

## Some Additional Observations and Recommendations on the

### European Commission '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' COM(2001) 510 final, 2001/0207(CNS) of 12 September 2001

UNHCR shared its initial observations on the European Commission "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 November 2001. UNHCR generally welcomes the proposal and is particularly pleased with the overall orientation of many of the key provisions of the text which reaffirm the 1951 Convention and its 1967 Protocol as the cornerstone of the international legal regime for the protection of refugees.

The proposed Directive goes to the heart of UNHCR's mandate for the international protection of refugees. UNHCR therefore attaches the greatest importance to the deliberations on this instrument in the Council of the European Union and wishes to remain engaged in this challenging process of reaching a common understanding and agreement in the European Union.

In formulating its observations, UNHCR is guided by the following overarching considerations:

(i) The interpretation of the 1951 Convention refugee definition is a matter of international law. Its interpretation is not, or should not be, subject to variations on the basis of the history, legal culture or political necessity of each State Party or a group of States Parties to the Convention but must be given an "autonomous and international meaning" derivable from the sources mentioned in Articles 31 and 32 of the Vienna Convention on the Law of Treaties.<sup>1</sup> The UNHCR *Handbook on Criteria and Procedures for Determining Refugee Status*, because of its "high persuasive authority",<sup>2</sup> could serve as a useful guide for this enquiry.

(ii) By the same token, the scope and interpretation of the refugee definition deserves to be determined independently of the financial or other costs attached to the granting of asylum or any other factors influencing a State's capacity to provide protection to refugees. A person who satisfies the established definitional criteria of the Convention is, and remains, a refugee regardless of whether the State is able or willing to meet its international obligations under the 1951 Convention.<sup>3</sup>

(iii) A restrictive interpretation of the refugee definition will not help reduce the numbers of non-refugee migrants claiming asylum, nor would it deter refugees from fleeing persecution in their country of origin.

(iv) The deliberations of Member States of the European Union on the refugee definition and complementary or subsidiary forms of protection have implications beyond the borders of

---

<sup>1</sup> UK House of Lords, *Regina v. Secretary of State for the Home Department, Ex parte Adan and Aitseguer*, Judgment of 19 December 2000.

<sup>2</sup> See 1 above.

<sup>3</sup> It may be useful to recall in this context the declaratory nature of refugee status. As generally accepted and as also reflected in paragraph 28 of the UNHCR *Handbook*, a person does not become a refugee because of recognition of his or her refugee status, but is recognized as such because he or she is a refugee.

the European Union, in particular with the enlargement of the European Union, but also world-wide.

(v) It is broadly recognized, including in Europe, that a person may be in need of international protection even if none of the Convention grounds is the cause, directly or indirectly, of the feared harm. Last but not least, UNHCR has been mandated, by a series of United Nations General Assembly resolutions, to provide protection and assistance to a broader category of refugees than those covered by its Statute or the 1951 Convention.

The comments and observations set out in this note focus on certain aspects of the draft Directive which are under discussion, by suggesting ways in which some of the provisions could be further strengthened or improved, or providing justifications for maintaining the original Commission proposals. The observations are structured in a way to set out, in a text-box, the text of the respective provision, including changes suggested by UNHCR in *italics*, and then to outline UNHCR's reasoning. Further additional comments, addressing other aspects and complementing UNHCR's initial observations will be offered as discussions evolve.

### Scope of the Directive

#### Article 3

This Directive shall apply to all third country nationals and stateless persons who make an application for international protection at the border or on the territory of a Member State and to their accompanying family members and to all those who receive such protection.

In view of the fundamental principle of *non-refoulement*, UNHCR underlines the necessity of ensuring that all persons who seek protection at a border or on the territory of a Member State of the European Union be regarded as applicants for international protection, irrespective of their country of origin or route. A person is a refugee as soon as he or she fulfils the criteria contained in the definition, which would necessarily occur prior to the time of refugee status determination by a Member State of the European Union. In view of these considerations, UNHCR considers it essential that the scope of the Directive should remain as currently formulated, without restrictions as to where the asylum-application is made or the nature of the examination (i.e. admissibility or substantive).

