UNHCR's Summary Observations on the Amended Proposal by the European Commission for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (COM(2000) 326 final/2, 18 June 2002)

I. GENERAL COMMENTS

The Office of the United Nations High Commissioner for Refugees (UNHCR) is pleased to submit the following comments to the Amended Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (Document COM(2002) 326 final/2) issued on 18 June 2002. UNHCR's comments of July 2001 on the original proposal, issued on 20 September 2000, have not lost their validity in many regards. The present document highlights UNHCR's main observations on the amended proposal. They will be followed separately by more detailed comments in the form of an annotated version of the proposal.

UNHCR welcomes the fact that some of its initial observations on the original proposal have been taken into account. These include: the lifting of certain restrictions on the application of basic principles and guarantees to accelerated procedures (but not border procedures); access to legal counsel at all stages of the procedures; and the provision for necessary (instead of basic) training for all persons involved in identifying asylum-seekers and determining refugee status. The revision is not entirely positive, however. The draft seems to have lost considerably in logic (we refer here to our comments later in this document on the structure of the proposal, on accelerated procedures and on the safe third country concept) and in terms of progress towards genuine harmonisation.

UNHCR hopes that Member States will be prepared to overcome an apparent reluctance to engage in more substantial procedural harmonisation. The now proposed minimum standards are often not binding; the exceptions allowed are many; and certain clauses permit Member States to maintain laws and regulations on important points which may deviate from the draft Directive. Such provisions can only serve to defeat the purpose of harmonisation. Certainly in the long run, the costs associated with legislative adaptation at the national level would be outweighed by the benefits resulting from an efficient, truly common asylum system.

UNHCR has noted a generally more restrictive approach reflected in the amended draft Directive. It is concerned at the broad formulation of powers to detain, the increasingly heavy reliance on accelerated procedures, the non-applicability of a considerable number of principles and guarantees in border procedures, and the overly extensive exceptions to the principle of suspensive effect of appeals. The presentation in the draft proposal (in Chapter III) is an indication that "regular procedures" are seen as a rather exceptional process, while accelerated procedures apply to, and appear to serve mainly to reject or deflect, the majority of claims lodged in the Member States. Such restrictions seem to reflect more generally a shift in emphasis away from the efficient and fair identification of persons in need of protection towards the deterrence of real or perceived abuse, if not sheer deterrence of arrivals of asylum-seekers.

UNHCR fully shares the concern to establish more efficient asylum procedures, while fully maintaining principles of fairness. This is in the interest of all concerned and not least to ensure the credibility and cost-effectiveness of asylum systems. A much higher degree of efficiency than is currently the case could be achieved, *inter alia*, by instituting a single procedure to determine all claims for international protection with a strong focus on quality

decision-making in first instance, by prioritising the processing of certain categories of claims within such a procedure and, above all, by introducing a three-month time limit for all first instance procedures. If States made the resources available to observe this time limit, there would be no need for separate legal procedures and devices which moreover raise protection concerns.

II. SPECIFIC COMMENTS

Given that a more extensive annotated version of the proposed Directive will follow, UNHCR's comments here are organised around main principles and do not necessarily follow the structure of the chapters. Where not indicated otherwise, references to articles are those of the draft Directive.

CHAPTER I - SCOPE AND DEFINITIONS

Single Procedure for All Requests for International Protection

Article 1 limits the scope of the draft Directive to procedures for granting and withdrawing refugee status. While **Article 3(3)** opens the possibility of applying the provisions of the Directive to applications for subsidiary protection, it is clear that they are not necessarily to come under the purview of this draft Directive.

