

THE LANGDON REPORT (1995)

Justice and Home Affairs Cooperation with Associated Countries

report by A J Langdon

October 1995

(formally adopted as SEC(96)86, 10.1.96).

EXECUTIVE SUMMARY

BACKGROUND

Introduction

Under this contract with the European Commission the consultant was required to make short visits to the 9 countries that have Europe Agreements with the EU (and Slovenia, where the Agreement is initialled) as a follow-up to the reference in the Conclusions of the Essen European Council to the inclusion of justice and home affairs matters in the structured dialogue, and the availability of the Phare programme to support activities in the justice and home affairs field. The consultant was asked to have discussions, in particular, with the ministries of justice and of the interior in the Associated Countries and to report within 3 months. The visits were carried out during the period 26 July to 10 October.

2. First, some preliminary disclaimers. Within the time-frame described above there was clearly no opportunity for any appreciable direct observation on the ground, for the collection of data on a standardised basis, or for the methodical analysis and comparison of information. The consultant was specifically requested not to get involved in the assessment of any projects that countries might have in mind for Phare funding and to make it clear that all proposals would have to be put forward through the normal Phare procedures. This study itself is clearly an insufficient foundation for meaningful assessments of individual countries, and this report will not attempt to make any such assessments. In short the consultant has approached the work from the standpoint that this exercise is very much a first step to follow-up the relevant part of the Essen Conclusions, and that it is simply intended to map out the area for possible further action.

Surrounding

3. The consultant was not asked to examine the conduct of the structured dialogue under the Council and it would be inappropriate for him to do so. Nevertheless, it is obvious that a very important change has been introduced by the regular meetings that are now held with the Associated Countries both at the level of the Justice and Home Affairs Council itself and at the expert working group level. The consultant was bound to be struck by the great expectations that these meetings have stimulated

within the Associated Countries, and by their hope that the process will soon develop in a planned and focused way that enables them to pursue their common concerns in detail.

4. While it does not seem that there has yet been any appreciable discussion of justice and home affairs matters within the Association Councils, it is relevant to note that all the Europe Agreements contain Articles on these matters albeit expressed in different terms. This represents the formal linkage, in addition to the dialogue under the Justice and Home Affairs Council, and the Phare machinery, and the framework of the Association Councils will surely prove a constructive forum for the discussion of bilateral cooperation in this field with each country.

5. A crucial background issue is the extent of current assistance. While Phare support for fields related to justice and home affairs projects has hitherto been quite limited an extensive network of bilateral assistance has developed in this field. There is a noticeable regional dimension to this assistance, which is also characterised by the extent to which technical assistance in this field operates directly between the government services concerned. It can be assumed that this will be a lasting feature of assistance in these particular fields of work. In addition to uncoordinated bilateral assistance, a considerable amount of work is being put into the region by international organisations such as UNHCR, IOM and UNDCP (the last of which has since 1992 been leading a Task Force to co-ordinate assistance directed at the drug problem in the region). Any new initiative would clearly need to take account of all this existing work. The Budapest Group on Uncontrolled Migration and the International Law Enforcement Academy at Budapest are also performing relevant roles, and account should be taken of them too.

THE PRE-ACCESSION PERSPECTIVE

6. Justice and home affairs are those that are dealt with under Title VI (the Third Pillar) of the Union Treaty, under which (Article K3) the Council may adopt joint positions and joint actions and draw up Conventions which it recommends for adoption. There is a formal acquis of agreed instruments containing requirements that a State joining the Union would have to undertake on accession. It is a fact, however, that such instruments do not exist at the level of the Union on some very important Title VI topics, though the Member States of the Union may have quite clear expectations on those matters.

7. In addition to the defined pre-accession perspective sketched above, the Member States of the Union and the Associated Countries themselves manifestly have an immediate and shared concern to deal with the pressures of unauthorised migration and of serious crime that have arisen as an unwelcome concomitant of the democratic transition process.

