



**UNHCR Statement on the right to asylum,
UNHCR's supervisory responsibility and the
duty of States to cooperate with UNHCR in the exercise of its supervisory responsibility**

*Issued in the context of a reference for a preliminary ruling addressed to Court of Justice of the European Union by the Administrative Court of Sofia lodged on 18 October 2011 –
Zuheyr Freyeh Halaf v. the Bulgarian State Agency for Refugees (C-528/11)*

1. Introduction

1.1. The Administrative Court of Sofia has requested a preliminary ruling from the Court of Justice of the European Union (the “Court”) concerning, *inter alia*, the content of the right to asylum under Article 18 of the Charter of Fundamental Rights of the European Union (“EU Charter”),¹ UNHCR’s supervisory responsibility as set forth in the 1951 Convention relating to the Status of Refugees (“1951 Convention”)² and other instruments, and the duty of States to cooperate with UNHCR in the exercise of its supervisory responsibility.

1.2. A number of questions have been posed by the Administrative Court of Sofia, including Questions 2 and 3 which are of particular interest to UNHCR, as follows:³

2. What is the content of the right to asylum under Article 18 of the Charter of Fundamental Rights of the European Union in conjunction with Article 53 of that Charter and in conjunction with the definition in Article 2(c) and recital 12 of Regulation No 343/2003?

3(a) Is Article 3(2) of Regulation No 343/2003, in relation to the obligation under Article 78(1) TFEU to comply with instruments under international law on asylum, to be interpreted as meaning that in the procedure for determining the Member State responsible pursuant to Regulation No 343/2003, the Member States are obliged to request the Office of the UNHCR to present its views, where facts and conclusions therefrom are set out in documents of that Office to the effect that the Member State responsible pursuant to Article 3(1) of Regulation No 343/2003 is in breach of provisions of European Union law on asylum?

¹ European Union, *Charter of Fundamental Rights of the European Union*, 7 December 2000, Official Journal of the European Communities, 2000 OJ C 364/1, available at: <http://www.unhcr.org/refworld/docid/3ae6b3b70.html>.

² UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series No. 2545, vol. 189, p. 137, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>.

³ C-528/11, Reference for a preliminary ruling from the Administrativen Sad Sofia (Bulgaria) lodged on 18 October 2011 - *Zuheyr Freyeh Halaf v Darzhavna agentsia za bezhantsite pri Ministerski savet*, available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=115845&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2888287>.

(b) If this question is answered in the affirmative, the following question might also be answered:

If such a request is not made to the Office of the UNHCR to present its views, does this constitute a substantial infringement of the procedure for determining the Member State responsible pursuant to Article 3 of Regulation No 343/2003 and an infringement of the right to good administration and the right to an effective legal remedy pursuant to Articles 41 and 47 of the Charter of Fundamental Rights of the European Union, specifically also in the light of Article 21 of Directive 2005/85/EC, which provides that that Office has the right to present its views when individual applications for asylum are examined?

1.3. UNHCR has a direct interest in this matter, as the subsidiary organ entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, to seek solutions to the problems of refugees.⁴ According to its Statute, UNHCR fulfils its mandate *inter alia* by “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto[.]”⁵ This supervisory responsibility is reiterated in Article 35(1) of the 1951 Convention and Article II of the 1967 Protocol relating to the Status of Refugees (“1967 Protocol”)⁶ by way of a duty for States Parties to cooperate with UNHCR.⁷

1.4. UNHCR’s supervisory responsibility has also been reflected in European Union law, including by way of a general reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the European Union (“TFEU”),⁸ as well as in Declaration 17 to the Treaty of Amsterdam, which provides that “consultations shall be established with the United Nations High Commissioner for Refugees [...] on matters relating to asylum policy”.⁹ Secondary EU legislation also emphasizes the role of UNHCR. The supervisory responsibility of UNHCR is specifically articulated in Article 21 of Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status (“Asylum Procedures Directive”)¹⁰ and Recital 22 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for

⁴ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3628> (“UNHCR Statute”).

⁵ *Ibid.*, at para. 8(a).

⁶ UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations Treaty Series, vol. 606, page 267, available at: <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>.

⁷ According to Article 35 (1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of th[e] 1951] Convention”. See note 2 above.

⁸ European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 2007 OJ C 115/47, available at: <http://www.unhcr.org/refworld/docid/4b17a07e2.html>.

⁹ European Union, *Declaration on Article 73k of the Treaty establishing the European Community*, 1997 OJ C 340/134, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1997:340:0001:0144:EN:PDF>.

¹⁰ Council of the European Union, *Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status*, 2005 OJ L 326/13, available at: <http://www.unhcr.org/refworld/docid/4394203c4.html>. Article 21(c) in particular obliges Member States to allow UNHCR “to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for asylum at any stage of the procedure.”

subsidiary protection, and for the content of the protection granted (recast) (“Qualification Directive”).¹¹

1.5. In addition to UNHCR’s general interest in this matter, the referring questions explicitly refer to the role of UNHCR in respect of the relevant provisions of EU law.

1.6. This Statement is presented in five parts. Following Part 1, Part 2 addresses the content of the right to asylum as understood under international law and as enshrined in Article 18 of the EU Charter in light of the 1951 Convention. Part 3 provides an overview of UNHCR’s supervisory responsibility under international refugee law and under EU asylum law, while Part 4 explains the duty of States to cooperate with UNHCR and to facilitate its duty of supervising the application of international conventions for the protection of refugees.¹² By way of conclusion, Part 5 provides UNHCR’s proposed answers to Questions 2 and 3(a) referred to the Court.

2. The right to asylum

2.1. The right to asylum in international law

2.1.1. The modern institution of asylum, including the legal framework established by the 1951 Convention and its 1967 Protocol, emanates directly from the right to seek and enjoy asylum affirmed in Article 14 of the Universal Declaration of Human Rights (“UDHR”).¹³ It

¹¹ European Parliament, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*, 2011 L 337/9, available at: <http://www.unhcr.org/refworld/docid/4f06fa5e2.html>.

¹² UNHCR’s mandate *rationae personae* is broader than refugees and asylum-seekers and refugees, and includes non-refugee stateless persons. Paragraph 6 of the UNHCR Statute and subsequent UN General Assembly Resolutions provide the basis for UNHCR’s mandate over refugees, whether formally recognized or not, which would include asylum-seekers and those individuals benefitting from complementary or subsidiary forms of protection determined by the application of the 1951 Convention and/or other regional refugee instruments. In 1994, the UN General Assembly entrusted UNHCR with a global mandate for the identification, prevention and reduction of statelessness and for the international protection of stateless persons. See: UN General Assembly Resolutions A/RES/49/169 of 23 December 1994 and A/RES/50/152 of 21 December 1995. Other categories of persons, including returnees and internally displaced persons, in certain circumstances, are considered to be “of concern to UNHCR”. For the purposes of this Statement however, reference is made only to asylum-seekers and refugees.

¹³ UN General Assembly, *Universal Declaration of Human Rights 1948*, 10 December 1948, 217 A (III). See also, UNHCR, *Note on International Protection*, 30 June 2008, A/AC.96/1053, at para. 11, available at: <http://www.unhcr.org/refworld/docid/486902122.html>; Executive Committee Conclusion No. 82 (XLVIII), 1997, at paras. (b) and (d); Executive Committee Conclusion No. 85 (XLIX), 1998, at paras. (f) and (n); Executive Committee Conclusion No. 87 (L), 1999, at para. (j). The Executive Committee of the High Commissioner’s Programme was established in 1958 and functions as a subsidiary organ of the United Nations General Assembly. It has both executive and advisory functions. Its terms of reference are found in United Nations General Assembly Resolution 1166(XII) which states *inter alia* that it is “to advise the High Commissioner, at his request, in the exercise of his functions under the Statute of his Office.” This includes issuing Conclusions on International Protection (often referred to as “Executive Committee Conclusions”), which address issues in the field of refugee protection and serve as “international guidelines to be drawn upon by States, UNHCR and others when developing or orienting their policies on refugee issues”. See: *A Thematic Compilation of Executive Committee Conclusions, 6th edition, June 2011*, June 2011, available at: <http://www.unhcr.org/refworld/docid/4f50cfbb2.html>.

has been reaffirmed in a growing number of regional refugee and human rights instruments,¹⁴ including the EU Charter which, in its Article 18 provides that “the right to asylum shall be *guaranteed* (emphasis added) (see Section 2.2 below).