### Derivative status

#### Article 6

1. Member States shall ensure that accompanying family-members are *granted* the same status as the applicant for international protection, *unless they are applicants in their own right or this is incompatible with their personal status*.
2. The rule laid down in paragraph 1 is not applicable where the accompanying family member is excluded from refugee and subsidiary protection status pursuant to Chapters III and IV.

UNHCR welcomes the strong considerations given, in the draft Directive, to the principle of family unity. In keeping with this principle and in accordance with State practice, dependants of a head of family determined to be a refugee should normally be granted the same status, namely refugee status.

The exceptional circumstances in which the principle of family does not automatically lead to the granting of derivative refugee status is when family members are applicants for asylum in their own right or when this would be incompatible with the personal status of the family member, e.g. because he or she possesses a different nationality.

### Nature of persecution

#### Article 11

1. In the determination of whether a well-founded fear of being persecuted has *been established*, the term persecution shall be considered to cover, *in particular*, any of the following situations:
  - (a) the infliction of *serious harm* or discrimination on the grounds of race, religion, nationality, political opinion or membership of a particular social group, sufficiently serious by its nature or repetition *or on cumulative grounds* as to constitute a significant risk to the applicant's life, freedom or security or to preclude the applicant from living in his or her country of origin;
  - (...)
2. The following *main* principles shall govern the determination of whether a well-founded fear of being persecuted should result in the recognition of an applicant as a refugee (...)

Article 11 of the draft Directive attempts to define persecution. The commentary to the Article specifically notes that the interpretation of the term "is intended to be flexible, adaptable and sufficiently open, in order to reflect ever-changing forms of persecution". This commendable intention seems to be contradicted by the wording of the opening paragraph of the proposed article.

A *well-founded fear*, by definition, contains a subjective and an objective element, both of which must be taken into consideration.<sup>4</sup> By stipulating that it has to be determined whether a *well-founded fear*, a fear which - according to the UNHCR *Handbook* - must be supported by an objective situation, has to be '*objectively established*'; Article 11 (1) of the draft Directive effectively seems to introduce an additional 'objective element' in refugee status determination. This risks setting too high a standard of proof in order to satisfy the test of objectivity. UNHCR would therefore recommend that the term '*objectively established*' be deleted from the text.

Attempting to define persecution through a list of situations to be considered "*as a minimum*" could limit the scope of the interpretation of persecution unreasonably. To ensure the Directive's adaptability to changing realities of persecution, whether in its form or content, UNHCR suggests to replace "*as a minimum*" by "*in particular*" in Article 11 (1) and by "*mair*" in Article 11 (2) and Article 12, both indicating the non-exhaustive nature of the listings contained in the provision rather than minimum conditions.

UNHCR furthermore recommends changing the formulation "*serious and unjustified harm*" by deleting "*unjustified*" in Article 11 (1) a. The word is not contained in the refugee definition of the 1951 Convention and seems to introduce an unwarranted element of judgment. It stipulates a test which is, in most circumstances, incompatible with human rights guarantees and which may limit persecution to only violations of non-derogable human rights.<sup>5</sup> UNHCR is concerned that this formulation could be read to formulate an additional requirement, which could potentially exclude some refugees from being recognized.

UNHCR welcomes the recognition in the commentary to Article 11 of the draft Directive that measures of discrimination may amount to persecution, in particular, that "*the repetition of discriminatory measures which, taken separately, may not be serious enough to constitute persecution, may give rise to a valid claim for refugee status on cumulative grounds*". This reflection is fully consistent with the UNHCR *Handbook*: While 'mere' discrimination may not, in the normal course, amount to persecution in and of itself (though particularly egregious forms with consequences of a substantially prejudicial nature for the person concerned, undoubtedly will be so considered), a persistent pattern of consistent discrimination will usually amount to persecution on "cumulative grounds" and warrant international protection.<sup>6</sup> The proposed Directive would benefit from a reference to considerations of 'cumulative grounds' in the text of Article 11 (1)a itself.

---

<sup>4</sup> UNHCR *Handbook on Criteria and Procedures for Determining Refugee Status*, Para. 38.

