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WORKING SESSION 11

Humanitarian issues and other commitments, including:

- Combating trafficking in human beings
- Refugees and displaced persons

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Good afternoon Excellencies, Ladies and Gentlemen,

I would like to thank the organisers – in particular the Special Representative and her office – for the invitation and the opportunity to contribute to the review of the OSCE commitments concerning efforts to prevent child trafficking, to address the special needs of child victims, and to prosecute those who traffic children.

As some of you may know, I worked on anti-trafficking issues at the ODIHR from 2000-2004 and subsequently worked with Save the Children and UNICEF specifically on child protection issues.

I. Positive developments in law and policy – now we need to focus more on implementation

Over the past ten years, we have seen significant progress in the fight against child trafficking. *The 2005 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings* recommended the promotion of a “protective environment.” UNICEF’s *Protective Environment Framework* defines several broad elements that are critical for effective protection for all children. These interconnected elements work individually and collectively to strengthen protection and to reduce vulnerability.

One key element of a “protective environment” is robust legislation. This is perhaps the area where we have seen the most significant progress as the legal and policy framework to prevent and to combat trafficking has been strengthened by the Council of Europe, the European Union and national governments in recent years. Both the Council of Europe *Convention on Action against Trafficking* and the European Union *Trafficking Directive* include specific provisions concerning the identification and protection of suspected child victims of trafficking.

Additionally, the *European Union Action Plan on Unaccompanied Minors 2010-2014* is noteworthy because it identified areas where common regional resources (including through the work of the Fundamental Rights Agency, the European Asylum Support Office and FRONTEX) were brought to bear on some of the more difficult issues for all unaccompanied children, such as identification, guardianship, age assessment, family tracing and durable solutions.

Unfortunately, we are facing challenges in fully implementing the legal and policy provisions that would lead to better identification and greater protection for children. Sometimes this is because there is a conflict in law between immigration and child protection measures. In other cases, shortcomings may be due to a lack of resources or lack of priority given to the issue. In this regard, another important element of a protective environment is high level of governmental commitment including appropriate policies and adequate budgets. Many OSCE Participating States have developed and implemented National Action Plans to address trafficking, often with specific measures concerning children. National Rapporteurs on Trafficking and Ombudspersons for Children have also contributed to better monitoring and evaluation, which is important to ensure an effective protective environment.

Finally, we should bear in mind that some migrant children fall through the cracks and do not receive any protection because they may not neatly fit into the existing narrow legal categories or because their age may be disputed or they may even be engaged in activities that place them in conflict with the law. Consequently, we need to ensure outreach to these at-risk children, low-threshold drop-in centres to support them and timely referral to child protection services as well as non-punishment provisions for those who have been compelled by their traffickers to commit crimes. Additionally, we should consider how we can best help children transition to adulthood and how we can prevent disappearances and increased vulnerability for those who will soon be “ageing out” of the childcare system.

## II. Implementation and good practice: using the CRC principles as the framework for all actions

Assuming that we have good legislation and comprehensive Action Plans in place, how can we improve implementation of these measures and achieve better outcomes for the children concerned?

As the OSCE Ministerial Council reaffirmed in its Decision no 13 from 2004 – the guiding principles of the United Nations *Convention on the Rights of the Child* provide the framework for all actions concerning children.

The principle of non-discrimination means that we should ensure equal treatment and equal access to services for all children, regardless of their migratory status or other criteria. This is as important for prevention as it is for protection. It is easy to say that “migrant children are first and foremost children and should be treated as such,” but in most countries this is very difficult to put into practice. We know the current reality all too well, particularly for children migrating with their families, who often face human rights violations along their harrowing journeys. In particular, migration control and reception measures should respect family unity and children’s rights. We need to take care that our interventions do not make children more vulnerable or put them at greater risk.

A second important principle is the right to be heard. A good practice example that was implemented in several OSCE Participating States is the Council of Europe’s Life Project approach. *The Handbook on Life Projects for Unaccompanied Migrant Minors* that was prepared for front-line professionals is available in all six OSCE languages and could be put to further use to develop and to exchange good practice tools for consulting with and empowering at-risk migrant children and youth.

Perhaps the most difficult principle to translate into good practice is respect for the best interests of the child. The Convention on the Rights of the Child states that “*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*” Yet, the best interests of the child is undefined in the Convention and remains a complicated concept. It does not only refer to the “well-being” of the child, but has much broader implications.

In particular, as outlined in the recent *General Comment No 14* from the Committee on the Rights of the Child (2013), the principle of the best interests of the child needs to be implemented in both procedural safeguards as well as in substantive decision making.

In the last several years, many OSCE Participating States have strengthened procedural safeguards and supports for child victims of trafficking such as providing for the appointment of an independent professional guardian. As outlined in the *Core Standards for Guardians of Separated Children in Europe*, the guardian plays a critical role in advocating for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child.