2.1.2. Central to the realization of the right to asylum is the principle of *non-refoulement*, the cornerstone of international refugee protection. This principle is codified, *inter alia*, in Article 33(1) of the 1951 Convention. The principle of *non-refoulement* applies to any conduct resulting in the removal, expulsion, deportation, return, extradition, rejection at the frontier or non-admission, etc. that would place a refugee at risk. The principle of *non-refoulement* is not subject to territorial restrictions; it applies wherever the State in question exercises jurisdiction.¹⁵ The principle of *non-refoulement* is also codified in regional refugee law instruments,¹⁶ including in Article 19(2) of the EU Charter, and forms a rule of customary international law.¹⁷ The prohibition against *refoulement* in international refugee law is complemented by *refoulement* prohibitions contained in and developed under international human rights law, which prohibit, *inter alia*, the removal of a person to a risk of torture or other cruel, inhuman or degrading treatment or punishment or other forms of

¹⁴ See: Article XXVII, Organization of American States, *American Declaration on the Rights and Duties of Man*, 2 May 1948, available at: <http://www.unhcr.org/refworld/docid/3ae6b3710.html>; Article 22(7), Organization of American States, *American Convention on Human Rights, "Pact of San Jose", Costa Rica*, 22 November 1969, available at: <http://www.unhcr.org/refworld/docid/3ae6b36510.html> (“American Convention on Human Rights”); Article II, Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 10 September 1969, 1001 U.N.T.S. 45, available at: <http://www.unhcr.org/refworld/docid/3ae6b36018.html> (“1969 OAU Convention”); Article 12(3), Organization of African Unity, *African Charter on Human and Peoples' Rights*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at: <http://www.unhcr.org/refworld/docid/3ae6b3630.html>; Article 18, EU Charter, note 1 above.

¹⁵ *Hirsi Jamaa and Others v. Italy*, Application No. 27765/09, European Court of Human Rights (“ECtHR”), 23 February 2012, available at: <http://www.unhcr.org/refworld/docid/4f4507942.html>; UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, at paras. 24, 26, 32-43, available at: <http://www.unhcr.org/refworld/docid/45f17a1a4.html> (“UNHCR Advisory Opinion on Non-Refoulement”); UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of Hirsi and Others v. Italy*, March 2010, at paras. 4.1.1-4.2.3, available at: <http://www.unhcr.org/refworld/docid/4b97778d2.html>.

¹⁶ See: Article 19(2) EU Charter, note 1 above; Article 22(8), American Convention on Human Rights, note 14 above; Article II(3), OAU Convention, note 14 above; *Cartagena Declaration on Refugees*, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, at pages 190-193, available at: <http://www.unhcr.org/refworld/docid/3ae6b36ec.html> (“Cartagena Declaration”). The obligation to respect the principle of *non-refoulement* is also reflected in Article 3 of the European Convention on Human Rights (Council of Europe, *The Convention for the Protection of Human Rights and Fundamental Freedoms*, 3 September 1953, United Nations Treaty Series, vol. 213, page 222, available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>) (“ECHR”), and Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <http://www.unhcr.org/refworld/docid/3ae6b3a94.html>) (“CAT”).

¹⁷ Concurring Opinion of Judge Pinto de Albuquerque in *Hirsi Jamaa and Others*, note 15 above, at p.42. See also, UNHCR, *UNHCR Note on the Principle of Non-Refoulement*, November 1997, available at: <http://www.unhcr.org/refworld/docid/438c6d972.html>; UNHCR, *Declaration of States Parties to the 1951 Convention and or Its 1967 Protocol relating to the Status of Refugees*, 16 January 2002, HCR/MMSP/2001/09, at para. 4, available at: <http://www.unhcr.org/refworld/docid/3d60f5557.html>; and UNHCR, *The Scope and Content of the Principle of Non-Refoulement (Opinion)* [Global Consultations on International Protection/Second Track], 20 June 2001, at paras 193-253, available at: <http://www.unhcr.org/refworld/docid/3b3702b15.html>.

serious harm.¹⁸ The principle of *non-refoulement* applies to all refugees, including those who have not been formally recognized as such, and to asylum-seekers whose status has not yet been determined.¹⁹

2.1.3. The institution of asylum is not however limited only to the prohibition on *refoulement*. It includes, *inter alia*, (i) access of asylum-seekers to fair and effective processes for determining status and protection needs, consistent with the 1951 Convention and its 1967 Protocol; (ii) the need to admit refugees to the territories of States; (iii) the need for rapid, unimpeded and safe UNHCR access to persons of concern; (iv) the need to apply scrupulously the exclusion clauses stipulated in Article 1F of the 1951 Convention; (v) the obligation to treat asylum-seekers and refugees in accordance with applicable human rights and refugee law standards; (vi) the responsibility of host States to safeguard the civilian and peaceful nature of asylum; and (vii) the duty of refugees and asylum-seekers to respect and abide by the laws of host States.²⁰

2.1.4. In terms of the applicable standards of treatment of asylum-seekers and refugees, together with relevant provisions of international human rights law, Articles 2 to 34 of the 1951 Convention provide a comprehensive list of rights, entitlements and standards of treatment to be granted to refugees by States Parties.²¹ The preamble to the 1951 Convention also underscores its purpose to assure refugees the widest possible exercise of their fundamental rights and freedoms, and Article 5 stipulates “[n]othing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention”. Key principles of the 1951 Convention include those of non-discrimination, *non-refoulement*, non-penalization for illegal entry or stay, and the enjoyment of basic human rights.²²

¹⁸ Article 3(1) CAT, note 16 above; Article 7, UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <http://www.unhcr.org/refworld/docid/3ae6b3aa0.html>; Articles 5(2) and 22.8, American Convention on Human Rights, note 14 above; and Article 13, Organization of American States, *Inter-American Convention to Prevent and Punish Torture*, available at: <http://www.unhcr.org/refworld/docid/3ae6b3620.html>.

¹⁹ See: para. 28, UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, available in: UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.unhcr.org/refworld/docid/4f33c8d92.html>. This is a reissue of the previous *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, reprinted together with the Guidelines on International Protection. When making reference to the *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, this Statement will refer to the “UNHCR Handbook”.

²⁰ Executive Committee Conclusion No. 82 (XLVIII), 1997, at para. (d).

²¹ At a minimum, those provisions not connected to lawful stay or residence also apply to asylum-seekers not yet formally recognized as refugees. See: Articles 3 (non-discrimination), 4 (freedom of religion), 5 (rights granted apart from the Convention), 7 (exemption from reciprocity), 8 (exemption from exceptional measures), 12 (personal status), 16 (access to courts), 20 (rationing), 22 (public education), 31 (non-penalization for illegal entry or stay), and 33 (*non-refoulement*). See, e.g., UNHCR, *UNHCR Comments on the European Commission’s amended recast proposal for a Directive of the European Parliament and the Council laying down standards for the reception of asylum-seekers*, July 2012, (COM (2011) 320 final, 1 June 2011), available at: <http://www.unhcr.org/refworld/docid/500560852.html>

²² UNHCR, *Note on international protection: report of the High Commissioner*, 28 June 2011, A/AC.96/1098, at paras. 2 and 3, available at: <http://www.unhcr.org/refworld/docid/4ed86d612.html>.

2.1.5. Finally, while the right to asylum in international law encompasses a number of fundamental rights, it is nevertheless an independent right intended to ensure individual safety and security, with the prospect of continuing to live free from harm. While the principle of *non-refoulement* is a fundamental right and the cornerstone of international refugee protection, the right to asylum in international law goes beyond the prevention of *refoulement*. The process starts with admission to safe territory and concludes with the attainment of a durable solution.²³

2.2. The right to asylum in the EU context

2.2.1. Respect for fundamental rights, including the right to asylum,²⁴ has long been recognized as a general principle of EU law.²⁵ Such general principles occupy the same position as Treaty provisions in the hierarchy of EU law, and govern the validity and interpretation of secondary Community legislation, as well as national implementing measures. This has been reinforced since the coming into force of the TFEU on 1 December 2009, which establishes that the legal nature of the EU Charter's provisions is that of primary legislation within the EU legal order.²⁶

2.2.2. Article 18 of the EU Charter expresses the right to asylum, and provides that:

“The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.”

Article 18 explicitly incorporates (i) the principles and standards of treatment of the 1951 Convention and its 1967 Protocol and (ii) the requirements of the Treaty on European Union and the TFEU (hereinafter referred to as the “Treaties”).