UNHCR would like to reiterate that a single procedure to examine international protection needs would serve to increase considerably the efficiency of systems in place to identify persons in need of such protection, in the interests of both the individuals in question and of cost-reduction. In light of the expert discussions and the broad consensus on this topic during the Global Consultations on International Protection, it would be disappointing if the opportunity to introduce a single procedure would be missed. The examination of a claim under the 1951 Refugee Convention allows for information to be obtained which could usefully be considered as relevant not only to the 1951 Convention refugee definition, but also to subsidiary protection categories. The circumstances that force people to flee their country are complex and, often, of a composite nature. The identification of protection needs cannot, therefore, be made in a compartmentalised fashion. Cases must be examined in a comprehensive manner, which can best be achieved in a single procedure that provides for a single set of procedural standards and guarantees. They should also be determined in a hierarchical manner whereby the first determination is always made in relation to the 1951 Convention. If the procedures were left separate, however, the same standards and safeguards would need to apply to identify persons in need for subsidiary protection.

UNHCR further notes that **Article 2(b)** defines an "*application for asylum*" as a request for international protection under the 1951 Refugee Convention only. Under international law, however, the term asylum is broader than the protection granted under the 1951 Refugee Convention and should incorporate protection under complementary or subsidiary protection categories. The definition of the term here and its use elsewhere in the document are therefore unfortunate.

CHAPTER II - BASIC PRINCIPLES AND GUARANTEES

In general, UNHCR is pleased with the basic principles and guarantees which should apply to any asylum procedure. Certain concerns remain, which are outlined below.

Access to the Procedure

Article 5(1) indicates that the failure to apply for asylum as soon as possible may be used as a ground, albeit not a sole ground when rejecting an asylum claim. UNHCR would like to emphasise that a great number of valid reasons may delay the filing of a claim, including for instance the perceived need first to consult with a legal counsellor, trauma or cultural sensitivities. While a delay in application may therefore be a factor in consideration of the credibility of a claim, it should not be a ground for rejection in and of itself, whether as a sole ground or one ground among others.

Furthermore, while UNHCR does not object to the requirement that an application be made in person (**Article 5(2)**), such a requirement should not be used to hinder access to the procedure itself, such as may for example occur when the person is in detention.

To ensure that border officials do not filter applications submitted at the border, UNHCR believes that it deserves to be made clear that they register and forward the asylum claim to the determining authority, rather than "*deal with applications*", as **Article 5(6)** currently stipulates.

Gender Sensitivity and Special Cases

UNHCR would encourage a more gender-sensitive approach throughout the Directive. While special measures are included for separated children (**Article 15**), the Directive seems to lack similar special provisions with respect to claims by women, victims of torture or sexual violence or traumatised persons. Trauma and sensitivities related to sexual violence or culture may play an important factor in a late application, for example. They may also lead such persons to acquiesce to being part of a single claim by the head of a household initially, with an application only being filed on their own behalf subsequently. Such delays should therefore not lead to non-consideration of the claim, as provided for, among others, in **Article 5(4)**.

While some special measures with respect to personal interviews could be inferred from **Article 11(2)(a)**, more explicit references to measures required to meet the special needs of female asylum-seekers, victims of torture or sexual violence and traumatised persons, similar to Article 15, would be useful. These would include an entitlement for female asylum-seekers to be heard by a female interviewer and interpreter, and the assurance of *in camera* interviews in all cases (**Article 11(1)**) to ensure full confidentiality and privacy, unless the applicant requests otherwise. Special measures and exceptions are, in UNHCR's view, also necessary with respect to detention (**Article 17**), including at the border (**Article 35**). With respect to children, **Article 15** would usefully be complemented with an explicit reference to the "best interest of the child" principle.

UNHCR would furthermore encourage the use of gender-neutral wording throughout the Directive.

Right to Stay Pending Examination of Application

UNHCR appreciates that asylum-seekers shall be allowed to stay on the territory of Member States (**Article 6(1)**). However, UNHCR is concerned that this right to stay is limited to the first instance procedure, as per Article 2(e). Given the seriousness of treatment that refugees may be exposed to, the asylum-seeker should be allowed to remain until a *final* decision on his or her asylum application is issued, unless specific exceptions are applicable (see UNHCR's observations on appeals).

Access to UNHCR

Article 9(1)(c) provides that asylum-seekers "*must not be denied the opportunity to communicate with the UNHCR*". In practice, many asylum-seekers will not be able to do so for various reasons. Asylum-seekers should therefore rather be *provided with an effective opportunity* to contact UNHCR.

