



UNHCR's Observations
on the
European Commission's proposal for a Council Directive on
minimum standards for the qualification and status of
third country nationals and stateless persons as refugees
or as persons who otherwise need international protection
(Brussels 12 September 2001, COM(2001) 510 final, 2001/0207(CNS))

Introduction

1. On 12 September 2001, the European Commission issued a proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection. In putting forward this proposal, the Commission has completed the entire set of legislative measures in the field of asylum set out in Article 63 of the Amsterdam Treaty and envisaged by the Tampere European Council as the first legislative step of developing a common European asylum system.

2. The Commission's proposal lays down a common interpretation of the criteria for determination of refugee status under the 1951 Convention and 1967 Protocol, introduces criteria for qualification for subsidiary protection status, and establishes minimum standards of treatment applicable to persons falling under the above categories.

3. UNHCR has often stressed that, since one of the main features of refugee status is its international character, and since recognition of refugee status under the 1951 Convention and 1967 Protocol has certain extraterritorial effects, it is essential that States parties to these international instruments apply the substantive criteria of the refugee definition in a harmonised and mutually consistent manner.

4. It has generally been acknowledged that, however properly the refugee definition contained in the 1951 Convention and 1967 Protocol may be applied, there are some categories of persons in need of protection who do not fall under the strict scope of these instruments. Such refugees of concern to UNHCR include, for example, those fleeing the indiscriminate effects of violence arising in situations of armed conflict, with no specific element of persecution. UNHCR has, accordingly, promoted the adoption of complementary or subsidiary regimes of protection to address their needs.

5. UNHCR generally welcomes the Commission's proposal, and hopes that the Community instrument eventually adopted will effectively ensure the realisation of the objectives affirmed by the Tampere European Council, as regards the full and inclusive application of the 1951 Convention and the granting of protection to all

those who need it. Inherent in the notion of “full and inclusive application of the Convention” is also ensuring access for all persons seeking protection to fair and efficient procedures for the determination of refugee status or subsidiary forms of protection, irrespective of nationality or country of origin. UNHCR therefore hopes that Member States will continue to examine any asylum application that may be submitted to them by any person who is not a national of the Member State concerned.

Overall assessment of the proposal

6. Generally speaking, UNHCR is pleased with the orientation of many of the key provisions of the text. In particular, UNHCR welcomes that the proposal:

- (i) Reaffirms that the 1951 Convention and its 1967 Protocol are the cornerstone of the international legal regime for the protection of refugees, and emphasises that the subsidiary protection regime that the draft Directive provides for is complementary and additional to the refugee protection regime enshrined in those instruments.¹
- (ii) Acknowledges that the recognition of refugee status is a declaratory act.²
- (iii) Recognises that the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status provides valuable guidance for Member States when determining refugee status.³
- (iv) Recognises that, for a person to qualify as a refugee under the 1951 Convention, it is immaterial whether the persecution feared stems from the State, or from parties or organisations controlling the State, or from non-state actors – provided, in the latter case, that the State is unable or unwilling to offer effective protection.⁴ This approach is in conformity with the practice of the vast majority of States, and also reflects UNHCR’s long-standing position as set out not least in the Handbook.⁵
- (v) Further recognises that, for a person to qualify as a refugee under the 1951 Convention, it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecutory action, provided that such a characteristic is attributed to him or her by the agent of persecution;⁶
- (vi) Recognises that the risk of punishment for draft evasion or desertion may, by itself, provide grounds for a refugee claim if the reason for the evasion or desertion is the person’s unwillingness to participate in military actions

¹ Preamble, paras. 3 and 17.

² Preamble, para. 10.

³ Preamble, para. 11.

⁴ Articles 9 (1) and 11 (2)(a).

⁵ UNHCR Handbook, paragraph 65.

⁶ Article 11(2)(b).