2.2.3. The 1951 Convention defines those who shall be recognized and protected as refugees and establishes a number of rights and duties for refugees in the receiving country. While the 1951 Convention does not set out procedures for the determination of refugee status as

²³ *Ibid.*, at paras. 2 and 3. See also, UN Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, 25 July 1951, A/CONF.2/108/Rev.1, available at:

<http://www.unhcr.org/refworld/docid/40a8a7394.html> (Recommendation D) and UNHCR, *UNHCR Submissions to the Inter-American Court of Human Rights in the framework of request for an Advisory Opinion on Migrant Children presented by MERCOSUR*, 17 February 2012, at para. 2.1, available at: <http://www.unhcr.org/refworld/docid/4f4c959f2.html>.

²⁴ Advocate General Maduro has stated that the “fundamental right to asylum [...] follows from the general principles of Community law”: Opinion on the Advocate General, *Elgafaji v. Staatssecretaris van Justitie*, C-465/07, Court of Justice of the European Union, 17 February 2009, at para. 21, available at: <http://www.unhcr.org/refworld/docid/501665e02.html>. The fact that the right to asylum preceded the Charter is also clarified by the Explanations to the Charter of Fundamental Rights of the European Union, 2007 OJ C 303/17, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0017:0035:en:PDF>, which provides that this right is based on Article 63 TEC.

²⁵ *Kadi v. Council of the European Union and Commission of the European Communities*, C-402/05 P and C-415/05 P, Court of Justice of the European Union, 3 September 2008, at para. 283, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005J0402:EN:HTML>. See also, T. Tridimas, *The General Principles of EU Law*, Oxford European Community Law Series, Oxford University Press, June 2007.

²⁶ Article 6(1), Treaty on European Union, as amended.

such,²⁷ fair and efficient asylum procedures are an essential element in the full and inclusive application of the 1951 Convention.²⁸ Contracting States need to set out such procedures in domestic legislation.

2.2.4. With regard to the requirements of the Treaties, Article 78 of the TFEU contains the following fundamental principles:

- a. The Union *shall* develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of *non-refoulement* (Art. 78(1)).
- b. The policy must be in accordance with the 1951 Convention and its 1967 Protocol (Art. 78(1)).
- c. The European Parliament and the Council shall adopt measures for a common European asylum system which will include a uniform status of asylum, valid throughout the Union, and a uniform status of subsidiary protection for nationals of third countries (Art. 78(2)).

In addition, Article 80 of the TFEU provides that “the policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility [...] between the Member States.”

2.2.5. The requirements of the Treaties have, pursuant to Article 63 of the EC Treaty (replaced by Article 78 TFEU), been laid down in a series of secondary legislative measures which include:

- a. The Dublin II Regulation;²⁹
- b. The Reception Conditions Directive;³⁰
- c. The Qualification Directive;³¹
- d. The Asylum Procedures Directive;³² and
- e. The Temporary Protection Directive.³³

²⁷ Articles 1C(5) 1C(6), and 9 of the 1951 Convention are premised on a duty to determine refugee status. See also, UNHCR Handbook, note 19 above, at para 189 on p.37.

²⁸ See: UNHCR Handbook, Part Two A (pages 37-38); UNHCR Advisory Opinion on Non-Refoulement, note 15 above, at para. 8; UNHCR, *Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, 31 May 2001, EC/GC/01/12, at paras. 4-5, available at: <http://www.unhcr.org/refworld/docid/3b36f2fca.html>. See also, Executive Committee, Conclusion No. 81 (XLVIII), 1997, at para. (h); Executive Committee Conclusion No. 82 (XLVIII), 1997, at para. (d)(ii) and (iii); Executive Committee Conclusion No. 85 (XLIX), 1998, at para. (q); Executive Committee Conclusion No. 99 (LV), 2004, at para. (l).

²⁹ Council of the European Union, *Council Regulation 343/2003/EC establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national*, 2003 OJ L 50/1, available at: <http://www.unhcr.org/refworld/docid/3e5cf1c24.html>.

³⁰ Council of the European Union, *Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*, 2003 OJ L 31/18, available at: <http://www.unhcr.org/refworld/docid/3ddcfda14.html>.

³¹ See note 11 above.

³² See note 10 above.

³³ Council of the 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*,

2.2.6. It is clear from the Preambles to these legislative measures that their purpose is, *inter alia*, to give effect to the right to asylum enshrined in Article 18 of the EU Charter. This is acknowledged in similar terms by each of these instruments. For example, Recital 15 to the Dublin II Regulation states that: “The Regulation observes the fundamental rights and principles which are acknowledged in the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full observance of the right to asylum granted by Article 18.”³⁴

2.2.7. Article 18 of the EU Charter thus establishes, in combination with Article 3(1) of the Dublin II Regulation and Articles 13 and 18 of the Qualification Directive, an obligation on Member States to ensure, *inter alia*, that an asylum-seeker (i) has access to and can enjoy a fair and efficient examination of his or her asylum claim and/or an effective remedy in the receiving state, (ii) is treated in accordance with adequate reception conditions, and (iii) is granted asylum in the form of refugee status or subsidiary protection status when the criteria are met. It requires compliance not only with the substantive provisions of the 1951 Convention, but also with the substantive and procedural standards contained in the EU instruments referred to in paragraph 2.2.5 above. The right to asylum thus overlaps with Articles 1, 4, 19(2) and 47 of the EU Charter.

2.2.8. The scope of the right protected by Article 18 goes beyond protection from *refoulement*. To construe Article 18 otherwise and in a narrow fashion is to fail to secure the effectiveness (*effet utile*) of this Article. The broad scope of Article 18 is further evident from the *travaux préparatoires* of the EU Charter. For example, the *travaux* show that the drafters of the EU Charter considered and rejected wording which restricted the scope of the provision to the “right to seek asylum” and chose the wider formulation of the “right to asylum”, notwithstanding that the right to asylum was not guaranteed in these terms in any international human rights instrument applicable in the European Union.³⁵

2.2.9. UNHCR, therefore, submits that the right to asylum in Article 18 of the EU Charter contains the following elements: (i) protection from *refoulement*, including non-rejection at the frontier; (ii) access to territories for the purpose of admission to fair and effective processes for determining status and international protection needs;³⁶ (iii) assessment of an

2001 OJ L212-223, available at: <http://www.unhcr.org/refworld/docid/3ddcee2e4.html> (“Temporary Protection Directive”).

³⁴ See also, Recital 5 to the Reception Conditions Directive, note 30 above; Recital 16 to the Qualification Directive, note 11 above; and Recital 8 to the Asylum Procedures Directive, note 10 above.

³⁵ For the discussions regarding the wording of Article 18 of the EU Charter within the *travaux préparatoires* of the EU Charter, see: Doc. CHARTE 4332/00 CONVENT 35, at p.496-528, available at: <http://register.consilium.europa.eu/pdf/en/00/st04/st04332.en00.pdf>. See also, M-T Gil-Bazo, “The Charter of Fundamental Rights of the European Union and the right to be granted asylum in the Union’s Law” [2008], *Refugee Survey Quarterly*, vol. 27 no. 3, at page 46, available at SSRN: <http://ssrn.com/abstract=1443009>. An alternative interpretation is that the EU Charter was intended to be a reaffirmation of existing rights rather than a source of new ones.

³⁶ This would also include a right to remain until such time as their claim has been [finally] determined. See: Recital 13 and Article 7 of the Asylum Procedures Directive, note 10 above; Articles 3, 5 and 13 of the European Union, *Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)*, 2006 OJ L 105/1 available at: <http://www.unhcr.org/refworld/docid/47fdfb0525.html>, and Recital 9 of the European Union, *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-*

asylum claim in fair and efficient asylum processes (with qualified interpreters and trained responsible authorities³⁷ and access to legal representation and other organizations providing information and support³⁸) and an effective remedy (with appropriate legal aid) in the receiving state;³⁹ (iv) access to UNHCR (or its partner organizations);⁴⁰ and (v) treatment in accordance with adequate reception conditions;⁴¹ (vi) the grant of refugee or subsidiary protection status when the criteria are met;⁴² (vii) ensuring refugees and asylum-seekers the exercise of fundamental rights and freedoms; and (viii) the attainment of a secure status.⁴³

3. UNHCR's supervisory responsibility

3.1. UNHCR's supervisory responsibility under international refugee law

3.1.1. As noted in Part 1 above, UNHCR's supervisory responsibility is an integral part of its international refugee protection mandate. It is explicitly provided for in Article 8(a) of the UNHCR Statute as follows:

“The High Commissioner shall provide for the protection of refugees falling under the competence of his Office by: (a) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto [...].”