<sup>5</sup> This formulation appears in several provisions of the proposed Directive and would therefore need to be changed in each of the provisions of the Directive in which it is proposed.

<sup>6</sup> See *Handbook on Procedures and Criteria for Determining Refugee Status*, Paragraphs 54 and 55.

### Reasons for Persecution

#### Article 12

In determining whether a well founded fear of persecution is based on reasons of race, religion, nationality, political opinion or membership of a particular social group, the following *main* elements shall be taken into account:

(...)

(d) the concept of a social group shall include a group which may be defined in terms of certain fundamental characteristics, such as sexual orientation, age or gender, as well as groups comprised of persons who share a common background or characteristics that are so fundamental to identity or conscience that those persons should not be forced to renounce their membership, *or groups which are defined by external perception.*

In UNHCR's understanding<sup>7</sup>, a "particular social group" is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The shared characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights. It follows that sex can properly be within the ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics, and who are frequently treated differently from men. If membership of a particular social group is based on characteristics determined to be neither unalterable nor fundamental, it should be assessed whether the group is nonetheless perceived as a cognizable group in society. It is for this reason that UNHCR recommends that Article 12 (d) expressly provides for external perception to be taken into account when identifying and defining the characteristics of the particular social group.

### Subsidiary forms of protection – Definition

#### Article 15

In accordance with Article 5 (2), Member States shall grant subsidiary protection status to an applicant for international protection who is outside his or her country of origin *or former habitual residence* and cannot return there owing to a well-founded fear of being subjected to

- (a) torture or inhuman or degrading treatment or punishment; or
- (b) violation of a human right sufficiently severe to engage the Member State's international obligations or;
- (c) *indiscriminate serious threats* to his or her life, *person* or freedom *resulting from* situations of armed conflict *or of endemic violence*, or *from* situations of systematic or generalized violations of human rights;

*for reasons outside the scope of Article 5 (1).*

UNHCR welcomes the inclusion of grounds for subsidiary protection in the draft Directive.

<sup>7</sup> See 'Guidelines on International Protection: Gender-related Persecution within the context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees', HCR/GIP/02/01 of 7 May 2002 and 'Guidelines on International Protection: "Membership of a particular social group" within the context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees', HCR/GIP/02/02 of 7 May 2002. This understanding incorporates an approach based on 'protected or immutable characteristics' and an approach to define a particular social group based on 'social perception'.

As regards torture and inhuman or degrading treatment or punishment the body of case-law built by the European Court for Human Rights has now established beyond doubt the applicability of the European Convention of Human Rights to cases of expulsion, deportation or extradition to a country where an individual is likely to be subjected to treatment contrary to its Article 3 for whatever reason and without any qualification as regards the motives for the risk of exposure to ill-treatment.

Furthermore there is consistent State practice<sup>8</sup> of granting some form of complementary protection to persons fleeing the indiscriminate effects of armed conflict or generalized violence, albeit with no specific link to the 1951 Convention grounds. Practice varies, however, and the Directive offers an important opportunity to establish a harmonized approach based on an agreed definition and content. Since there is already a harmonized understanding as regards the beneficiaries of temporary protection (Directive 2001/55/EC of 20 July 2001)<sup>9</sup> it would be consistent if individuals, fleeing outside the context of a mass-influx but for the same reasons, were to be granted subsidiary protection, unless of course they fall under the 1951 Convention.

This would also be in line with a series of Recommendations of the Parliamentary Assembly and the Committee of Ministers of the Council of Europe, in particular Recommendation (2001)18 of the Committee of Ministers on Subsidiary Protection, adopted on 27 November 2001<sup>10</sup>. It is moreover significant that Member States of the European Union have over the years repeatedly reaffirmed their support to UNHCR's mandate activities undertaken for persons fleeing the indiscriminate effects of violence associated with armed conflicts or serious public disorder.<sup>11</sup>

Finally, the evolution of the law of armed conflict and related thereto of international criminal law, most notably the Statute of the International Criminal Court and its adoption by the EU Member States, offer an important legal rationale for extending the scope of international protection beyond Convention refugees. The jurisprudence of the International Tribunal for the former Yugoslavia and the International Tribunal for Rwanda as well as the Statute of the International Criminal Court have reinforced the norms of international humanitarian law, especially for the protection of civilians. It would be incongruent if especially those persons who risk falling victim of violations of norms sanctioned by individual criminal liability and possible prosecution, would not be able to claim protection against being returned to situations where such violations risk to occur.