Effective Communication with Asylum-Seekers

Where so much depends on the testimony of the individual, effective information of and communication with an asylum-seeker is essential. No meaningful asylum procedure is possible if there is not proper communication on often complex matters. UNHCR is therefore concerned that **Article 9(1)(a)** provides for information to be given to asylum-seekers in a language they "*may reasonably be supposed to understand"*, rather than a language that *is* understood by the applicant. The same applies to interpretation services (**Article 11(2)(b)**). Experience shows that very often, an assumption to the effect that an asylum-seeker speaks and understands the official language of his or her country of origin may prove incorrect. Where, however, the difficulty of providing information and the services of an interpreter in a language that is understood by the applicant lies in his or her lack of co-operation and bad faith, specific exceptions could be foreseen. The services of an interpreter should furthermore be made available whenever *necessary*, rather than when "*reasonable"* only, as now stipulated in **Article 9(1)(b).**

UNHCR is also concerned that personal interviews may be omitted if the competent authority cannot provide an interpreter (**Article 10(2)(c)**. Comments to be made on behalf of an applicant in lieu of a personal interview because an interpreter is not available, as provided under **Article 10(3), Para. 2**, cannot eliminate the fundamental need for meaningful communication with an applicant.

Access to Information, Legal Counselling and Assistance

UNHCR welcomes the provision that asylum seekers shall be afforded the opportunity to consult a legal adviser or other counsellor on matters relating to their asylum procedure in an effective manner, as provided for in **Article 13(1)**. UNHCR also welcomes the provision that legal assistance must be provided free of charge in case of appeals, as stipulated in **Article 13(2)**. UNHCR would appreciate it if limitations to access by legal advisors and other counsellors (see **Article 14(1)**) did not impede the right of asylum applicants to consult a legal counsellor in an effective manner.

Article 14 (1) foresees limitations to access to information in an applicant's file for the asylum-seeker and his or her legal advisor or counsellor. While **Article 7(1)(b)** rightly stipulates that Member States shall ensure that precise country of origin information is made available to decision-makers, it does not rule out that sources on which such information is based, may be withheld from the scrutiny of the asylum-seeker or his/her counsel. Such an approach would leave the asylum-seeker and decision-maker in unequal positions. UNHCR recommends that information and its sources may be withheld only in clearly defined cases in which disclosure of such sources would jeopardise national security or the security of organisations or persons providing the information in question.

Detention of Asylum-Seekers

The reaffirmation of the general principle that asylum seekers should not be detained is, in itself, welcome. However, UNHCR is seriously concerned at the broad formulations of powers to detain where such detention is "objectively necessary for an efficient examination of the application" (**Article 17(1), Para. 1**) or "necessary for a quick decision" (**Article 17(2)**). In UNHCR's view, the above wording is too vague and general to justify such a severe measure

as deprivation of liberty. It might, for instance, be understood as authorising the detention of an asylum-seeker for reasons of administrative expedience or convenience.

UNHCR believes that the guidance provided in Executive Committee Conclusion No. 44 (XXXVII) of 1986 on permissible exceptions to the general rule of not detaining asylum-seekers continues to meet States' concerns. The exceptions (together with explanatory guidance quoted from UNHCR's Guidelines on Detention) which may be resorted to, if necessary, are:

(i) to verify identity

This relates to those cases where identity may be undetermined or in dispute.

(ii) to determine the elements on which the claim for refugee status or asylum is based

This statement means that the asylum-seeker may be detained exclusively for the purposes of a preliminary interview to identify the basis of the asylum claim. This would involve obtaining essential facts from the asylum-seeker as to why asylum is being sought and would not extend to a determination of the merits or otherwise of the claim. This exception to the general principle cannot be used to justify detention for the entire status determination procedure, or for an unlimited period of time.