3.1.2. UNHCR's supervisory responsibility is also reflected, *inter alia*, in the 1951 Convention and its 1967 Protocol, notably through the corresponding State obligation to cooperate with UNHCR in the exercise of its supervisory function.⁴⁴ Articles 35 and 36 of the

country nationals, 2008 OJ L 348/98, available at: <http://www.unhcr.org/refworld/docid/496c641098.html> (“Returns Directive”).

³⁷ “Responsible authorities” includes determining authorities and other authorities who may be responsible for processing claims, making decisions on claims and conducting preliminary examinations in accordance with Article 4 of the Asylum Procedures Directive, note 10 above.

³⁸ See: Recital 13 of the Asylum Procedures Directive, note 10 above. Adequate legal representation is provided for in Articles 15 and 16 of the Asylum Procedures Directive; appropriate representation for minors is provided for in Article 17 of the Asylum Procedures Directive.

³⁹ The right to an effective remedy is provided for in Article 39 of the Asylum Procedures Directive, note 10 above; the right to legal assistance and/or representation in appeals procedures is provided for in Article 15 of the Asylum Procedures Directive.

⁴⁰ Article 10(c) of the Asylum Procedures Directive, note 10 above.

⁴¹ See: Articles 2 to 34 of the 1951 Convention, note 2 above, as informed by international human rights law and the Reception Conditions Directive, note 30 above. The right to an adequate standard of living, including food, clothing and housing, is protected in Article 25 of the UDHR, note 13 above, and Article 11 of the *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.unhcr.org/refworld/docid/3ae6b36c0.html>.

⁴² Articles 13 (“Granting of Refugee Status”) and 18 (“Granting of subsidiary protection status”) of the Qualification Directive, note 11 above.

⁴³ This would also include a right to a residence permit (3 years renewable for refugees; 1 year renewable for beneficiaries of subsidiary protection), unless compelling reasons of national security or public order exist, in accordance with Article 24 of the Qualification Directive, note 11 above.

⁴⁴ Preambular 6 of the 1951 Convention, note 2 above, notes that UNHCR's ability to effectively implement its international protection mandate, including its supervisory responsibility, is dependent upon the cooperation of the States Parties, noting that: “the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing the effective coordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner.”

1951 Convention, as well as Article II of the 1967 Protocol,⁴⁵ provide the legal basis for the obligation of States Parties to cooperate with UNHCR in the exercise of its functions, and in particular, to facilitate its duty of supervising the application of the provisions of the 1951 Convention and the 1967 Protocol. The duty of States Parties to cooperate with UNHCR in the exercise of its supervisory responsibility will be dealt with in greater detail in Part 4 below.

3.1.3. The main purpose of UNHCR's supervisory role is first and foremost to promote and ensure compliance with the relevant legal instruments.⁴⁶ It should also be seen as a means of furthering the object and purpose of the entire 1951 Convention and other instruments for the protection of refugees, namely the international protection of refugees and to assure refugees the widest possible exercise of their fundamental rights and freedoms.⁴⁷

3.1.4. A wide range of activities are carried out by UNHCR pursuant to or in support of its supervisory responsibility, including:⁴⁸

- a. Monitoring and reporting on state practice and the situation of asylum-seekers and refugees and intervening as relevant in response to state practice and protection concerns,⁴⁹ including *inter alia* by making representations to governments and other relevant actors;
- b. Advising governments and legislative bodies on the practical application of the provisions of international refugee instruments,⁵⁰ as well as providing comments

⁴⁵ Regional refugee instruments, such as Article VII of the 1969 OAU Convention, note 14 above, also contain State Party obligations to cooperate with UNHCR in the exercise of its functions, including its supervisory role. See also, Recommendation II(e) of the Cartagena Declaration, note 16 above, which provides that States should: "[...] support the work performed by the United Nations High Commissioner for Refugees (UNHCR) in Central America and to establish direct co-ordination machinery to facilitate the fulfillment of his mandate."

⁴⁶ UNHCR, *Note on International Protection*, 7 July 2000, A/AC.96/930, at para. 20, available at: <http://www.unhcr.org/refworld/docid/3ae68d6c4.html> ("2000 Note on International Protection").

⁴⁷ Preamble to the 1951 Convention, note 2 above.

⁴⁸ See: *Summary Conclusions: Supervisory Responsibility*, June 2003, Cambridge University Press, at paras. 3 to 5, available at: <http://www.unhcr.org/refworld/docid/470a33c0d.html>, adopted at the expert roundtable organized by UNHCR and the Lauterpacht Research Centre for International Law, in the context of the Global Consultations on International Protection (University of Cambridge, UK, 9–10 July 2001). See also, V. Türk, *UNHCR's Role in Supervising International Protection Standards in the Context of its Mandate - Keynote Address by Volker Türk*, 20 May 2010, available at: <http://www.unhcr.org/refworld/docid/4bfb8c962.html> ("Türk 2010"); V. Türk, "UNHCR's Supervisory Responsibility", *Revue Québécoise de Droit International*, vol. 14.1 (2001), pp. 143-145, available at <http://www.sqdi.org/volumes/pdf/14.1 - turk.pdf> ("Türk 2001"); V. Türk, *UNHCR's supervisory responsibility*, 1 October 2002, Working Paper No.67, available at: <http://www.unhcr.org/refworld/docid/4ff3f9b12.html> ("Türk Working Paper 67"); Executive Committee of the High Commissioner's Programme, Standing Committee, 8th Meeting, Progress Report on Informal Consultations on the Provision of International Protection to All Who Need It, EC/47/SC/CRP.27, 30 May 1997, at para. 7, available at: <http://www.unhcr.org/3ae68cfc0.html>; and, 2000 Note on International Protection, note 46 above, at paras. 10-29.

⁴⁹ Article 35(2) (b) and (c) and Article 36 of the 1951 Convention, note 2 above, set out clear obligations for states to provide information on the application of the 1951 Convention. Information gathering, reporting and protection interventions are facilitated by the presence of UNHCR offices in the majority of States Parties to international refugee instruments. Relevant domestic law, regulations, decrees, instructions, administrative decisions and other related administrative measures are regularly measured against the international refugee instruments. See also, Executive Committee Conclusion No. 57 (XL), 1989, at para. (d); and Executive Committee Conclusion No. 77 (XLVI), 1995, at para. (f).

⁵⁰ See, for example: UNHCR should provide its advice on the application of international refugee instruments in situations of large-scale influx of refugees: Executive Committee Conclusion No. 19 (XXXI), 1980, at para. (d). UNHCR should also be involved in the application of the cessation clauses: Executive Committee Conclusion No. 69 (XLIII), 1992, at the Preamble.

- on, and technical input into, draft refugee legislation and related administrative decrees in order to ensure conformity with international law and standards relating to refugees and asylum-seekers;
- c. Advising and being consulted on national asylum or refugee status determination procedures, and having guaranteed access to individual case files.⁵¹ UNHCR is entitled to intervene and submit its interventions on any individual case at any stage of the procedure.⁵² UNHCR may also participate in state asylum procedures in appropriate form, whether at first or second instance, in an advisory role or as part of the decision-making structures;⁵³

⁵¹ Executive Committee Conclusion No. 28 (XXXIII), 1982, at para. (e). It may also be necessary for UNHCR, with the consent of the authorities of the asylum country, to certify that a person is considered a refugee within UNHCR's mandate: Executive Committee Conclusion No. 35 (XXXV), 1984, at para. (e). For recognition of this element of UNHCR's supervisory responsibility in the legislation of EU Member States, see, for example : *Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers* [Belgium], 09/07/2012, Article 57/23 bis at para. 1, available at: https://dofi.ibz.be/sites/dvzoe/FR/Documents/19801215_F.pdf, which provides for UNHCR access to individual case files as follows: « Le représentant en Belgique du Haut Commissaire des Nations Unies pour les Réfugiés, ou son délégué, à condition que le demandeur d'asile soit d'accord peut consulter toutes les pièces, y compris les pièces confidentielles, figurant dans les dossiers de demande de reconnaissance de la qualité de réfugié pendant tout le déroulement de la procédure, à l'exception de la procédure devant le Conseil d'Etat ». According to Spanish asylum legislation, UNHCR has to be informed of all applications for international protection. UNHCR has access to all applicants and individual files of asylum seekers, the opportunity to be present at the interviews and the chance to present written positions to be included in the files. In the case of applications lodged at borders (including airports) and at internment centers, and prior to the adoption of any decision both in the case of the initial application and in case that a request for re-examination of the claim is presented, UNHCR's opinion must be heard. See: Articles 34 and 35 of *Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria*, available at: http://noticias.juridicas.com/base_datos/Admin/112-2009.t2.html#a31.

