributed to the existing agreements between Austria and some Eastern European countries on the abolition of visas for tourists. Austria welcomed the more liberal regulations adopted by some Eastern European countries to permit their nationals to travel abroad. Hundreds of thousands of tourists from those countries were now visiting Western Europe, and some of them decided to stay and apply for asylum. Only a few were granted refugee status. In that situation, the Austrian Government, while determined to continue its liberal asylum policy, had also taken steps to resolve the problems arising from the growing flow of asylum-seekers.

102. Mr. Mock, the Foreign Minister, had taken an important initiative within the Council of Europe by drawing attention to the new major influx of asylum-seekers from Eastern Europe and proposing concrete action to arrive at a common approach to the problem. Such action included a thorough evaluation of the cross-border movement of persons in Europe in the light of both developments in Eastern European countries and the CSCE process, the elaboration of an approach to cope with the influx, including voluntary repatriation to the country of origin, and the establishment of regular consultations within the Council of Europe.

103. In addition, measures had been taken at the national level to avoid unnecessary delays and long waiting times pending the final decision on the granting of asylum, and appropriate steps had been taken to speed up asylum procedures under existing legal regulations, fundamental guarantees of fair procedures being in no way curtailed. Where the decision was negative, applicants were given advice and support to facilitate their voluntary return to their home country.

104. His delegation agreed with the Swedish representative's view concerning the importance of the High Commissioner continuing to monitor the refugee situation in Europe. Austria fully supported the work being done in the informal consultations between certain countries, in which the refugee situation in Europe should be included. His Government was very pleased to host the next meeting in Austria.

Mr. KELLEY (United States of America), after expressing his appreciation 105. of the Note on International Protection, said that there was one area of concern that was not dealt with by the Note and was so far inadequately handled in the guidelines on refugee children. As the largest country of resettlement for unaccompanied and unattached minors, the United States had both a humanitarian and a practical interest in how those cases were managed. All children separated from their parents might be at special risk of neglect or abuse, even if they appeared to be attached to some other family unit or individual. His Government believed that all States and organizations involved with the protection of asylum-seekers and refugees needed to take new, concrete steps to focus their efforts on those children, to scrutinize their living conditions, and to increase their endeavours to reunite them with their parents. Furthermore, all States needed to recognize the special problems of children separated from their parents and to work in co-operation with other States and with UNHCR to ensure that legal protection for them was in place, as well as policies and programmes designed to solve their particular problems. International adoptions must be very carefully scrutinized. In all those efforts, Member States and UNHCR, as well as other

international and private organizations, must seek to protect the best interests of the child above all and respect the principle of the unity of the biological family.

106. His Government's concern for migrant children separated from their parents stemmed from a perception that there was sometimes a tendency to "let well enough alone" when a child was found separated from his or her parents, as long as he or she was attached to some adult or family unit. His country's experience was that such a tendency might lead to situations where children were not reunited with their parents, might be abandoned or attached to abusive or problematic households upon arrival in the United States, or exposed to abusive adoption practices.

107. His delegation supported the conclusions submitted in the report of the Sub-Committee on International Protection.

108. <u>Mr. MTANGO</u> (United Republic of Tanzania) said that his delegation fully agreed with the assertion made in paragraph 4 of the Note on International Protection that failure to defend basic principles and to protect refugee rights could only lead to an erosion of the High Commissioner's authority, of the guiding principles and, ultimately, of the system of international protection itself. If UNHCR's mandate was not faithfully discharged, the moral authority of the Office would be placed in jeopardy.

109. The Note on International Protection had rightly pointed out the importance of strictly observing the principle of <u>non-refoulement</u>, non-expulsion and non-rejection at the border, in particular when the latter occurred without any access to appropriate procedures. The Note also pointed out that, notwithstanding the Executive Committee's conclusions discouraging the detention of refugees, detention under harsh conditions for long periods and without justifiable cause had recently increased. Paragraph 23 of the Note further pointed out that many States, including members of the Executive Committee which had participated in the elaboration of the conclusions on the detention of refugees, continued to detain refugees and asylum-seekers in disregard of the basic minimum standards recognized as appropriate. Those reports must preoccupy the minds of all members of the Executive Committee, and the present debate provided an opportunity to engage in self-examination with a view to improving the individual record of each State.

110. His delegation's interest in the question of security of refugees in general, and military or armed attacks on them in particular, was well known. In paragraph 26 <u>et seq</u>. of the Note on International Protection, the High Commissioner reported that there had been a wide variety of military and armed attacks on refugee camps and settlements during 1987 and the first six months of 1988, the vast majority of which had taken place in Africa and the Middle East. Such attacks had resulted in indiscriminate violence against refugees, including women, children and aged persons, as well as civilians living in the vicinity. In one country in Africa alone, some 33 attacks had been registered in 1987, with a large number of refugees murdered, injured, raped, abducted or reported missing. Women were usually the most productive element of the refugee community; although not vulnerable <u>per se</u>, they were particularly subject to harassment. UNHCR was therefore to be commended for giving some recognition of that priority in paragraph 7 of the Note on Refugee Women in document A/AC.96/XXXIX/CRP.1.

It was on the basis of those very preoccupying situations that his 111. delegation called upon the High Commissioner to intensify his involvement in all aspects of the problem of security of refugees, giving due emphasis to armed attacks. The conclusions on military or armed attacks adopted at the thirty-eighth session of the Executive Committee and the Declaration adopted by the International Conference on the Plight of Refugees, Returnees and Displaced Persons in Southern Africa provided the High Commissioner with an additional basis for decisive action in that area. His delegation therefore hoped that the machinery now put into place by the High Commissioner would closely monitor events, collect information, and draw the attention of the international community to the urgent need to deal with that inhuman practice of a number of States and surrogate armed groups. The High Commissioner should seek international co-operation in bringing pressure to bear on the perpetrators of armed attacks and other violations of the physical safety of refugees, in order to end them forthwith. He should also be more actively engaged in tackling the root causes of refugee movements, in line with his mandate to seek permanent solutions.

112. It would be a contradiction if the Committee, while adopting conclusions on international solidarity and refugee protection, were to consider action that departed from the focus on solidarity, co-operation and burden-sharing, without which the common humanitarian endeavour could not succeed.

113. It had been agreed that operative paragraph 4 of the Sub-Committee's draft conclusion on international solidarity and refugee protection should be replaced by a compromise text that had been worked out with his delegation's participation. His delegation was willing to accept the compromise text but considered that the text in square brackets on page 11 of the Sub-Committee's report lacked the essential elements for a balanced solution to the problem and should therefore be deleted. His delegation had no objection to the text in square brackets on page 14 of the Sub-Committee's report.

114. <u>Mr. ROBERTSON</u> (Australia), Chairman of the Sub-Committee of the Whole on International Protection, confirmed that a compromise text had been worked out to replace the text in square brackets on page 11 of the Sub-Committee's report. He would read it out, so that delegations could consider it overnight. If any difficulties were found, they should be reported to him or to the Secretariat early the following morning. The compromise text was as follows: "<u>Recalled</u> that respect for fundamental humanitarian principles of protection is, in all circumstances, an obligation for all members of the international community, it being understood that the principle of international solidarity contributes to the satisfactory implementation of these principles".

115. The CHAIRMAN urged members to study the compromise text overnight.

The meeting rose at 5.55 p.m.