(iii) in cases where asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State, in which they intend to claim asylum

What must be established is the absence of good faith on the part of the applicant to comply with the verification of identity process. As regards asylum-seekers using fraudulent documents or travelling with no documents at all, detention is only permissible when there is an intention to mislead or a refusal to co-operate with the authorities. Asylum-seekers who arrive without documentation because they are unable to obtain any in their country of origin should not be detained solely for that reason.

(iv) To protect national security and public order

This relates to cases where there is evidence to show that the asylum-seeker has criminal antecedents and/or affiliations which are likely to pose a risk to public order or national security.

UNHCR appreciates the concerns of Member States, as reflected in the draft Directive, to address problems associated with the abuse of asylum-systems and, in this regard, use detention as a deterrent. The Office therefore stands ready to further discuss ways in which these concerns can be met without compromising basic human rights standards.

It would be useful to provide a listing of general principles applicable to detention, such as specific provisions for children and other particularly vulnerable persons, who should only be detained as a measure of last resort and for the shortest possible time. Furthermore, UNHCR considers it important for the Directive to provide for alternatives to detention, such as forms of assignment of residence in reception centres with enforceable limitations on movement, or reporting obligations. Guidance in this regard can also be found in the UNHCR Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers (1999).

Because of the gravity of detention, UNHCR welcomes mandatory periodic judicial review of the detention order. It understands **Article 17(3)** to provide for this without requiring application by the detainee.

Effect of Explicit or Implicit Withdrawal of Asylum Application

UNHCR notes that explicit or implicit withdrawal of an asylum application may lead either to discontinuation or to rejection of the application. In UNHCR's view, any withdrawal of an

application should lead to a discontinuation of the examination of the claim, and a closing of the file, rather than a rejection of the claim.

CHAPTER III – PROCEDURES AT FIRST INSTANCE

Distinction between Admissibility and Examination of the Merits of a Claim

UNHCR notes that admissibility considerations (**Article 25**) have been integrated into accelerated procedures. This lack of a clear distinction between questions of admissibility, which are of a formal nature, and an examination of the merits of the claim, risks causing confusion between very different stages of the assessment of an asylum claim. UNHCR strongly recommends therefore that admissibility issues be treated in a separate chapter, clearly distinct from issues concerning the substance of a claim, as was initially the case. To enhance the distinction between questions of admissibility and matters of substance of a claim, UNHCR further recommends a change in terminology: Where questions of admissibility determine a decision in an asylum procedure, Member States may *declare inadmissible* rather than "*reject*" an application. This distinct terminology would adequately reflect the fact that a denial of admissibility is not based on a substantive examination of the claim.

Similarly, on a general note, Member States may find that assessing a claim that is manifestly well-founded or unfounded may be more efficient than first examining admissibility issues. UNHCR appreciates that this possibility is provided for by the draft Directive and encourages States to consider it on a more general basis.

With regard to the grounds for inadmissibility proposed in the draft Directive, UNHCR has the following observations:

According to **Article 25(d)** an asylum application may be considered inadmissible if an extradition request has been made by an EU Member State or another 'safe' third country. It is UNHCR's view that the proposed approach is problematic, in as far as it mixes a decision on an asylum claim with the distinct extradition procedure. UNHCR has, in the context of the European Commission proposal for a Council Framework Decision on the European arrest warrant and surrender procedures between Member States, proposed that in such cases the asylum procedure should be suspended and, after the resolution of prosecution, whether by sentence or by acquittal, consideration of the asylum case should be resumed and brought to its final conclusion. This can be done either in the State in which the asylum-procedure was initially pending or through transfer of responsibility for examining the asylum-application to the EU Member State or other 'safe' third country to which extradition takes place.

With regard to **Article 25(e)** UNHCR notes that an indictment by an international criminal tribunal is a matter of exclusion and therefore concerns the merits of the case, which potentially involve complex legal issues. It must therefore be considered in the substantive stage of the procedure and cannot be left to the admissibility stage.