⁵² See, for example, *Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers* [Belgium], note 51 above, at Article 57/23 bis at paras. 2 and 3, whereby UNHCR is expressly authorised to provide its written opinion to the Commissaire général aux réfugiés et aux apatrides (CGRA) or Conseil du Contentieux des étrangers, and which obliges the CGRA to explain why it has not followed UNHCR's opinion. See also the reference to the fact that taken into consideration UNHCR's views in certain parts of the Spanish asylum procedures is mandatory in note 51 above. In Switzerland, legislation recognizes the value of UNHCR's submissions in the decision-making process, and provides that the Federal Office for Migration (1st instance body) may request UNHCR to provide its views. See: Article 28, *Ordonnance 1 sur l'asile relative à la procédure (Ordonnance 1 sur l'asile, OA 1) du 11 août 1999 (Etat le 1 janvier 2011)* [Switzerland], 142.311, 1 January 2011, available at: http://www.admin.ch/ch/f/rs/142_311/index.html

⁵³ Executive Committee Conclusion No. 8 (XXVIII), 1977, at para. (d); Executive Committee Conclusion No. 28 (XXXIII), 1982, at para (e); and Executive Committee Conclusion No. 35 (XXXV), 1984, at para. (e). See also, 2000 Note on International Protection, note 46 above, at para. 24. In Europe, UNHCR participates in the refugee status determination procedures in, *inter alia*, Italy, Austria, Spain and France. Since April 2005, UNHCR is represented in the newly established Territorial Commissions ("TCs") in Italy by one UNHCR staff member who has full voting rights. The TCs are the Italian first instance body processing asylum applications under the 1951 Convention and, since 2008, applications for international protection under the Qualification Directive. UNHCR's presence was provided for in *Law N. 189, 30 July 2002* and its implementation in the decree on the refugee status determination procedure *N. 303, 16 September 2004* and confirmed with *Legislative Decree N. 25, 28 January 2008*, on the transposition of the Qualification Directive. In Austria, UNHCR is involved in special procedures at the airport, such that UNHCR must approve cases which the Austrian Federal Asylum Office intends to reject as manifestly unfounded or to dismiss based on the so called "safe third country" notion. See Article 33(2) of the *Federal Act Concerning the Granting of Asylum (2005 Asylum Act - Asylgesetz 2005)* [Austria], 1 January 2006, [unofficial English translation] available at: <http://www.unhcr.org/refworld/docid/46adc62c2.html>. In Spain, UNHCR takes part in the Inter-ministerial Commission on Asylum and Refugees ("CIAR") in an observer capacity with no right to vote. The CIAR is composed of representatives of the Ministry of Interior (chair), Ministry of Foreign Affairs and Cooperation, Ministry of Justice, Ministry of Health, Social Services and Equality (State Secretariat of Social Services and Equality), and the Ministry of Employment and Social Security (formerly the Ministry of Labour and

- d. Having access to asylum applicants, refugees and returnees, either as recognized in law or in administrative practice, and being permitted to supervise their well-being at reception centres, camps or other refugee settlements.⁵⁴ This would also include the corresponding right of asylum applicants and refugees, including those in detention, to contact UNHCR, and to be duly informed of this right;⁵⁵
- e. Intervening and making submissions to courts or quasi-judicial institutions in the form of *amicus curiae* briefs, statements or letters;⁵⁶
- f. Conducting advocacy, including through the issuance of public statements;
- g. Receiving and gathering data and information concerning asylum-seekers and refugees;⁵⁷
- h. Issuing legal positions on international law matters relating to asylum-seekers and refugees, including eligibility guidelines on how the situation in countries of origin relates to refugee and other international protection criteria⁵⁸ and guidelines on the interpretation and meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention;⁵⁹ and
- i. Developing progressively international law and standards relating to asylum-seekers, refugees and other persons of concern.⁶⁰ While it is broadly recognized that the international legal framework is generally adequate to cover the various forms of forced displacement, there is a continuing need to supplement some of its aspects, to identify normative gaps, and to fill those through the progressive development of law and standards.

Immigration). See: Articles 23.3 and 35 of *Ley 12/ 2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiaria*, available at: http://noticias.juridicas.com/base_datos/Admin/112-2009.t2.html#a31. In France, UNHCR-nominated assessors are part of the decision-making panel at the Cour national du droit d'asile (2nd instance decision-making panel), which consists of a President, an assessor nominated by the administration and the assessor nominated by UNHCR. See: CESEDA, Article L732-1, available at: <http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006335354&cidTexte=LEGITEX T000006070158&dateTexte=20120731&oldAction=rechCodeArticle>.

⁵⁴ Executive Committee Conclusions No. 22(XXXII), 1981, at para. (III); No. 33(XXXV), 1984, at para. (h); No. 48(XXXVIII), 1987, at para. (d); No. 72(XLIV), 1993, at para. (b); No. 73(XLV), 1994, at para. (b); No. 77(XLI), 1995, at para. (q); No. 79(XLVII), 1996, at para. (p); No. 48(XXXVIII), 1987, at para. (4)(d).

⁵⁵ Executive Committee Conclusions No. 8(XXVIII), 1977, at para. (e)(iv); No. 22(XXXII), 1981, at para. III, and No. 44(XXXVII), 1986, at para. (g).

⁵⁶ UNHCR, *Note on international protection*, 30 June 2010, A/AC.96/1085, at para. 18, available at: <http://www.unhcr.org/refworld/docid/4caaeabe2.html>.

⁵⁷ Article 35(2)(a) of the 1951 Convention, note 2 above.

⁵⁸ See, in this regard, UNHCR, *AMM and others v. Secretary of State for the Home Department - Statement on behalf of the Office of the United Nations High Commissioner for Refugees (UNHCR)*, 6 June 2011, available at: <http://www.unhcr.org/refworld/docid/4edc7b7f2.html>.

⁵⁹ *Ibid.* See, also: Executive Committee Conclusion No. 8(XXVIII), 1977, at para. (g); ExCom, *Agenda for Protection [Global Consultations on International Protection/General]*, 26 June 2002, A/AC.96/965/Add.1, Goal 1, Point 6(2), available at: <http://www.unhcr.org/refworld/docid/3d4fd0266.html>. Such guidelines are included in the *UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, note 19 above. The Guidelines complement the UNHCR Handbook and are intended to provide guidance for governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff.

⁶⁰ Executive Committee Conclusion No. 29(XXXIV), 1983, at para. (j). See also, UNHCR, *Note on International Protection (submitted by the High Commissioner)*, 7 September 1994, A/AC.96/830, at para. 68, available at: <http://www.unhcr.org/refworld/docid/3f0a935f2.html>; V. Türk, "The Role of UNHCR in the Development of International Refugee Law", in Frances Nicholson & Patrick Twomey (eds.), *Refugee Rights and Realities: Evolving Concepts and Regimes* (Cambridge 1999), pp. 153-173; and Türk 2010, note 48 above, at p.15.

3.2. UNHCR's supervisory responsibility under EU asylum law

3.2.1. UNHCR's supervisory responsibility has also been reflected in EU law.⁶¹ As noted in the Introduction in paragraph 1.4 above, primary EU law reflects UNHCR's supervisory responsibility, notably through Article 78(1) TFEU, which makes reference to the 1951 Convention, and Declaration 17 to the Treaty of Amsterdam, which provides for consultations with UNHCR on matters relating to asylum policy. Secondary EU legislation also emphasizes the supervisory role of UNHCR, most notably through:

- a. Article 21 of the Asylum Procedures Directive, which creates an obligation for Member States to allow "UNHCR to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for asylum at any stage of the procedure", in addition to Articles 8(b), 29(3), 30(5) and 38(c) which create an obligation for EU Member States to take into consideration UNHCR information in the examination of asylum claims, in designating third countries as safe countries of origin and in connection with procedures for the withdrawal of refugee status;
- b. Recital 22 of the Qualification Directive, which states that consultations with UNHCR "may provide valuable guidance for Member States when determining refugee status according to Article 1 of the Geneva Convention";
- c. Recital 10 and 17, as well as Articles 1(5), 9(1), 12(2), 25, 29(2), 32(2), and 50-51 of Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office ("EASO"), which foresees an important role for UNHCR within the EASO's direction and activities, including UNHCR representation on the EASO Management Board;⁶² and
- d. Recital 11 and Articles 3(3), 5(3)(d) and 5(4)(d) of the Temporary Protection Directive, which provide for consultations with UNHCR and that information from UNHCR should form part of the basis for, and be referred to in, the Council Decision to introduce temporary protection.