- incompatible with his or her deeply held moral, religious or political convictions.⁷
- (vii) Recognises that cessation of refugee status must be declared on a case-by-case basis and that the burden of proof lies with the Member State which has granted such status.⁸
 - (viii) Contains special provisions for the protection of unaccompanied minors, and provides that the “best interests of the child” should be a primary consideration of Member States when implementing the Directive.⁹
 - (ix) Recognises that persecution may be gender-related, and that a social group may be defined, *inter alia*, by gender or sexual orientation.¹⁰
 - (x) Provides that the notion of “members of the family” of the refugee encompasses not only the spouse and minor children, but also other close relatives who lived together as part of the family unit at the time of leaving the country of origin, and who were wholly or mainly dependent on the applicant at the time.¹¹
 - (xi) Emphasises that Member States have the power to introduce or maintain more favourable standards of treatment both in respect of the qualifying criteria and of the rights and benefits attached to the possession of the relevant status.¹²
 - (xii) Generally provides for an adequate level of treatment of refugees and beneficiaries of subsidiary protection, taking into account not only the provisions of the 1951 Convention, but also the development of international human rights law.¹³

7. UNHCR is, however, concerned about the fact that some of the definitions provided in the proposed Directive differ from those embodied in relevant international instruments.¹⁴ It is also of concern that some of the proposed Directive’s provisions and commentaries thereon do not, in UNHCR’s view, correctly reflect the legal position. Moreover, some of the provisions as currently drafted are not in line with principles of international refugee law or with UNHCR’s policy positions.

Specific comments

8. The following observations focus on those aspects of the proposed Directive that UNHCR believes require clarification or amendment in order to ensure full

⁷ Article 11(1)(d)(ii).

⁸ Article 13(2).

⁹ Article 28 and Preamble para. 23.

¹⁰ Article 12(d) and Preamble para. 15.

¹¹ Article 2(j).

¹² Article 4.

¹³ Chapter V.

¹⁴ UNHCR acknowledges that the definitions contained in the draft Directive are given for the sole purpose of that instrument and, as such, they do not – and indeed cannot – affect the interpretation of other instruments. It, nevertheless, submits that, in the drafting of legal instruments, it is strongly advisable to adhere to accepted language and terminology in order to avoid confusion of concepts.

conformity with international standards. The observations follow the actual structure of the proposed Directive.

Article 2(a)

9. The expression “international protection” is used here to refer to the protection accorded by a Member State, either in the form of refugee status or of subsidiary protection status. While acknowledging that this use of the term is common, UNHCR would like to point out that from an international law perspective, international protection is the protection that the international community accords to individuals or groups through special organs and mechanisms.

10. The regime of international refugee protection exists independently of any State having accepted responsibility to protect the refugee in question. In conformity with paragraphs 1 and 8 of the Statute of UNHCR, adopted by General Assembly resolution 428(V) of 1950, the responsibility for providing international protection to refugees lies with the High Commissioner for Refugees.¹⁵ The protection that States extend to refugees is not, properly speaking, “international protection,” but national protection extended in the performance of an international obligation.¹⁶ This form of national protection is better described, in UNHCR’s view, as “asylum.”

Article 2(c)

11. The term “refugee” is defined in this provision as a “third country national or a stateless person who fulfils the requirements laid down by Article 1(A) of the Geneva Convention...” This definition does therefore not replicate the precise wording of the refugee definition contained in the 1951 Convention and its 1967 Protocol in that it excludes from its ambit nationals of EU Member States. While indeed it is extremely unlikely that nationals of EU Member States would have any valid claim to asylum, this consideration should have no effect on the manner in which the globally accepted refugee definition of the 1951 Convention and 1967 Protocol is being defined in the domestic legal system of 15 States parties. The scope of the refugee definition embodied in these binding international treaties cannot be reserved from, by virtue of the provisions of Article 42 of the Convention; nor can the

¹⁵ The General Assembly has also reaffirmed UNHCR’s international protection function and responsibilities in a series of resolutions since 1957.