UNHCR further notes the inclusion of the "**safe" third country notion** under **Article 25(c), 27 and 28**, and the elaboration of this notion in **Annex I**. In UNHCR's view, the applicability and therefore the usefulness of this notion is questionable, as countries currently at the periphery of the Union will soon join the EU.

As the preamble to the 1951 Refugee Convention and a number of Executive Committee Conclusions make clear, refugee protection issues are international in scope and satisfactory solutions cannot be achieved without international co-operation. It is for this reason, that UNHCR generally welcomes multilateral agreements such as have been agreed by the EU to lay out the criteria and mechanisms for determining the State responsible for examining the claim which aim to ensure effective protection for the persons concerned.

UNHCR's main concerns with regard to the proposed "safe" third country concept remain the following:

Pursuant to **Article 28 (1)(a)** Member States may seek to transfer to a third country the responsibility for considering an asylum request in cases where the applicant "has had an opportunity to avail himself/herself of the protection of the authorities of that country". UNHCR considers it inappropriate to derive the third country's responsibility from the mere presence of the applicant there. Mere presence is often the result of fortuitous circumstances. UNHCR therefore recommends deletion of the last phrase of **Article 28 (1)(a).**

UNHCR equally expresses a reservation to the provision that Member States may deny an applicant access to the procedure – and remove him to a third country – solely because, pursuant to **Article 28 (1) (b)** *"there are grounds for considering that this particular applicant will be admitted (...)".* UNHCR takes the view that removal of an asylum-seeker to a third country should not take place unless the following conditions are met:

- that the third country has *expressly* agreed to re-admit the person to its territory and to consider the asylum application; hence, the assurance that *the third country agrees to admit the applicant to its territory and to consider the asylum claim substantively* should be substituted for the draft text;
- that the third country will protect the asylum-seeker against *refoulement* and will treat him or her in accordance with recognised basic human rights standards until a durable solution is found, namely that the country is "safe" for the particular applicant; in this context, accession to the 1951 Convention and its 1967 Protocol, and actual State practice and compliance remain a critical factor;
- that the applicant has already a connection or close links with the third country so that it appears reasonable and fair that s/he be called upon to first request asylum there; in this respect, the well-founded intentions of the asylum-seeker should as far as possible be taken into account.

Without these safeguards, asylum-seekers may easily find themselves "in orbit". Whether a country is "safe" or not, is not a generic question which can be answered for any asylum-seeker who has set foot in that particular country. The analysis whether the asylum-seeker can be transferred to a third country for determination of the claim must be made on an individualised basis. It is for this reason, that UNHCR cautions against the use of lists of countries. It follows that UNHCR has strong reservations about **Article 27** of the proposal. The burden of proof does not lie with the asylum-seeker to establish that the third country is unsafe, but with the country that wishes to remove the asylum seeker from its territory.

The "Norm" of Accelerated Procedures

It is telling that the entire chapter on first instance decisions of the proposed Directive refers to accelerated procedures only. In this sense, the chapter heading foreseen in the draft Directive does not appear appropriate.

Member States have an interest in ensuring efficient procedures more generally, rather than introducing a variety of parallel procedures. An important means to ensure efficiency is to set time limits in general for all procedures, particularly in first instance procedures. UNHCR therefore proposes a **general time limit** of three months to reach a decision on an asylum application at the first instance. This time limit may be extended for specified reasons such as the complexity of a case. However, experience shows that the large majority of asylum claims tend to originate from nationals of a limited number of States, with regard to which expertise in country of origin information can be established. Such a general time limit is, in UNHCR's view, more effective than the specific one of **Article 24**.

Efforts to combine speed and quality decision-making would also reduce the number of appeals, which tend to be particularly lengthy. In some States this would probably require

additional resources and training. A focus on an inquisitorial process rather than an adversarial one would also be useful to elicit the relevant information in a more co-operative manner, based on mutual trust.