3.2.2. Within the European Union, UNHCR undertakes all of the activities noted in paragraph 3.1.4 above, including by:

- a. Issuing recommendations⁶³ and reports on State practice⁶⁴ and the situation of asylum-seekers and refugees in particular Member States;⁶⁵

⁶¹ As indicated in note 45 above, UNHCR's supervisory responsibility has also been recognized in other Regional Refugee Regimes: see, e.g. Article VIII of the 1969 OAU Convention and Recommendation II(e) of 1984 Cartagena Declaration.

⁶² European Union, *Regulation No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, 19 May 2010*, No 439/2010, available at: <http://www.unhcr.org/refworld/docid/4c075a202.html>.

⁶³ See, e.g., UNHCR, *UNHCR's Recommendations to Cyprus for its EU Presidency, July-December 2012*, July 2012, available at: <http://www.unhcr.org/4efc6aba9.html>; UNHCR, *UNHCR's Recommendations to Denmark for its EU Presidency, January-June 2012*, January 2012, available at: <http://www.unhcr.org/refworld/docid/4f02fcb92.html>.

⁶⁴ See, e.g., UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice*, March 2010, available at: <http://www.unhcr.org/refworld/docid/4bab55752.html>; and UNHCR, *Safe at Last? Law and Practice in Selected EU Member States with Respect to Asylum-Seekers Fleeing Indiscriminate Violence*, 27 July 2011, available at: <http://www.unhcr.org/refworld/docid/4e2ee0022.html>. These reports are

- b. Intervening and making submissions to quasi-judicial institutions or courts in the form of *amicus curiae* briefs,⁶⁶ statements⁶⁷ or letters;⁶⁸
- c. Acting in an advisory-consultative role or as an observer in national asylum, refugee status, or statelessness determination procedures;⁶⁹
- d. Sharing information on how the situation in countries of origin relates to refugee and other international protection criteria and preparing eligibility guidelines on specific countries for use in national asylum procedures;⁷⁰ and
- e. Providing comments on draft legislation – including EU law – in order to ensure conformity with international law and standards relating to asylum-seekers and refugees.⁷¹

the result of research projects on the application of key provisions of the Asylum Procedures Directive and Qualification Directive (in particular Article 15(c)), respectively, in selected Member States.

⁶⁵ See, e.g., UNHCR, *Hungary as a country of asylum: Observations on the situation of asylum-seekers and refugees in Hungary*, 24 April 2012, available at: <http://www.unhcr.org/refworld/docid/4f9167db2.html>; UNHCR, *UNHCR Recommendations on Important Aspects of Refugee Protection in Italy*, July 2012, available at: <http://www.unhcr.org/refworld/docid/5003da882.html>.

⁶⁶ For in depth discussion of UNHCR *amicus curiae* briefs see *I. v. The Minister for Justice, Equality and Law Reform, On the Application of the United Nations High Commissioner for Refugees*, [2004] 1 ILRM 27, Ireland: Supreme Court, 14 July 2003, available at: <http://www.unhcr.org/refworld/docid/42cb9ac34.html>, where the Court held that: “In the present case, an issue of public law arises and the judgment of the court may affect parties other than those now before the court. The court was satisfied that the UNHCR might be in a position to assist the court by making written and oral submissions on the question of law certified by the High Court and, accordingly, appointed it to act as *amicus curiae* and, for that purpose, to make oral and written submissions.” See, also, *Secretary of State for the Home Department (Respondent) v. K (FC) (Appellant); Fornah (FC) (Appellant) v. Secretary of State for the Home Department (Respondent)*, [2006] UKHL 46, United Kingdom: House of Lords, 18 October 2006, <http://www.unhcr.org/refworld/docid/4550a9502.html>.

⁶⁷ By way of example, Advocate General Eleanor Sharpston, in her Opinion in *Bolbol v. Bevándorlási és Állampolgársági Hivatal*, C-31/09, Court of Justice of the European Union, 4 March 2010, at para. 16, available at:

<http://curia.europa.eu/juris/document/document.jsf?docid=79353&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&cid=116824>, para 16), noted that: “The UNHCR occasionally makes statements which have persuasive, but not binding, force. His Office has published various statements which relate to the interpretation of Article 1D of the 1951 Convention: a commentary in its Handbook on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol, a note published in 2002 (and revised in 2009) and a 2009 statement (also subsequently revised) which relates expressly to Ms Bolbol’s case. I intend to treat this last as an unofficial *amicus curiae* brief”.

⁶⁸ For examples of individual EU Member State practice, see note 52 above.

⁶⁹ See notes 51-53 above for examples of UNHCR involvement in national refugee status determination procedures.

⁷⁰ See notes 58, 59 and 65 above.

⁷¹ UNHCR, *UNHCR comments on the European Commission’s proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (COM(2009)554, 21 October 2009)*, August 2010, available at: <http://www.unhcr.org/4c640eee9.html>. See also more generally, UNHCR’s Comments on EU Instruments: <http://www.unhcr.org/cgi-bin/texis/vtx/search%5C?page=&comid=4fa29fda6&keywords=eu-instruments>.

4. Duty of States Parties to cooperate with UNHCR and to facilitate its duty of supervising the application of international conventions

4.1. Duty of States to cooperate with UNHCR in the exercise of its supervisory responsibility under international refugee law

4.1.1. As noted above, Article 35(1) of the 1951 Convention and Article II(1) of its 1967 Protocol recognize UNHCR's supervisory responsibility, and contain the corresponding treaty obligation of States Parties⁷² to cooperate with UNHCR in the exercise of its functions. Article 35(1) and Article II(1) specifically provide that States Parties shall “undertake to *cooperate* with the Office of the United Nations High Commissioner for Refugees [...] in the exercise of its functions, and shall in particular *facilitate* its duty of supervising the application of the provisions of th[e 1951] Convention [and its 1967 Protocol].” These provisions not only concretize the general obligations of United Nations (UN) Member States to cooperate with the United Nations,⁷³ they also serve to establish an explicit contractual link between the 1951 Convention and the UNHCR Statute, and form the basis for the legal framework establishing UNHCR's mandate and its competence as a subsidiary organ of the UN.⁷⁴

4.1.2. State Parties' duty to cooperate with UNHCR is specified further in Article 35(2) and Article 36 of the 1951 Convention. Pursuant to Article 35(2), States undertake to provide UNHCR:

- “... in the appropriate form, with information and statistical data concerning:
- (a) the condition of refugees;
 - (b) the implementation of [the 1951] Convention, and
 - (c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.”

Article 36 requires States Parties to “communicate to the [UN Secretary-General] the laws and regulations which they may adopt to ensure the application of [the 1951] Convention.” While Article 36 mentions the Secretary-General, in practice these communications are directed to UNHCR, as UNHCR is the main body within the UN system responsible for refugee matters, and a subsidiary organ of the UN General Assembly.⁷⁵

4.1.3. States have acknowledged the need for cooperation within the international community to achieve international protection goals,⁷⁶ and more particularly, the obligation for States to cooperate with UNHCR in its supervisory responsibility.⁷⁷ The concluding

⁷² Arguably, the content of Article 35 of the 1951 Convention, note 2 above, could possibly constitute a rule of customary international law, not least because a specific organizational supervisory practice developed by UNHCR, coupled with a consequent acquiescence by States in relation to this practice, is discernible: Türk Working Paper 67, note 48 above, at p. 5.

⁷³ See Articles 2(2), 22, 55 and 56 of the *Charter of the United Nations*, 24 October 1945, 1 United Nations Treaty Series XVI, available at: <http://www.unhcr.org/refworld/docid/3ae6b3930.html> (“UN Charter”).

⁷⁴ Türk Working Paper 67, note 48 above, at p. 6.

⁷⁵ Türk Working Paper 67, note 48 above, at p.4, with reference to Article 22 of the UN Charter, note 72 above.

⁷⁶ Paragraph 4 of the Preamble to the 1951 Convention, note 2 above. A number of Executive Committee Conclusions also call upon Governments to cooperate with UNHCR more generally, notably Executive Committee Conclusions No. 5(XXVIII), 1977, at para. (e), No. 74 (XLV), 1994, at para. (c), No. 90 (LII), 2001, at para. (c).