---

<sup>8</sup> See "Complementary/Subsidiary Forms of Protection in the EU States – An Overview", ELENA, April 1999.

<sup>9</sup> European Union, Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. Under Article 2 of this instrument protection is provided to persons who have fled areas of armed conflict or endemic violence as well as persons at serious risk of, or who have been victims of, systematic or generalized violations of their human rights.

<sup>10</sup> Based on the Council of Europe Committee of Ministers' Recommendation (2001)18, 'Subsidiary protection should be granted by member states to a person who, on the basis of a decision taken individually by the competent authorities, does not fulfill the criteria for refugee status of the 1951 Convention and its 1967 Protocol but is found to be in need of international protection:

- because that person faces a risk of torture or inhumane treatment or punishment in his/her country of origin or
- because that person has been forced to flee or remain outside his/her country of origin as a result of a threat to his/her life, security or liberty, for reasons of indiscriminate violence, arising from situations such as armed conflict or
- for other reasons recognized by the legislation or practice of the member state and therefore cannot be returned to the country of origin.'

<sup>11</sup> This evolution of the UNHCR mandate has been matched by regional arrangements, in particular in Africa, in the form of the 1969 *Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa* and in Latin America by the 1984 *Cartagena Declaration*.

This being said, UNHCR would like to offer some amendments to the proposed text.

*"...or former habitual residence..."*

UNHCR proposes to include in the scope of subsidiary protection stateless persons in order to ensure full consistency between refugee protection and subsidiary forms of protection. Therefore, in addition to an applicant's country of origin (country of nationality), explicit reference should also be made to the country of former habitual residence.

*"indiscriminate serious threats..."*

UNHCR proposes linking the word "*indiscriminate*" to "threats" rather than "*violence*" to make clearer the difference with discriminate threats qualifying as persecution on grounds enumerated in the 1951 Convention. The proposed incorporation of "serious" is meant to emphasize the necessary degree of severity of the potential harm.

*"...to life, person or freedom..."*

UNHCR suggests to replace the term "safety" with "person", as used in international humanitarian law. This term is meant to cover physical integrity or security rather than material or legal safety.

*"...resulting from situations of armed conflict or endemic violence"*

For the purpose of consistency, UNHCR proposes the use of wording similar to the definition used by Member States in Council Directive 2001/55/EC of 20 July 2001<sup>12</sup> in describing situations in which, in a mass-influx, temporary protection would be granted. The incorporation of a reference to situations of endemic violence is considered important to cover in particular situations of serious violence which may not (yet) qualify as situations of armed conflict under international humanitarian law, namely situations in which the threshold of armed conflict is not reached or the qualification as armed conflict is disputed.

*"for reasons outside the scope of Article 5 (1)."*

The addition aims to clarify and emphasize that the provisions of Article 15 are only applicable if there is no link between the risk or threat and any of the five Convention grounds. This is all the more important as the formulation employed in Article 15 includes grounds which would indicate a strong presumption for Convention refugee status, as also noted in UNHCR's initial observations.

For example, in UNHCR's understanding, an act of torture (Article 15 (a)) perpetrated by State actors would normally be linked to a Convention ground. However, cases where actors resort to torture out of purely criminal motivation could give rise to a claim of subsidiary protection, provided other relevant aspects of the Directive are met. Similarly, Article 15 (b) might overlap with Article 11, thereby undermining the protection afforded by the 1951 Convention.

The same concern applies to Article 15 (c). Situations of armed conflict may well engender persecution, as acknowledged by the Commission in its Explanatory Memorandum under

---

<sup>12</sup> Article 2 (c) of Council Directive 2001/55/EC of 20 July 2001 reads: " 'displaced persons' means third country nationals or stateless persons who have had to leave their country or region of origin, or have been evacuated, in particular in response to an appeal by international organisations, and are unable to return in safe and durable conditions because of the situation prevailing in that country, who may fall within the scope of Article 1 A of the Geneva Convention or other international or national instruments giving international protection, in particular (i) persons who have fled areas of armed conflict or endemic violence; (ii) persons at serious risk of, or who have been the victims of, systematic and generalised violations of their human rights;(...)"