Home affairs issues

8. It is clear to the consultant that the priority issues are

combatting unauthorised immigration, including border control regimes in particular:

- asylum procedures
- combating drug-related and other serious crime, and police training and equipment.

The legal position and the clarity of the acquis differ as between these topics, however, and this is considered in the report. The consultant suggests that at some point in the pre-accession process it would probably help if a more authoritative statement could be made about the matters that are binding legal requirements and those that are more by way of being expectations-of general standards.

Justice issue

9. In addition to the Conventions negotiated under Article 220 of the Treaty of Rome and under Title VI of the Union Treaty itself, the main Council of Europe criminal Conventions and the UN Conventions on Drugs are so close to the concerns of the EU that they can virtually be regarded as part of the accession requirements.

OBSERVATIONS

Home affairs issues

10. Many of the Associated Countries have, for example, the most difficult border situations to control and they can produce figures to show how seriously they regard the task. They all expressed - in one way or another - the wish to become an integral part of the EU's defences against illegal immigration, and organised crime, rather than to be seen as transit countries, and they equally expressed the need for more training and equipment if they were to do the job better. The economic and other circumstances of the 10 countries vary so greatly that generalisations are useless. The expressed needs for equipment varied from the most basic vehicular and communications equipment, through standard equipment for drug analysis and document appraisal, up to digitalised fingerprint registers and highly sophisticated computer systems. As for training, there was a widespread and apparently genuine plea for more training on virtually all aspects of preventive and enforcement work, and also on the wider aspects of law enforcement in the spirit that would be expected in the EU. A diplomatic representative of an EU Member State to one of the more developed Associated Countries told the consultant that he "saw no risk-of over-training here", and that was a shrewd comment.

11. These expressed needs were closely linked to a widespread wish to be involved much more closely with the law enforcement systems of the EU in an operational sense, including access to EU computerised information systems. That reflects an exaggerated view of the extent to which such systems exist at the EU level, but there is undoubtedly much hope in the Associated Countries that closer functional linkages can be established. It would not be appropriate for the consultant to get drawn too deeply into this: it is clearly an issue to pursue elsewhere. On the other hand, there is clearly a responsibility on the EU to keep the Associated Countries closely informed of general developments in establishing Europol's operating modalities, so that they may keep their own institutional arrangements aligned with what will be expected of them on accession.

12. The consultant formed the view that the Associated Countries generally appreciated the requirements relating to asylum that would be made of them at the time of accession. There was great variety in the extent to which the 10 countries had met those requirements. Some had what appeared to be well-developed asylum procedures; others seemed to the consultant to have ratified the relevant international instruments without having taken full measures to implement them; others had not got to the point of announcing an intention to accept the Geneva Convention. The Associated Countries that appeared to have thought most deeply about this part of the acquis emphasised the need for help in training the staff involved in this work, including border guards. The need for assistance in assembling reliable data on countries of origin was also emphasised.

13. The consultant was not able to form a view on the need for "institution building" advice on the construction of migration policy and migration management systems. Such a need may exist.

Justice issues

14. In general, the Associated Countries appeared to have a good appreciation of the scope of the accession requirements (see above) that strictly relate to judicial co-operation in Title VI of the Treaty. The consultant did not get the impression, however, that this specific dossier ranked very high in their perception of the mountainous task that faced them in carrying out the programme of approximation of laws described in the Commission's White Paper on the preparation of the Associated Countries of central and eastern Europe for integration into the internal market of the European Union' and he was not surprised by that. Some countries did, however, emphasise that their problem was not in drafting legislation to implement Conventions, but in operating mutual arrangements, such as extradition, that involved other countries. What was needed to deal with that, they said, was practical know-how and training. More generally, several ministries of justice expressed the hope that more schemes could be developed to familiarise the judiciaries of their countries not only with the specifics of European law but also with the style of operating in the EU Member States. Nearly every country that was visited stressed the language problem, both in relation to building bridges with the judiciaries in Member States and also in the more technical dimension of approximation of laws.