¹⁶ The expression “international protection” was proposed by the French delegate during the discussions at ECOSOC and the General Assembly of the Statute of UNHCR (instead of the expression “legal protection” which was used in the text under discussion). The French delegate explained that the purpose of the proposal was to mark the difference between international protection extended by UNHCR and national protection extended by States (Official Records of ECOSOC, Ninth session, 1949, Summary Record of the Three Hundred and Twenty-Sixth Meeting, pp. 628-629; and GAOR, Fourth session, Third Committee, Summary Record of the 256th Meeting). The relationship existing between international protection extended by UNHCR and national protection extended by States –in the form of asylum– is illustrated in the “Note on Asylum” submitted by the High Commissioner to the Twenty-eighth session of UNHCR’s EXCOM (Document EC/SCP/4 of 24 August 1977). In that Note, the High Commissioner pointed out: “A person who leaves his country of origin because of persecution or a well-founded fear of it has a primary and essential need to receive asylum in another country. (...) In the exercise of his function to provide international protection, the High Commissioner seeks to ensure that refugees receive asylum and to promote liberal asylum practices by States...”

provisions of the Convention be restricted on grounds of nationality, by virtue of the non-discrimination principle enshrined in Article 3. To ensure full compatibility with the 1951 Convention, UNHCR therefore recommends that the proposal refers not merely to “third country nationals” but to aliens.

Article 2(d)

12. The expression “refugee status” is defined as “the status granted by a Member State to a person who is a refugee and is admitted as such to the territory of the Member State and/or permitted to remain and reside there.”

13. UNHCR wishes to point out that the term “refugee status” may, depending on the context, cover two different notions. Paragraph 28 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status reads: “[a] person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined.”¹⁷ In this sense, “refugee status” means the condition of being a refugee. In contrast, the proposed Directive appears to here use the term “refugee status” to mean the set of rights, benefits and obligations that flow from the recognition of a person as a refugee. This second meaning is, in UNHCR’s view, better described by the use of the word “asylum.”¹⁸

Articles 2(g) and 2(h)

14. For the reasons set out above with respect to the wording of Articles 2(a) and 2(d), UNHCR would recommend that the term “asylum” be used in preference to “international protection”. If this were adopted, these two articles could be combined into one subparagraph, and the term “asylum” in the fifth line of the present 2(g) could be replaced with the term “Convention refugee status”. There would then, in UNHCR’s view, be no need for the present 2(h).

Article 2(j)(ii)

15. According to this provision, the family unit of the applicant includes the children of the applicant as well as the children of the couple (i.e. those of the applicant and his or her spouse or unmarried partner in a stable relationship), but does not include the children of the applicant’s spouse or stable partner. UNHCR considers that this distinction unjustified and should be corrected.

Article 2(k)

¹⁷ UNHCR’s Handbook, para.28. It is noted that, in this respect, the draft Directive appears to use the phrase in two different ways, in so far as para.10 of the Preamble acknowledges the declaratory character of the decision that determines refugee status.

¹⁸ This meaning is reflected in a wealth of works on international law, in numerous international instruments, and in numerous national Constitutions and legislations, including those of Member States of the EU (See for instance Article 16 of the German Constitution and Section 51 of the German Aliens Law; Preamble of the French Constitution, and Laws of 11.05.98 and of 25.07.52 of France; Article 3 of the Asylum Law of Spain; Article 10 of the Italian Constitution and article 1 of Law 39/90 of Italy; and Article 1 of Law 15/1998 of Portugal).

16. UNHCR understands the final phrase of this provision, “in relation to the application for asylum” to mean, in effect, that “accompanying family members” are only those family members who are present in the country, but are not themselves applicants for asylum. UNHCR recommends that this terminology be used in preference to the current wording, to avoid confusion, particularly with respect to Article 6(1).

Article 3

17. UNHCR wishes to draw attention again to its comments formulated under Article 2(c), regarding the unwarranted restriction of access to asylum to third country nationals and stateless persons. For UNHCR, it is necessary to ensure that all persons who seek protection, no matter their country of origin, are entitled to have their claims considered.

Article 5

18. UNHCR welcomes the proposed Directive’s holistic approach to international protection as embodied in Article 5, save for the unwarranted nationality-based limitations commented upon above.

