



**UNHCR Observations on the
European Commission Proposal for a
Council Framework Decision on combating terrorism
(COM(2001) 521 final 2001/0217 (CNS))**

1. UNHCR welcomes the Commission initiative for framework legislation to combat terrorism at the level of the European Union (EU) to the extent that it would contribute positively to the development of appropriate international standards in this regard. UNHCR notes that the scope of the draft Framework Decision, as stipulated in its Article 2 and the Explanatory Memorandum, is limited to acts of terrorism directed at Member States or conduct on the territory of the EU which can contribute to acts of terrorism in third countries.

2. While there is no obvious linkage between the subject matter of the draft Framework Decision and the 1951 Convention relating to the Status of Refugees, internationally agreed criteria for characterizing certain acts as “terrorist offences” may be relevant to the interpretation and application of the so-called “exclusion clauses” of the refugee definition of the 1951 Convention. These clauses are contained in Article 1F of the 1951 Convention, which stipulate that its provisions “shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the United Nations”. From this wording, it is apparent that a proper application of the exclusion clauses would and should make it impossible for terrorists to benefit from the protection of the 1951 Convention.

3. UNHCR notes that, in the context of article 1 F (b) of the 1951 Convention, the serious and grave nature of the offence must clearly be established. Any listing of terrorist acts in legislative instruments must maintain the connotation of particular gravity. In addition, UNHCR wishes to point out that it is also important that the particular circumstances of the individual case be fully examined and, hence, that any unwarranted automaticity between the draft Framework Decision and the application of the exclusion clauses be avoided in asylum cases generally. The international standards developed in respect of the exclusion clauses require either personal participation or personal knowledge and responsibility in the sense of contributing to the impugned acts, or failing to stop them. Strict observance of these standards is particularly important when assessing whether certain acts carried out by an applicant for asylum may constitute terrorist acts, as the person’s intent and motivation are an integral part of the definition of such offences. Whereas in some cases the personal knowledge and responsibility of the individual may be established on the basis of the person’s position and his or her level of participation in the acts in question, there may be cases where such a conclusion would be unwarranted, and the person should be given the opportunity to show that he or she had no personal knowledge or was not directly involved in those acts.

4. In conclusion, from UNHCR's perspective, while the interpretation of Article 1F(b) of the 1951 Convention would generally be informed by the terms of this Framework Decision, an examination of the individual circumstances of each case, as well as the gravity of the excludable act, would still be necessary, particularly where offences are examined that are punishable by less severe maximum penalties. UNHCR offers these observations so as to ensure that no unwarranted linkages be made between the Framework Decision and the interpretation and application of the exclusion clauses of the 1951 Convention, should this indeed be considered by decision-makers determining refugee status.

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