⁷⁷ Executive Committee Conclusions No. 5(XXVIII), 1977, at para (e), and No. 74 (XLV), 1994, at para. (c).

observations of human rights treaty monitoring bodies also reflect this obligation to cooperate, and have increasingly emphasized the need of States Parties to cooperate and coordinate with UNHCR.⁷⁸

4.1.4. States Parties to the 1951 Convention have a duty to interpret and to implement the provisions of the 1951 Convention, including Article 35, in good faith and in accordance with their ordinary meaning and in light of the overall purpose of the 1951 Convention.⁷⁹ The Court of Justice of the European Union has acknowledged that international treaties, such as the 1951 Convention, must be interpreted using the rules of interpretation enshrined in Articles 31 et seq. of the Vienna Convention on the Law of Treaties.⁸⁰

4.1.5. UNHCR's Executive Committee has elaborated upon a number of actions that States Parties should undertake in order to fulfill their obligation under Article 35(1).⁸¹ These include, *inter alia*:

- a. Ensuring that asylum-seekers have access to and are able to contact UNHCR;⁸²
- b. Ensuring that UNHCR has access to asylum-seekers, including at reception centres, places of detention and in camps and other settlements;⁸³
- c. Providing UNHCR with information, when requested, on implementation of the Convention in their respective countries;⁸⁴ and
- d. Involving UNHCR in the application of the cessation clauses, in keeping with the role of UNHCR to supervise the application of the 1951 Convention.⁸⁵

4.1.6. In order to implement the obligation to cooperate with UNHCR in good faith, States Parties need to provide UNHCR with an effective opportunity to present its views, to be consulted and/or to have access to information that would enable it to fulfill its supervisory

⁷⁸ See, e.g., Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Uzbekistan*, 7 November 2001, CRC/C/15/Add.167, available at: <http://www.unhcr.org/refworld/docid/3cbbe27d4.html>, at para. 60: The Committee recommends that the State party “[c]ontinue and strengthen its cooperation with UNHCR.”; Council of Europe: Commissioner for Human Rights, *Post-war justice and durable peace in the former Yugoslavia*, February 2012, p.46, available at: <http://www.unhcr.org/refworld/docid/4f7423b72.html>. The Commissioner recommends that: “States in the region are called upon to step up their efforts, in collaboration with UNHCR, in order to end the protracted displacement of refugees and other displaced persons and provide them with fair, long-term solutions.”; and Council of Europe: European Commission Against Racism and Intolerance (ECRI), *ECRI Report on Ukraine (fourth monitoring cycle)*, 21 February 2012, CRI(2012)6, at p.30, available at: <http://www.unhcr.org/refworld/docid/4f4500532.html> and *ECRI Report on Greece (Fourth Monitoring Cycle)*, Adopted on 2 April 2009, 15 September 2009, CRI(2009)31, at p.38, available at: <http://www.unhcr.org/refworld/docid/4ab0ed6e0.html>. In both reports, ECRI encourages authorities to continue and strengthen their cooperation with UNHCR, including with regard to the reform of legislation and status determination procedures concerning asylum-seekers and refugees.

⁷⁹ See Articles 26 and 31 et seq. of the *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, available at: <http://www.unhcr.org/refworld/docid/3ae6b3a10.html>

⁸⁰ *The Queen on the application of: International Air Transport Association (IATA) and European Low Fares Airline Association v. Department for Transport*, C-344/04, Court of Justice of the European Union, 10 January 2006, at para. 40, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62004J0344:EN:HTML>.

⁸¹ See notes 49-51, 53-55, and 50-60 above.

⁸² See note 55 above.

⁸³ See note 54 above.

⁸⁴ Executive Committee Conclusions No. 57 (XL), 1989, at para. (d); No. 61 (XLI), 1990, at para. (i); No. 65 (XLII), 1991, at paras. (1) and (m); No. 77 (XLVI), 1995, at para. (e); and, No. 79 (XLVII), at para. (f).

⁸⁵ Executive Committee Conclusion No. 69 (XLIII), 1992, at the Preamble.

responsibility. Furthermore, as a consequence of the nature and authority of UNHCR as the body mandated by the UN General Assembly to provide international protection and to supervise the application of international protection instruments, in conjunction with the obligation to implement their treaty obligations in good faith, States Parties have an obligation to take UNHCR's views duly into consideration.

4.2. Duty of States to cooperate with UNHCR in the exercise of its supervisory responsibility under EU asylum law

4.2.1. As noted in Section 3.2 above, the duty of States to cooperate with UNHCR in the exercise of its supervisory responsibility has also been reflected in European Union law.⁸⁶ In particular, Declaration 17 to the Treaty of Amsterdam, which foresees consultations with UNHCR in the area of harmonisation of refugee law and policies, can be seen as a concrete commitment by EU Member States to implement their responsibility to cooperate with UNHCR in the exercise of its supervisory responsibility. During the EU harmonization process, UNHCR provided detailed policy and legal opinions on the various draft texts, as well as substantive background documentation both on state practice and on relevant international refugee law standards.⁸⁷ As noted in paragraph 3.2.1 above, UNHCR is also specifically mentioned in the Qualification Directive⁸⁸ and the Asylum Procedures Directive,⁸⁹ both of which are at the core of the Common European Asylum System (CEAS).⁹⁰ The Regulation establishing the EASO foresees an important role for UNHCR, including respect for UNHCR guidelines, UNHCR representation on the EASO Management Board, and UNHCR participation in the EASO Consultative Forum and Working Parties, among other forms of involvement in its direction and activities.

4.2.2. The duty of States to cooperate with UNHCR in its supervisory role has also been reflected in the jurisprudence of European regional and national courts, notably where it has (i) indicated that Member States should take into account UNHCR materials in examining international protection claims, and (ii) the fact that Courts themselves have assigned due weight to UNHCR materials in their deliberations.

4.2.3. The European Court of Human Rights ("ECtHR") has, for example, long recognised the obligation of Council of Europe Member States to take into account materials originating from objective and reliable sources, including UN agencies, in assessing risk under Article 3 of the European Convention on Human Rights,⁹¹ and has regularly relied upon UNHCR

⁸⁶ The duty of States to cooperate with UNHCR is also reflected in the national legislation of EU Member States, particularly following the transposition of the EU legislative provisions listed in paragraph 3.2.1 above. For example, the obligation to cooperate with UNHCR is reflected in the national legislation of Bulgaria, the Law for the Asylum and Refugees (*Prom. SG. 54/31 May 2002, amend. SG. 31/8 Apr 2005, amend. SG. 30/11 Apr 2006, amend. SG. 52/29 Jun 2007, amend. SG. 109/20 Dec 2007, amend. SG. 82/16 Oct 2009, amend. SG. 39/20 May 2011*, English translation available at: <http://www.unhcr.org/refworld/docid/47f1faca2.html>), which stipulates in Article 3(1) that: "The Republic of Bulgaria shall fulfill its obligations under of the [1951 Convention relating to the status of refugees] and the [1967 Protocol] through its state bodies, in co-operation with the [UNHCR] for refugees." Other examples are listed in notes 51-53 above.

⁸⁷ See 2000 Note on International Protection, note 46 above, at para 42.

⁸⁸ See note 11 above, at Recital 22.

⁸⁹ See note 10 above, at Article 21.

⁹⁰ The *European Pact on Immigration and Asylum* adopted by EU Member States under the French Presidency of the EU recommends that a sustained dialogue be conducted with UNHCR in the establishment of the CEAS. See p. 11 of the Pact, available at: <http://register.consilium.europa.eu/pdf/en/08/st13/st13440.en08.pdf>.

⁹¹ See, e.g., *Salah Sheekh v. the Netherlands*, Application No. 1948/04, ECtHR, 11 January 2007, at para. 136, available at: <http://www.unhcr.org/refworld/docid/45cb3dfd2.html>. The Council of Europe has also made

guidelines, reports, statements and formal third party interventions in its jurisprudence.⁹² More precisely, the ECtHR gives due weight to UNHCR's conclusions about the international protection needs of an individual.⁹³ For its part, the Court, in the joined cases of *NS v. Secretary of State for the Home Department* and *ME and Others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*,⁹⁴ cited with approval the ECtHR's practice of using UNHCR statements in assessing the risks to which an applicant for international protection might be exposed in the Member State responsible for examining the claim under the Dublin II Regulation (the "Responsible State"). More particularly, the CJEU noted that EU Member States could refer to information such as that cited by the ECtHR in *M.S.S. v. Belgium and Greece*,⁹⁵ where the ECtHR specifically referred to UNHCR documents, in order to assess the risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the EU Charter that an asylum-seeker might face in the Responsible State.⁹⁶

4.2.4. National courts of EU Member States have also referred to UNHCR guidelines and materials in their jurisprudence regarding the international protection needs of asylum-seekers and refugees, and have duly taken them into consideration in their deliberations.⁹⁷

reference to the importance of considering UNHCR information in (i) assessing the situation in the country of return in the context of forced returns (Council of Europe Committee of Ministers, *Twenty Guidelines on Forced Return*, 4 May 2005, available at: <http://www.unhcr.org/refworld/docid/42ef32984.html>) and (ii) providing UNHCR with access to asylum-seekers, to information about asylum applications, and permitting UNHCR to present its views regarding asylum applications in the context of accelerated asylum procedures (Council of Europe Committee of Ministers, *Guidelines on human rights protection in the context of accelerated asylum procedures*, 1 July 2009, available at: <http://www.unhcr.org/refworld/docid/4a857e692.html>).