19. UNHCR wishes to point out that the last part of Article 5(2) referring to “is unable or, owing to such fear, is unwilling to avail himself of the protection of that country” may be misplaced in the context of subsidiary protection. Under the refugee definition of Article 1(A) of the 1951 Convention, “availment of protection” of the country of nationality has a special meaning that is intrinsically linked to the notion of “well-founded fear of persecution.” UNHCR would therefore recommend that the definition with respect to beneficiaries of subsidiary protection should refer rather to unwillingness or inability to return to the country of nationality or former habitual residence. UNHCR would also like to caution that the use of the “well-founded fear” test in respect of subsidiary protection may potentially lead to unnecessary confusion with the refugee definition contained in the 1951 Convention and 1967 Protocol.

20. UNHCR further wishes to point out that, in order to duly reflect the text of Article 1(A)(2) of the 1951 Convention, the last sentence of the commentary on Article 5(1), should read: “The fear must be such that it makes the applicant unwilling or unable to avail him or herself of the protection of the country of nationality or, if the applicant has no nationality, unable or unwilling to return to the country of his or her former habitual residence.”

Article 6(1)

21. This article provides that “Member States shall ensure that accompanying family members are entitled to the same status as the applicant for international protection.” UNHCR would like to draw attention to its comments under Article 2(k), where a recommendation was made to clarify that the term “accompanying family members” refers only to persons who are not applicants for asylum in their own right.

22. In addition, UNHCR wishes to point out that not all the dependent members of the family of a refugee, or of a beneficiary of subsidiary protection, are automatically eligible for derivative refugee or subsidiary protection status. Recognition of derivative status would not be appropriate if the member of the family is a national of a State other than that of the applicant. In such a case, the member of the family should be granted a residence permit, and should be entitled to continue to maintain normal relations with his or her country of nationality. Granting of a residence permit would, of course, not be necessary if the member of the family is a national of the country of asylum. Automatic recognition of derivative status is indeed called for only where the member of the family is either a national of the same country as the applicant, or is a stateless person.¹⁹ UNHCR therefore recommends that “unless such status is incompatible with their existing status” or words to that effect be added to Article 6(1).

Article 7(b)

23. UNHCR notes the reference to a “reasonable possibility” and assumes that this is in line with the UNHCR standard.²⁰ However, to ensure that the standard of proof is not unrealistic given the special nature of the refugee, UNHCR recommends to replace “will” with “might” (which would also more generally be in line with Article 7(c) of the proposed Directive).

Article 7(e)

24. UNHCR is concerned that the provision in Article 7(e) may be read into as a general evidentiary requirement. A person claiming to be in need of protection must not be required to produce “credible evidence that laws or regulations are in force and applied in practice in the country of origin which authorise or condone the persecution or the infliction of other serious harm to the applicant.” Information as to whether or not such laws or regulations exist is part of the fact-finding process provided for in Article 7(a), which requires the decision-makers to examine “all relevant facts as they relate to the country of origin...” In some instances, it may well be the case that existing laws (as such in line with international law) could have the effect of condoning persecution, if applied, for instance, in a discriminatory or arbitrary manner. To avoid any potential misinterpretation, this provision could therefore be deleted.

Article 8(2)

25. Article 8(2) provides that “a well-founded fear of being persecuted or otherwise suffering serious unjustified harm may be based on activities which have been engaged in by the applicant since he left his country of origin, save where it is established that such activities were engaged in for the sole purpose of creating the necessary conditions for making an application for international protection.”

26. UNHCR acknowledges that there may be instances where an individual outside his or her country of origin acts in a certain way for the sole purpose of

¹⁹ Cf. UNHCR Handbook, para. 184.

²⁰ UNHCR Handbook, paras. 37-50.