With a view to informing guidance to strengthen Member States’ child protection systems, the Fundamental Rights Agency of the European Union has specifically undertaken research on child protection systems as well as on guardianship systems. Last year the Fundamental Rights Agency issued a *Handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*. By presenting a set of core common principles and key standards the Handbook aims to improve conditions for children under guardianship, and to promote respect for their fundamental rights.

While we can find some good practices concerning procedural safeguards that respect the best interests of the child, it has proven more challenging in practice for States to consider the best interests of the child in substantive decisions such as in the determination of a durable solution. This is necessary, however, in order to ensure respect for the 4<sup>th</sup> guiding principle of the Convention on the Rights of the Child – the right to survival and development.

According to the UNHCR and UNICEF good practice report *Safe & Sound* published last year: “A durable solution in the context of the unaccompanied or separated child is a sustainable solution that ensures that the child is able to develop into adulthood, in an environment which will meet his or her needs and fulfil his or her rights as defined by the Convention on the Rights of the Child and will not put the child at risk of persecution or serious harm...A durable solution also ultimately allows the child to acquire, or to re-acquire, the full protection of a State.”

In order to make such decisions, authorities need better Country of Origin Information, which includes details on child-specific forms of persecution as well as the child rights situation generally. As part of an EU-funded project, UNICEF Netherlands has developed and piloted a methodology for such Child Notices together with UNHCR and the European Asylum Support Office.

### III. Recommendations

In conclusion, I would like to make three specific recommendations in the areas of prevention, prosecution and protection.

First, with regards to prevention and specific at-risk children, I would ask you all to consider whether and how the OSCE and its Participating States could play a more significant role in ending childhood statelessness. Every child has the right to a nationality, yet thousands of children in the OSCE region remain without citizenship. *UNHCR estimates that there are still as many as 680,000 stateless persons in Europe. Countries with large asylum-seeker and refugee populations in Europe report hosting thousands of stateless children, both unaccompanied and with their families.* No child should be born stateless, but this remains a problem across the OSCE region and children who do not possess a nationality are particularly vulnerable to discrimination, trafficking and exploitation. Fortunately, this is a problem that we can solve with the tools provided in the relevant international treaties and recent UNHCR guidelines. Efforts should be made to identify stateless persons and to protect them from discrimination and real risks such as trafficking. UNHCR’s #ibelong campaign aims to end statelessness by 2024. This is not only an issue in developing countries or simply a matter of improving birth registration. This is a real problem in the OSCE region and one that we can work to eradicate. For example, more and more States have ratified the relevant treaties and several have set up specific Statelessness Determination Procedures. Last week the European Network on Statelessness launched its new study “*No Child Should Be Stateless*” at the Council of Europe, which provides an overview of the situation in Europe and specific recommendations how to address this problem. Furthermore, experts at the Parliamentary Assembly of the Council of Europe are currently working on a report on the need to eradicate statelessness in Europe, with a particular focus on statelessness among children, which should also result in a new Resolution later this year.

Secondly, with regards to prosecution, the OSCE should continue to support Participating States in establishing and developing National Referral Mechanisms. As defined in the ODIHR Handbook, a National Referral Mechanism is a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society. Evidence shows us that a stable, protected victim is more likely to be willing and able to contribute to prosecution efforts. Therefore, victim-protection

mechanisms based on human rights can help secure successful prosecution. Furthermore, as highlighted in its 2014 Annual Report, on the top of the Council of Europe's monitoring body GRETA's list of ten main gaps in the implementation of the Council of Europe Convention is the need to strengthen child victim identification, services and provision of a legal guardian. In more than 30 countries, GRETA has called upon States to improve the identification of and assistance to child victims of trafficking. Child rights advocates are lobbying for child-specific National Referral Mechanisms and I think that we should all consider: what would a child-specific National Referral Mechanism look like in practice in my country? Such an National Referral Mechanism process would ideally be embedded within the existing child protection system and ensure an interdisciplinary child-centred approach similar to the Multi-Agency Safeguarding Hubs model in the UK or the Children's House model found in the Nordic countries. The OSCE could collect good practice examples of child-specific National Referral Mechanisms as well as child friendly-procedures and training for professionals. Additionally, in line with the recommendations from the 2013 Addendum, the OSCE could play a role in strengthening the transnational work of National Referral Mechanisms in cross-border cases with the aim of securing both the prosecution of traffickers and better protection for child victims.

Finally, concerning protection efforts the OSCE could collect and exchange good practices regarding the operationalisation of the principle of the best interests of the child in all measures to assist and to protect trafficked children. In particular, this would include Best Interests Determination procedures that aim to identify a durable solution in line with the good practice compiled in UNHCR and UNICEF's recent report *Safe & Sound*.

Thank you for your attention. I look forward to learning more about challenges and good practices in your countries during our exchange this afternoon.