As outlined in our earlier comments, an asylum procedure can be accelerated in a number of ways, including: prioritising specific categories of applications; establishing shorter, but reasonable, delays for appeals; reducing the time required for the completion of the appeals process; and simplifying and/or prioritising appeals and reviews. Instead of establishing separate accelerated procedures, priority within the regular procedure could be given to the examination of defined categories of applications, such as manifestly unfounded and well-founded claims, and those from unaccompanied minors/separated children seeking asylum and other vulnerable persons.

Manifestly well-founded claims deserve early attention as these concern persons whose cases not only can be dealt with quickly and efficiently, but who have been so clearly exposed to serious harm that they merit being assured of safety and stability as early as possible.

With respect to **manifestly unfounded claims**, UNHCR notes that **Article 29(a)** does not take into account considerations relevant for subsidiary protection. UNHCR wishes to recall the Executive Committee Conclusion No. 30, which refers to applications obviously without foundations as those "not related to the criteria for the granting of refugee status … nor to any other criteria justifying the grant of asylum". As noted above, asylum in this sense is broader than refugee status under the 1951 Refugee Convention only.

UNHCR disagrees with **Article 29(c),** which provides for an accelerated procedure for an applicant who "*is prima facie excluded from refugee status (...)".* In UNHCR's experience, decisions on exclusion from refugee status are complex and demand a careful examination of the asylum claim, not only because of the grave consequences for the applicant but in order that all relevant evidence can be elicited and considered as part of the determination process. UNHCR would thus advise against adoption of this paragraph.

Under **Articles 30 and 31**, and **Annex II** an application may also be deemed manifestly unfounded if the applicant is from a "**safe country of origin**". UNHCR acknowledges that applications for asylum may be made by persons coming from countries in which there is in general terms no serious risk of persecution. UNHCR has not objected in principle to the use of this notion as a procedural tool to assign these applications to accelerated procedures. It would, however, be important to spell out more clearly in Article 31, that the use of this procedural tool does not increase the burden of proof on the asylum-seeker and that it remains essential to fully assess each individual case on its merits.

Article 32 of the draft Directive describes other grounds for processing applications for asylum under an accelerated procedure. According to UNHCR's Executive Committee Conclusion No. 30 (XXXIV) of 1983, systems must be able to adjust to deal expeditiously with cases of clear fraud, abuse and misrepresentation. Article 32 seems to describe claims falling broadly into these categories, but concerns with regard to some of the provisions, as outlined in earlier comments, remain. In particular, **Article 32(h)** seems outside the scope of cases envisaged in Executive Committee Conclusion No. 30.

Notwithstanding the above, UNHCR considers it important to bear in mind that a key consideration for accelerating the processing of an asylum claim is a practical one: the claim must lend itself to a prompt examination and decision.

Separate Border Procedure

UNHCR notes that provisions on the border procedure, which are separate and parallel to regular and accelerated procedures, are included at the behest of Member States. There is no reason for due process of law requirements in asylum cases submitted at the border to be

considerably different from those submitted within the territory. Given the importance of personal testimony in determining asylum claims, the lack of a requirement for a personal interview is of special concern. UNHCR recommends inclusion in **Article 35(1)** of the basic safeguards contained in the Articles 7, 8(1), 9, 10(1), 11, 12 and 16(3) of the draft Directive.

Moreover, given that a stay at the border entry point or transit zone is generally equivalent to detention and cannot be considered a conducive environment for refugee status determination, the stay of an asylum-seeker at the border should be for the shortest possible time, and subject to judicial review. It would be particularly important to prioritise manifestly unfounded and well-founded claims in procedures initiated at the border and to provide for exceptions and special measures for vulnerable persons and minors, while fully respecting the principle of family unity.

CHAPTER IV – APPEALS PROCEDURES

Non-Suspensive Effect of Appeals Procedures

UNHCR notes with satisfaction that applicants have the right to an effective remedy of a decision on their asylum claim, in as far an appeal by a "court of law" (an independent and impartial tribunal or body) is provided for, with the authority to review both points of fact and law.