“manufacturing” an asylum claim, when that person would otherwise not have a well-founded fear of persecution. UNHCR appreciates that States face a certain difficulty in assessing the validity of such claims, and agrees with States that the practice should be discouraged. At the same time, UNHCR needs to insist that the principle at stake is whether the person consequently would face a risk to his or her life or liberty upon return, and is not primarily a question of how the risk comes about. There is no logical or empirical connection between the well-foundedness of the fear of being persecuted or of suffering serious unjustified harm, and the fact that the person may have acted in a manner designed to create a refugee claim.²¹

27. If the aim of Article 8(2) is to assist States in addressing so-called self-serving claims, which sometimes raise difficult evidentiary and credibility issues, it would be preferable, in UNHCR’s view, to address the issue from the perspective of making appropriate credibility assessments and looking into burden of proof issues in the individual case.²² For UNHCR, therefore, a proper analysis of such cases demands not an assessment of whether the asylum-seeker acted in “bad faith” (as noted in the explanatory memorandum) but rather, as for every case, whether the requirements of the definition are in fact fulfilled taking into account all the relevant facts surrounding the claim.²³

28. As regards beneficiaries of subsidiary protection, UNHCR finds it difficult to see how a person may have a well-founded fear of suffering serious unjustified harm as a result of activities undertaken after leaving his or her country of origin. For example, it is difficult to imagine that activities engaged in by the applicant while in the country of asylum could be cause for a well-founded fear of being subjected to serious and unjustified harm resulting from “indiscriminate violence arising in situations of armed conflict”.²⁴

Article 9

29. The provision in Article 9 dealing with sources of persecution is most welcome in so far as it acknowledges and codifies what UNHCR views as the state of international law in this regard - i.e. that it is immaterial whether the feared harm emanates from a State or a non-State agent. There are, however, two aspects of Article 9 that are cause for some concern.

30. Firstly, UNHCR would sound a note of caution with respect to the statement in Article 9(2) that where effective State protection is available, the fear of being persecuted or otherwise suffering serious unjustified harm “shall not be considered well-founded”. In UNHCR’s view, this assertion is too categorical and fails adequately to express the complexities of the assessment.

²¹ It is noted that this is recognised in the Commission’s commentary on this article.

²² For instance, the reference to continuity of convictions is, in UNHCR’s view, an assessment which goes to credibility and not a principle or requirement in and of itself.

²³ In this sense the explanatory memorandum paragraph on this provision is somewhat difficult to interpret, as it asserts that Member States are entitled to start from the premise that the impugned activities do not in principle furnish grounds for recognition, but goes on (correctly, in UNHCR’s view) to point out that if a risk or persecution or serious harm nevertheless is produced, the protection need must be recognised.

²⁴ This is one of the grounds of subsidiary protection listed in Article 15 of the proposed Directive.

31. Secondly, as regards Article 9(3), the question of availability of State protection (or lack thereof) comes in as a factor for consideration where the threat of persecution emanates from non-State actors.²⁵ This provision equates national protection provided by States with control over territory by international organisations or quasi-State authorities. In UNHCR's view, such an equation is inappropriate. An international organisation may indeed (as has been the case in Kosovo or East Timor) have a certain administrative authority and control over territory on a transitional or temporary basis but such functions cannot be interpreted to substitute for the full range of measures normally attributed to the exercise of State sovereignty. Similarly, quasi-State authorities may indeed control parts of territory. This control (which is often disputed and rather fluid) cannot, however, be meant to replace the exercise of national protection provided by States, not least because international obligations stemming from international human rights law would not necessarily tally with those of States parties to international human rights instruments. UNHCR recommends therefore that this provision be deleted from the proposed Directive.

Article 10

32. UNHCR welcomes this attempt to put a more uniform structure and meaning to a notion which has been applied in widely differing ways by various States for some years. In general UNHCR agrees with the proposed analysis, including in particular its recognition that it will not normally be a consideration where the feared harm emanates from agents of the State, and that the reasonableness of finding such an alternative will depend both on circumstances in that part of the country put forward as furnishing the alternative and the individual personal circumstances of the asylum-seeker.