Article 11 (2) c) and as also confirmed by State practice and jurisprudence, either in the form of non-military acts of persecution by State and non-State actors or in the form of military activities pursued with persecutory intent. The nexus with a Convention ground is potentially even more relevant in “situations of systematic or generalized violations of human rights”. It is only in situations where such violations have no link to a Convention ground that subsidiary forms of protection are required and where they fulfil an important function, depending always on the severity of the threat and the degree of risk the individual concerned encounters.

### Subsidiary Protection - Status

UNHCR welcomes the fact that persons granted subsidiary protection status will generally benefit from a similar standard of treatment as those receiving Convention refugee status. Indeed, the rights and benefits to be granted should be based on the actual needs of the beneficiaries rather than on the grounds on which their need for international protection have been established. The enjoyment of such rights, including the possibility to become self-reliant, does not necessarily equate with permanent settlement or local integration but could also facilitate re-integration in the country of origin upon eventual return.

In UNHCR's understanding subsidiary forms of protection, like protection under the 1951 Convention, are indeed not necessarily permanent in nature. In reality, however, the need for subsidiary protection is often longer than anticipated and may sometimes be as long lasting as that for protection under the 1951 Convention. In recognition of this fact, and of the importance to instill persons whose lives have been disrupted due to flight with a sense of safety and stability, UNHCR suggests that, in particular, the comparatively much shorter validity of residence permits of beneficiaries of subsidiary forms of protection (Article 21 (2)) be reviewed. When changed circumstances in the country of origin justify cessation, it is anyway foreseen that residence permits may be revoked (Article 16 (1)). In the enjoyment of basic rights and benefits, treatment as similar as possible between Convention refugees and beneficiaries of subsidiary protection will not only minimize fragmentation of the international protection regime but could also minimize appeals against denial of Convention refugee status by persons wishing to obtain the full set of rights attached to that status.

### Cessation of Refugee Status

#### Article 13

1. Member States shall maintain refugee status until and unless the refugee:
  - (a) has voluntarily re-availed himself or herself of the protection of the country of nationality; or
  - (b) having lost his or her nationality, has voluntarily re-acquired it; or
  - (c) has acquired a new nationality, and enjoys the protection of the country of his or her new nationality; or
  - (d) has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or
  - (e) can no longer, because of the circumstances in connection with which he or she has been recognized as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of nationality, *unless there are compelling reasons arising out of previous persecution for refusing to avail himself or herself of the protection of the country of his or her nationality;*
  - (f) Being a person with no nationality, he or she is able, because the circumstances in connection with which he or she has been recognized as a refugee have ceased to exist, to return to the country of former habitual residence, *unless there are compelling reasons arising out of previous persecution for refusing to return to the country of his or her former habitual residence;*



In cases referred to in points (a) to (f), the residence permit may be revoked.

In considering point (e), Member States shall have regard to whether the change of circumstances is of such profound and durable nature that the refugee's fear of persecution can no longer be regarded as well-founded.

2. The Member State which has granted refugee status shall bear the burden of proof in establishing that a person has ceased to be in need of international protection for one of the reasons stipulated in paragraph 1.

Article 1 C of the 1951 Convention exhaustively enumerates the reasons for which refugee status ceases. UNHCR therefore welcomes the incorporation of the cessation clauses of Article 1 C of the 1951 Convention in the draft Directive. UNHCR also welcomes the explicit stipulation in the draft Directive that the burden of proving cessation of refugee status lies with the State asserting it. This provision fully reflects State practice and current understanding of international refugee law.<sup>13</sup>

UNHCR suggests, however, that the "compelling reasons" exception to general cessation set out under both Articles 1C (5) and (6) of the 1951 Convention be also incorporated into the draft Directive. This humanitarian exception is interpreted to extend beyond the actual wording of the provision and is recognized to apply to refugees under Article 1 A (2) of the 1951 Convention. As explained in the UNHCR *Handbook*, it reflects a general humanitarian principle that is now well grounded in State practice<sup>14</sup> and should therefore be expressly reflected in the draft Directive.<sup>15</sup>