CONCLUSIONS: THE NEED FOR ASSISTANCE

Home affairs issues

15. In general terms, the consultant has no doubt that there is a significant unmet need within the Associated Countries in the Third Pillar areas of immigration control, asylum and law enforcement considered above. He is also clear that it would be in the interests of the Associated Countries themselves, the EU, and the accession process for more action to be taken to meet the need. On the partial information available to him in such a short study, however, the consultant has no way to estimate the scale or precise character of the need in each country. In particular, the

consultant would not want to express views on the more elaborate information technology suggestions without knowing more about the human resources and management structures that they are intended to assist. It was obvious, on the other hand, that some countries require border control and law enforcement assistance of a fairly basic kind and the need for asylum Procedures where they are totally lacking is self-evident

Justice issues

16. The consultant does not question the importance of the preoccupations of justice ministries described above. Not all these matters are closely related to Title VI of the Treaty. however; and those that are closely related seem to be generally under control.

CONCLUSIONS: PHARE

Home affairs issues

17. The consultant takes the view that any approach towards the deployment of Phare funding in this field should start from the recognition, first, that this is an unfamiliar field for Phare and, second, that there is already a great deal of directly relevant bilateral and multilateral activity. It follows that any significant new orientation of Phare towards Title VI topics would therefore involve:

- the mobilisation of expert resources to help manage Title VI proposals;
- and arrangements to ensure that such proposals fit in sensibly with the background of existing assistance already operative through different channels.

18. In the consultants view, therefore, and given the special nature of this field, some new management mechanism is needed to help the assessment of proposed new Phare programmes in the home affairs area. In particular

- it should bring to bear the expertise available in Member States' government services, and in multilateral players;
- it should be borne in mind that there may well be a regional dimension to the distribution of Member States' expertise;
- there should be channels to support projects involving two or more beneficiary countries, which are not easy to package under strictly national programmes;
- it should be accepted that both the targeting of Phare support and the deployment of bilateral assistance would be helped if simple systems - not necessarily kept in the same place - could be developed to keep track of the main bilateral and multilateral ongoing programmes.

19. The way forward depends a great deal on the extent to which the recommendations in the previous paragraph can be accepted, and the way in which they might be put into effect. In essence there would be a choice between a more reactive and a more proactive emphasis, and it would be quite feasible to move on incrementally from one to the other.

20. Even a modest approach would almost certainly require some new money to be available, over and above current national Phare allocations.

21. The more demand-driven approach would involve relying on the great interest which the commissioning of this consultancy has itself apparently generated in the beneficiary countries, and on the confirmation in the Essen conclusions that Phare funding stood ready to support justice and home affairs projects. Subject to the overall priorities being indicated by the Commission, the initiative could largely be left with the beneficiary countries themselves to determine the priority that they attached to these issues in competition with other priorities.

22. In the consultant's view, even a prudent move forward of that kind could well involve the processing of a considerable new demand in the home affairs area that has hitherto not figured largely in Phare, and it would be a mistake to under-estimate the task of absorbing this. Equally, Phare's movement into the regulatory environment of the Title VI interest in border controls would inevitably involve some re-orientation in Phare away from the facilitation of transit towards the regulatory aspect of transit (and it would be sensible to take account of that in the existing transit facilitation and Customs programmes that touch on Title VI interests.) There is a good deal to be said for letting any new arrangements bed down and get established, and for expertise to be accumulated, before considering a much higher level of activity. In any event, it is doubtful whether even the simple model described here would prove to be entirely reactive in practice. Countries are only able to express their demands sensibly when they have a good idea of the kind of assistance that Phare might in fact be able to provide, and it is inescapable that Phare would need to offer some view of that kind on the priority issues identified here.

23. If it were decided to proceed in a more planned and coordinated way, the most obvious objective among the issues noted would be the consistent regulation of the prospective frontiers of the EU. That topic is present even in a more modest approach, but to identify it as a deliberate programme objective would be a major step. It would involve a thorough needs assessment from the Associated Countries and would have to take into account the parallel Tacis interest.