33. In UNHCR's view, though, the expression "internal protection" as introduced in this context is not defined and may be confused with other notions of protection referred to in the proposed Directive. The expression most commonly used to refer to this situation is "internal flight alternative" or "internal relocation alternative". Consideration of this would only require a change in the second paragraph of Article 10(l) by replacing "against finding internal protection to be a viable alternative to international protection" with "in favour of international protection".

34. As regards the Commission's commentary on Article 11(1)(d), the second sentence lists a reason for refusing to perform military obligations ("conscientious objection") alongside different manners in which those obligations may be avoided ("absence without leave, evasion, or desertion"). Moreover, the assertion made in that sentence that prosecution or punishment for refusal to perform military service for reasons of conscience "will not usually amount to persecution" is in direct contradiction with the text of Article 11(1)(d).

35. In addition, in relation to Article 11(2)(c), the Commission's commentary gives the impression that persons in flight from civil war or armed conflict could hardly be

²⁵ Where persecution emanates from the State, the question of availability of State protection (or lack thereof) does not arise. Lack of State protection is not a general requirement of the refugee definition.

recognised as Convention refugees. However, experience shows that most civil wars or internal armed conflicts are rooted in ethnic, religious or political differences which specifically victimise those fleeing. War and violence are themselves often used as instruments of persecution.

Article 12

36. UNHCR also welcomes this elucidation of the meaning of the reasons for being persecuted set out in Article 1 of the 1951 Convention, and is in general agreement with the draft's clarifications of the meaning of these terms. UNHCR would recommend, however, that Article 12(c) relating to the meaning of "nationality" should also contain, after the word "citizenship" in the first line, the words "or lack thereof" in order to fully reflect its meaning. In addition, UNHCR recommends that Article 12(d) dealing with the "membership of a particular social group" ground also expressly provide for external factors as one of the identifying and defining characteristics of the particular social group.²⁶

Article 13

37. UNHCR is pleased that this provision takes in the Article 1C cessation clauses of the 1951 Convention and that it places the burden of proving the cessation of refugee status on the State asserting it.

38. UNHCR would however recommend that the commentary on this Article be amended to reflect the generally accepted position that, in certain circumstances, the refugee may be able to obtain or renew his or her national passport without forfeiting his or her refugee status.²⁷

Article 14

39. UNHCR welcomes that this provision takes in the language of Article 1F of the 1951 Convention and that certain fundamental principles of accepted doctrine and State practice with respect to exclusion are codified here, including the need for personal and knowing conduct to trigger exclusion and that procedural rights should be preserved.

40. With respect to the commentary on Article 14(1)(a), however, UNHCR wishes to note that the assertion that "...the protection or assistance available from the United Nations agency must have the effect of eliminating or durably suppressing the individual's well-founded fear of being persecuted" does not have any legal or empirical basis. Nor is there any legal basis for making the applicability of this exclusion clause contingent upon a requirement of continuity in the protection or assistance received from the United Nations.

41. UNHCR further wishes to note that the commentary on Article 14(1)(c)(i), is at variance with the text of the 1951 Convention, insofar as the Convention does not

²⁶ The reference in Article 12(d) to "...groups of individuals who are treated as 'inferior' in the eyes of the law" could be more accurately portrayed to encompass all externally-defined social groups.

²⁷ Cf. UNHCR Handbook, para. 120.

require that the instruments defining the international crimes to which the provision refers should have been acceded to or accepted by each State concerned.

Article 15

42. UNHCR notes the approach taken by the proposed Directive to set out the grounds for subsidiary protection, which would only come into play when an examination of the asylum claim has indeed led to the conclusion that the applicant would not qualify for refugee status under the 1951 Convention and the 1967 Protocol. UNHCR would like to point out that in most cases the type of threats that are enumerated in Article 15 may indeed indicate a strong presumption for Convention refugee status, except perhaps for those fleeing the indiscriminate effects of violence and the accompanying disorder in a conflict situation, with no element of persecution or link to a specific Convention ground. And it is for the latter category of persons that subsidiary protection indeed fulfils an important function. Against this background, the elements listed under Article 15 would need to be revisited to ensure that the applicability of the 1951 Convention and the 1967 Protocol is not in effect undermined by resorting to subsidiary forms of protection.