UNHCR is concerned about the extensive exceptions to the principle of suspensive effect of appeals against a negative decision in cases enumerated in **Articles 39(2), 39(3), 39(4) and 40(1) and (3)**. If an applicant is not permitted to await the outcome of an appeal against a negative first instance decision on the territory of the Member State, the remedy against that decision is ineffective. Even in manifestly unfounded cases as defined in Executive Committee Conclusion No. 30, there must be some form of review. UNHCR would go along with the proposal to limit the automatic suspensive effect of an appeal in clearly defined manifestly unfounded cases, provided a court of law or another independent authority has reviewed and confirmed the denial of suspensive effect, taking into account the chances of an appeal.

In UNHCR's view, the safeguards set out in the preceding paragraph form a fundamental guarantee, given the potentially serious consequences of an erroneous determination in the first instance. This requirement should be seen in the light of the need to respect the principle of *non-refoulement*, exceptions to which are narrowly circumscribed. That principle should be observed in all cases, regardless of whether a negative decision is taken in an admissibility procedure instituted for the application of "safe" third country policies or in a substantive procedure.

In light of the above, UNHCR is concerned at the exceptions provided in **Article 39(2), 39(4)** and proposes to amend **Article 39(3)** to apply only to cases determined to be manifestly unfounded. The exceptions to even a review of a decision not to grant suspensive effect, provided for under **Article 40(3)(a), (3)(b) and (3)(d)** should, in UNHCR's view, be deleted.

III. CONCLUSION

UNHCR appreciates the resolve of Member States of the European Union and the initiative of the Commission to harmonise their asylum procedures within the framework of the Amsterdam Treaty. The adoption of a Community instrument on minimum standards on procedures for granting and withdrawing refugee status will, hopefully, result in fairer and more efficient asylum procedures throughout the Union.

UNHCR has concerns, however, about an approach to harmonisation which accommodates lower standards found in the domestic legislation and practice of individual Member States. The risk of downward harmonisation will, inevitably, be higher if the Directive contains significant scope for derogation or wide margins of discretion. It is UNHCR's fervent hope that best practice, in full conformity with international standards, will be allowed to prevail.

It is with this concern in mind that UNHCR has offered the foregoing observations. On some aspects of the proposal, such as the notions of "safe third country" and "safe country of origin" or accelerated procedures, UNHCR has noted that the emphasis on procedural devices risks overshadowing the basic concepts and principles which refugee status determination is supposed to uphold.

UNHCR is, nonetheless, very conscious of the need to establish **efficient procedures**, not least to enhance credibility in the asylum system. Various proposals outlined above would, in UNHCR's view, have the important advantage of greater efficiency without sacrificing fairness or principle. They include amongst others:

- the institution of a single procedure to determine all claims for international protection to avoid separate procedures having to be initiated for subsidiary protection upon final rejection under the 1951 Refugee Convention;

- specific short timelines to be set for all first instance procedure decisions;

- prioritization of claims within the regular procedure for certain types of cases, such as manifestly unfounded and manifestly well-founded cases, as well as special cases, such as children;

- a strong focus on quality decision-making in the first instance to reduce the number of appeals, with appropriate resources and training;

- limitation of appeals to one level on both facts and points of law;

- acceleration of appeals processes for manifestly unfounded cases, including reduced deadlines for filing appeals;

- allowance of a limited number of well-defined exceptions to the principle of (automatic) suspensive effect of appeals, with the decision not to grant suspensive effect being checked and authorised by a court of law.

To further harmonisation within the EU in asylum decision making, UNHCR would also encourage the establishment of an EU-wide advisory board, to monitor decision-making of the administrative authorities responsible for first instance decisions and gradually reduce divergence(s) in jurisprudence. UNHCR would be willing to provide its expert services in the establishment and functioning of such a body. Together with an efficient system of up-to-date information on countries of origin to be put at the disposal of national decision-makers, such an advisory board could support the harmonisation of diverging interpretations of the 1951 Refugee Convention or the Qualification Directive.

UNHCR looks forward to a continuing dialogue with the Commission and Member States on these as well as other topical issues that are being addressed by other, closely related EU instruments.

UNHCR, Geneva
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