Justice issues

24. The previous section relates only to the handling of the home affairs - priorities that have been identified. Although there are undoubtedly important general issues relating to the training of the judiciary and assistance in the preparation of legislation, these appear to the consultant to be addressed by existing programmes within Phare and he does not feel sure on the basis of this limited study, that they call for any special handling arrangement. If it should be decided that some new machinery should be set up for handling them, the consultant thinks that it should be kept separate from any arrangement that is set up for home affairs issues in the light of paragraph 18, since the requirements are very different. This could be pursued with the Council of Europe, as the institution that is most active in this area.

FINAL COMMENT

25. It is important not to focus on the regulatory and enforcement dimension to the exclusion of the "institution building" dimension. It is stressed that major support programmes should be dependant on a thorough understanding of the administrative context into which they belong, and the consultant believes that if the right framework can be established to meet the points set out in paragraph 18 above, then these aspects of Phare involvement in Title VI issues will fall into place, The report makes it clear that questions of border controls in the region must be handled sensitively, what is at issue is the encouragement of modern -systems that are effective in preventing evasion of control, while respecting human rights and interfering with the legitimate traveller to the least necessary degree.

I INTRODUCTION

I.1. The immediate cause for this study was the confirmation in the Conclusions of the meeting of the 1994 European Council at Essen that the structured dialogue with the associated States of Central and Eastern Europe extended to the field of justice and home affairs and that the Phare programme, appropriately funded within a multi-annual financial framework in accordance with the preparatory strategy agreed upon, should provide financial support for the purpose.

I.2. The Phare programme had, in fact. already become involved in some projects that had a bearing on justice and home affairs issues, but the statement in the Essen Conclusions marked a distinct shift of emphasis. The European Commission therefore asked me to carry out a study of the matter when I became available for outside work on retiring from the UK government service in June. (For reasons that will soon become apparent, this study is quite subjective in character, and I shall use the first person throughout).

I.3. The contract was finalised on 19 July and I was asked to report by the end of October. I was asked to visit each of the 10 countries ("Associated Countries") that have Europe Agreements with the European Union (EU), that is, Bulgaria, Czech Republic, Estonia, Hungary. Latvia, Lithuania, Poland, Romania and Slovakia. I was also asked to visit Slovenia (whose Agreement is as yet only initialled). In particular, I was asked to identify appropriate measures to promote integration through Co-operation in the field of justice and home affairs especially those necessary to prepare the countries concerned for accession to the EU, i.e. measures which are necessary to implement the *acquis* in these areas; to explore with the competent Ministries concerned (normally Interior and Justice Ministries) how this co-operation can be developed, where necessary with financial support from the Phare programme (through both national and multi-country initiatives); to make it clear that proposals to compete for support under the Phare programme would have to be channelled through the Phare National Co-. Coordinators, and would therefore be in competition with other demands on Phare resources allocated to each country.

I.4. I carried out this programme of visits between 26 July and 10 October. During the visits I had talks in every case with the Ministries of Justice and of the Interior, at senior official and/or ministerial level, and I usually saw the Officials concerned with accession strategy in the Ministry of Foreign Affairs or elsewhere. I also saw the Phare coordinators in some countries. Where they were available, I saw the representatives of the United Nations High Commissioner for Refugees (UNHCR) and the International Organisation for Migration (IOM). I also saw diplomatic representatives of the Member States of the EU to the country in question, and my visits were facilitated very thoughtfully by the delegations of the European Commission. I am grateful to all who helped.

I.5. It was clear to me from the outset that this mission had stimulated considerable expectations in some quarters, and before going any further I want to make clear what I can and cannot do.

I.6. One thing that I believe I can not do is to interfere in the normal Phare assessment process by expressing views - favourable or unfavourable - on particular proposals that Associated Countries have it in mind to put forward through their national Phare coordinating systems. Neither did I have any mandate to suggest to any interlocutor that additional Phare money may be found to support Phare involvement in justice and home affairs matters (though progress will obviously be constrained if no new money whatsoever is made available).