Article 17(1)(b)

43. The provision under Article 17(1)(b) relating to serious non-political crime (which refers to beneficiaries of subsidiary protection) should be amended to remove the words “as a refugee” at the end of the subparagraph.

Article 20

44. While UNHCR welcomes the provision of information to persons recognised as needing international protection, the Office queries the use of the terminology “in a language likely to be understood by them.” UNHCR would recommend that the provisions in this regard should mirror those of the Commission proposal for a Council Directive on minimum standards on procedures for granting and withdrawing refugee status, where the wording used is “in a language which they understand.”²⁸

Article 21

45. UNHCR appreciates that, as noted in the commentary on this provision, many Member States consider subsidiary protection to be temporary in nature. Nevertheless, as is also pointed out elsewhere in the explanatory memorandum,²⁹ the reality is that the need for subsidiary protection is often just as long-lasting as that for protection under the 1951 Convention. In recognition of that fact, UNHCR would recommend that the residence permit provided to beneficiaries of subsidiary protection should be for the same duration as that for Convention refugees. If it

²⁸ See Articles 7(a),(e) and (f) of the proposal, COM(2000)578 final (2000/0238(CNS)).

²⁹ See the Explanatory Memorandum, at p. 4, where it is noted that while the regime of subsidiary protection starts from the premise that the need for such protection is temporary in nature, “...in reality the need for subsidiary protection often turns out to be more lasting.”

appears that subsidiary protection is no longer necessary in advance of the expiry of the residence permit, the cessation provisions of Article 16 would in any case apply.

Article 24

46. Access to employment and employment-related educational opportunities is another area where the proposed Directive treats Convention refugees and beneficiaries of subsidiary protection differently. UNHCR takes the view that, just as the proposal provides for equal treatment to all beneficiaries of international protection as regards access to housing, social welfare and health care, there is no valid reason to treat beneficiaries of subsidiary protection differently from Convention refugees as regards access to employment. UNHCR therefore submits that beneficiaries of subsidiary protection should be entitled to work, and to benefit from available vocational training, workplace experience and other employment-related educational opportunities, once they are granted that status.

Article 28(3)

47. With a view to aligning this provision with similar provisions contained in the Proposal from the Commission for a Council Directive laying down minimum standards of reception of applicants for asylum in Member States,³⁰ UNHCR would propose that the words “in order of priority” be added at the end of the phrase “Member States shall ensure that unaccompanied minors are placed” in the first line of Article 28(3).

Article 31

48. According to this provision, Convention refugees are eligible for programmes of integration once they are granted asylum, whereas access to those programmes by beneficiaries of subsidiary protection status may be postponed for up to one year after that status has been granted. Again, for the reasons set out above in the comments to Article 21, UNHCR considers that this difference of treatment is not warranted.

Article 33

49. The mechanism envisaged under Article 33 to facilitate “direct co-operation and an exchange of information between the competent authorities” could also usefully build in opportunities for co-operation and information exchange with UNHCR. Such a role for UNHCR would be in line with the mandate of UNHCR to supervise the application of international conventions for the protection of refugees and with Article 35 of the 1951 Convention.

Conclusion

50. As is evident from the foregoing comments, UNHCR generally welcomes the present proposal from the European Commission. The proposal provides adequate basis for the discussion of the relevant issues, and constitutes an important step in the process of building a common European asylum system.

³⁰ See Article 25(2) of the proposal, COM(2001) 181 final (2001/0091(CNS)).

51. UNHCR considers, however, that there are some aspects of the Commission's proposal which need to be revised in order to ensure the desired full conformity with international protection principles, as well as the realisation of the fundamental aims of the proposed Community instrument.

52. It is in the spirit of its on-going, close co-operation with the Commission and Member States that UNHCR has offered the foregoing observations and suggestions. UNHCR trusts that they will be duly taken into consideration and will be appropriately reflected in the final text of the proposed Council Directive.

**UNHCR Geneva
November 2001**