⁹² See, for example, *Hirsi Jamaa and Others v. Italy*, note 15 above, at para. 203; *Sufi and Elmi v. the United Kingdom*, Applications Nos. 8319/07 and 11449/07, ECtHR, 28 June 2011, at paras. 231-234, and 245 et seq., available at: <http://www.unhcr.org/refworld/docid/4e09d29d2.html>; *M.S.S. v. Belgium and Greece*, Application No. 30696/09, ECtHR, 21 January 2011, at paras. 229, 255, 300-304 and 347-349, available at: <http://www.unhcr.org/refworld/docid/4d39bc7f2.html>

⁹³ *Jabari v. Turkey*, Application No. 40035/98, ECtHR, 11 July 2000, at para. 41, available at: <http://www.unhcr.org/refworld/docid/3ae6b6dac.html>. See also, *Preventing harm to refugees and migrants in extradition and expulsion cases: Report of the CoE Parliamentary Committee on Migration, Refugees and Population, Rule 39 indications by the European Court of Human Rights*, Document No. 12435, November 2010, available at: <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12435.htm>, where the rapporteur: "encourages further co-operation between UNHCR and the Strasbourg organs in strengthening the Rule 39 mechanism. The rapporteur invites the Strasbourg organs to give "due weight" to the views of UNHCR when considering issues of *refoulement* of asylum seekers and refugees, which clearly go to the heart of the mandate of both organizations in protecting human rights. The rapporteur also welcomes the steps taken by UNHCR to raise awareness about interim measures and their application and encourages them to continue their work in this area."

⁹⁴ *N. S. (C 411/10) v. Secretary of State for the Home Department and M. E. (C 493/10) and others v. Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, C-411/10 and C-493/10, Court of Justice of the European Union, 21 December 2011, available at: <http://www.unhcr.org/refworld/docid/4ef1ed702.html> ("*NS and ME*").

⁹⁵ Note 92 above.

⁹⁶ *NS and ME*, note 94 above, at paras. 88-94.

⁹⁷ See, for example: In the House of Lords case of *R. (on the application of Adan (Lul Omar)) v Secretary of State for the Home Department*, *R. v Secretary of State for the Home Department Ex p. Subaskaran*, *R. (on the application of Aitseguer) v Secretary of State for the Home Department (No.2)* [2000] UKHL 67 [2001] 2 AC 477, p. 520, Lord Steyn commented that: "Contracting states are obliged to co-operate with UNHCR. It is not surprising therefore that the UNHCR Handbook, although not binding on states, has high persuasive authority, and is much relied on by domestic courts and tribunals." In *R v. Uxbridge Magistrates Court and Another, Ex parte Adimi*, [1999] EWHC Admin 765; [2001] Q.B. 667, UK High Court (England and Wales), 29 July 1999, available at: <http://www.unhcr.org/refworld/docid/3ae6b6b41c.html>, Lord Justice Simon Brown noted with regard to UNHCR's Guidelines on Detention of Asylum-seekers, that "such Guidelines should be accorded considerable weight." In *Secretary of State for the Home Department (Respondent) v. K (FC) (Appellant)*;

4.2.5. EU Member States have also recognized UNHCR's supervisory role in other ways, by explicitly making reference to UNHCR's consultative role in national asylum legislation, by requesting UNHCR to provide comments on national asylum legislation, and in requesting UNHCR's assistance in building asylum systems. In Bulgaria, for example, the Report, *Refugees in Bulgaria: Building the National System for Refugee Protection – 1993-2003*, is a detailed account of the cooperation between the Bulgarian State and UNHCR in building an asylum system based upon the principles and standards included in the 1951 Convention, and an explicit recognition of the State duty to cooperate with UNHCR in exercising its supervisory role.⁹⁸

4.3. Duty of States to request UNHCR to present its views in the context of Dublin proceedings where UNHCR has already published relevant information on the situation of asylum-seekers and refugees in the potential Responsible State

4.3.1. On the basis of the above overview of international refugee law and EU asylum law, as well as the practice of EU Member States, it is clear that there is an obligation for EU Member States to cooperate with UNHCR in good faith in the exercise of its supervisory responsibility.

4.3.2. More particularly, in the context of proceedings under the Dublin II Regulation (i.e. in determining the Responsible State or deciding whether to assume responsibility under Article 3(2) of the Dublin II Regulation), this obligation to cooperate includes *inter alia* (i) providing UNHCR with an opportunity to present its views to any competent authority regarding individual applications, and (ii) taking materials produced by UNHCR into consideration in good faith, and to give due weight to the views expressed by UNHCR.

4.3.3. There is, however, no additional obligation upon Member States to request UNHCR to present its views in each and every proceeding under the Dublin II Regulation (or other procedure) where (i) relevant UNHCR documents already exist, (ii) this advice is sufficiently clear and up to date, (iii) UNHCR has access to refugees and asylum-seekers (and refugees and asylum-seekers are provided with an effective right to contact UNHCR) as well as information on individual asylum applications, the asylum procedure, and the interpretation and application of legal standards, and (iv) UNHCR is provided with an opportunity to present its views at any stage of the proceedings, in accordance with Article 21 of the Asylum Procedures Directive.

Fornah (FC) (Appellant) v. Secretary of State for the Home Department (Respondent), [2006] UKHL 46, United Kingdom: House of Lords, 18 October 2006, available at:

<http://www.unhcr.org/refworld/docid/4550a9502.html>, the House of Lords used the *UNHCR Guidelines on Gender-related persecution* to determine the scope of Article 1 of the 1951 Convention, stating that: "the UNHCR Guidelines, clearly based on a careful reading of the international, authorities, provide a very accurate and helpful distillation of their effect." In *S.O.A. v. Minister for Justice, Equality and Law Reform and Anor* (2009), [2009] IEHC 137, Ireland: High Court, 24 March 2009, available at:

<http://www.unhcr.org/refworld/docid/4a2d04982.html>, the Irish High Court followed the *UNHCR Guidelines on Internal Flight Alternative*, noting that the Guidelines "are undoubtedly of valuable assistance when internal relocation is considered as an alternative to asylum when persecution has been established."

⁹⁸ Bulgarian State Agency for Refugees and UNHCR, *Reference Book: "Refugees in Bulgaria". Building the National System for Refugee Protection, 1993-2003*, June 2004, available at: <http://www.unhcr.org/refworld/docid/42b8072d4.html>.

5. UNHCR's views on Questions 2 and 3(a) referred to the Court

UNHCR proposes the following specific responses to the questions referred to the CJEU by the Administrative Court of Sofia:

- a. *Question 2*: Article 18 of the EU Charter, which explicitly incorporates the principles and standards of treatment contained in the 1951 Convention and its 1967 Protocol and the requirements of the Treaties, contains the following protections for refugees and asylum-seekers: (i) protection from *refoulement*, including non-rejection at the frontier; (ii) access to territories for the purpose of admission to fair and effective processes for determining status and protection needs; (iii) assessment of any asylum claim in fair and efficient asylum processes and an effective remedy in the receiving state; (iv) access to UNHCR (or its partner organizations); (v) treatment in accordance with adequate reception conditions; (vi) the grant of refugee or subsidiary protection status when the criteria are met; (vii) ensuring refugees and asylum-seekers the exercise of fundamental rights and freedoms; and (viii) the attainment of a secure status.
- b. *Question 3(a)*: EU Treaties and secondary legislation, which create an obligation to comply with 1951 Convention, impose an obligation on Member States to cooperate with UNHCR in the exercise of its supervisory responsibility, including within the context of proceedings under the Dublin II Regulation, and therefore oblige Member States to (i) provide UNHCR with an opportunity to present its views to any competent authority regarding individual applications, and (ii) to take UNHCR's views duly into account

UNHCR
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