I.7. Looking beyond Phare, I was not retained on behalf of the Council to make recommendations to them about the structured dialogue in their field and I am certainly not in a position to make recommendations about policy initiatives, in the field of operational information exchange or elsewhere. Since these matters surfaced more than once during my visits, however, I shall make a few passing comments on them. Although I am not reporting to the Council, it was agreed at the outset that I should keep the K4 committee informed of my general progress, and I made an oral presentation to them on 12 September.

I have approached this whole exercise on the basis that I am retained by the Commission to advise them how Phare should proceed, taking account of the priorities and needs perceived in the Associated Countries. Even there, however, my scope is limited. In a hasty study of this End there is no possibility of assembling reliable data, let alone on a common basis. Also, on the basis of the rapid visits I have made I cannot sensibly express any public views about the true needs of individual countries, though even the most cursory visits disclose considerable differences between the nine countries in terms of their resources and institutions.

I.9. As I see it, my task is to map out the priorities in a very general sense; to consider a broad way the contribution that Phare might make; and to indicate what new demands may be made on Phare working structures by this unfamiliar work, and how they might be met. My conclusions are set out in sections VII.X of this report.

II. THE PRE-ACCESSION DIMENSION; THE ACQUIS

II.1. Since this whole exercise is firmly set in the context of pre-accession preparation, and since my terms of reference specifically direct me to the acquis in the justice and home affairs area, it is necessary to begin by considering what in fact is meant by the term in this field, and what may be the expectations that the EU will have of acceding States.

II.2. The Union Treaty's provisions governing co-operation in the fields of justice and home affairs are contained in Title VI (the third pillar). Article K.1 of that Title sets out the 9 areas that are to be regarded as matters of common interest ranging from asylum policy to police co-operation for the purposes of preventing and combating serious forms of international crime, Article K.3 provides for the Council, in the areas specified in Article K.1, to adopt joint positions and joint actions, and to draw up Conventions to be recommended to the Member States for adoption. These provisions replaced the purely inter-governmental arrangements by which the Member States had reached a number of agreements before the Union Treaty. Taking the pre- and post- Union Treaty instruments together, then, there is a clearly definable acquis of texts to which any acceding State would be expected to subscribe. They include, in particular, a number of resolutions and joint actions on immigration policy and asylum, and a handful of Conventions that have been opened for signature but have not yet come into force. These include the 1990 Dublin Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities; and the 1995 Conventions on Simplified Extradition; Fraud Against the Community Budget; the Customs Information System; and Europol.

II.3. In the judicial co-operation area of the Third Pillar it is accepted that there are also a number of Conventions that were negotiated under different arrangements from those described above, but which are regarded as being so close to the concerns of the EU that they can be regarded as part of the formal accession requirements. They include the Rome and Brussels Conventions negotiated under Article 220 of the Treaty of Rome, the main criminal Conventions of the Council of Europe and the UN Conventions on drugs.

II.4. If the extent of accession requirements could be simply established by references to these formal instruments, the matter would be straightforward. In fact, however, it is more blurred than that. There is at least one very important area (border controls, see below) where the nature of the strict legal acquis is arguable, and others where the Associated Countries are being engaged in discussion of topics that are not specifically part of the acquis in the sense of being matters on which the EU has itself reached any precise agreement (A number of the more detailed suggestions for further work with the Associated Countries that were for example, listed in the Berlin Declaration of 8 September 1994 probably come into that category.)

My own view is that it would probably be helpful if at some stage along the pre-accession route there could be a more authoritative statement about those justice and home affairs matters that are regarded as being part of the formal acquis and those that are being pursued with the Central and Eastern European Countries simply in their character as friendly and co-operative neighbours. For the immediate purpose of this study I do not have to limit the exercise to matters that can be demonstrated

to lie within the *acquis*. But I do have to give some thought to this dimension - at least in the areas that I shall identify as priorities - and make some assumptions about the way in which it is likely to be generally regarded. I have made the following assumptions in three key areas.