UNHCR welcomes Article 16 of the draft Directive relating to cessation of subsidiary protection status in so far as it clarifies that a subsidiary protection status lasts for as long as protection is required and, by analogy, refers to the wording of the general cessation clause of the 1951 Convention. In this way, the draft Directive establishes objective criteria for deciding whether it is appropriate to end subsidiary protection for persons in need of international protection.<sup>16</sup>

UNHCR also wishes to stress the need for maintaining a clear distinction between cessation and cancellation of refugee status. Cancellation of refugee status generally follows evidence of fraud or misrepresentation as regards facts central to the determination of refugee status, without lending itself to general assumptions about the refugee character of persons or categories of persons.

<sup>13</sup> "Note on Burden and Standard of Proof in Refugee Claims", UNHCR, December 1998 and Handbook on Procedures and Criteria for Determining Refugee Status, UNHCR, Geneva, September 1979, Paragraph 196.

<sup>14</sup> "Summary Conclusions – Cessation of Refugee Status", Global Consultations on International Protection, Lisbon Expert Round Table, 3-4 May 2001.

<sup>15</sup> With regard to the possibility of revocation of residence permits in cases of applicability of cessation clauses, mentioned in Article 13 of the draft Directive, UNHCR would like to remind EU Member States of Executive Committee Conclusion No. 69 which sets forth an additional humanitarian exception for persons whose long stay in the host country has resulted in strong family, social and economic ties.

<sup>16</sup> This is in line with the recommendations contained in the UNHCR Standing Committee document entitled 'Complementary Forms of Protection', (EC/50/SC/CRP.18) of 9 June 2001.

### Exclusion from Refugee Status

#### Article 14

1. Member States shall exclude from refugee status any applicant:
  - (a) who is at present receiving protection or assistance from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees. *When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Directive.*
  - (b) Who is recognized by the competent authorities of the country in which he or she has taken up residence as having the rights and obligations attached to the possession of nationality of that country;
  - (c) Where there are serious reasons for considering that
    - (i) the applicant has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
    - (ii) the applicant has committed a serious non-political crime prior to his or her admission as a refugee;
    - (iii) the applicant has been guilty of acts contrary to the purpose and principles of the United Nations.
2. The grounds for exclusion shall be based solely on the personal and knowing conduct of the person concerned.

UNHCR welcomes that the provisions of Articles 1 E and F of the 1951 Convention are properly reflected in Article 14 of the draft Directive on exclusion from refugee status. However, Article 14 (1) (a) of the draft Directive will need to be amended to reflect the content of Article 1 D of the 1951 Convention in its entirety.<sup>17</sup>

Article 1 F of the 1951 Convention sets out the exclusion clauses and relates to persons not deserving refugee protection under the 1951 Convention. The exclusion clauses should be regarded as separate from Article 33 (2) of the 1951 Convention which provides that the benefit of the *non-refoulement* provision "may not....be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country". Unlike Article 1 F which is in essence concerned with persons who are excluded from refugee status, Article 33 (2) deals with the treatment of those who have been determined to be refugees but nonetheless could be refouled. These two provisions serve different purposes. Article 1 F is motivated by the severity of crimes committed in the past by an individual, rendering him/her undeserving of refugee status. By contrast, Article 33 (2) aims to protect the safety of the country of refuge and hinges on the assessment that the refugee in question poses a present or future threat.

### Conclusion

UNHCR hopes that the draft Directive will provide for the full and inclusive application of the 1951 Convention by incorporating into Community law the internationally agreed definition of a refugee and by legislating a regional complement to the 1951 Convention which sets out minimum standards for the protection of persons in need of international protection for reasons unrelated to Convention grounds, based on international human rights law and international humanitarian law. With this, the European Union will make a major contribution to the international regime of refugee protection.

UNHCR Geneva, July 2002

<sup>17</sup> UNHCR is currently preparing a note on the interpretation of Article 1 D of the 1951 Convention which it hopes to finalize shortly and share with Member States and the Commission.