Border controls on persons

II.6. As is well known, the legal arguments relating to internal and external frontiers are quite different. I do not want to rehearse them in detail here, or to do more than note that the majority of Member States are signatories to the Schengen Convention which is dedicated to the removal of systematic controls on persons at internal frontiers when the regulatory regimes at the external frontiers and other compensating measures are sufficiently robust to enable that nobody would dissent from the proposition that controls should apply to persons crossing the EU's external frontiers, but it is doubtful whether there could properly be said to be an *acquis* on the matter at the level of the EU, since the relevant texts (the External Frontiers Convention and the European Information System Convention, both of which are fully compatible with the Schengen Convention's provisions relating to the external frontier) only exist in draft form and have not been recommended to Member States by the Council. The matter is further complicated by the fact that, while the Easternmost border that would be established if all 10 Associated Countries acceded to the EU simultaneously would be an external frontier on any footing, it is not possible to say in advance where the external frontier might lie if accessions are not simultaneous.

II.7. I have taken the view that, whatever the strict interpretation of the *acquis* an acceding State would be expected to show that it could adequately regulate its external frontier against the pressures of unauthorised migration and illegal trafficking and that its control methods were in conformity with general EU practice. Since border controls are one of the few protections against these pressures, and since the line of the external frontier at any given time cannot be forecast, the regulation on these lines of the intervening frontiers between the Associated Countries is highly desirable until such time as an integrated legal resolution becomes possible.

II.8. The question of strengthening border controls in Central Europe should obviously be approached with all the sensitivity that the history of the region demands. What is at issue is the encouragement of a modern system that is both effective and operated with full regard for the human dignity and rights of the traveller.

Asylum

II.9. The *acquis* in respect of asylum is one of the clearer parts of the justice and home affairs dossier. Article K.2 of the Union Treaty provides that the matters of common interest under Title VI shall be dealt with in compliance with the 1951 Geneva Convention relating to the status of refugees, and it can probably be assumed that the 1967 New York protocol, which expanded the geographical obligations under the 1951 Convention, would also be required of an acceding State. Furthermore, the

1990 Dublin Convention sets out a scheme for the determination of the Member State which should take responsibility for any asylum claim that is made within the EU. It is inherent in such a scheme that the asylum status determination systems of the Member States should operate as a broadly level playing-field, and that there should not be great disparities between them in terms of their outcomes, and it is a fundamental assumption that each Member State can be confident that it - and its courts - can regard each other Member State as a safe third country, to whom asylum applicants can be sent without fear that they will be wrongly returned- to countries where they have a well founded fear of persecution in Convention terms. The Dublin Convention still awaits sufficient ratifications to bring it into force. If it were already in force at the time of an accession, the EU would doubtless expect the acceding State to ratify it very quickly indeed. In any event, the EU is bound to have a keen eye for the asylum procedures of acceding countries.

Police cooperation

II.10 The most important legally binding obligation that an acceding State would have to accept in this field is almost certainly that to participate in the Europol Convention, which establishes an organisation for criminal intelligence exchange and analysis. A good deal of further preparatory work will be needed before the Convention comes into force, however. Until then, there is an interim organisation the Europol Drugs Unit, which operates at a much looser level and is not empowered to operate shared information systems.

II.11. A number of the Associated Countries put it to me that they should begin to establish links with Europol straightaway, and should benefit from formal information-sharing the least possible delay. They made the point - rightly, I am sure - that they would have much to contribute as well as to learn. I make a few general comments on this at VI 12 and 13, but basically I do not think that I should get drawn into these issues in any detail. I am clear, however, that -there is a responsibility on the EU to keep the Associated Countries well informed about the way in which the operating modalities of Europol are being developed so that the Associated Countries can be sure that they make their own internal organisational dispositions in a way which is at least compatible with the Europol structures.

II.12. Although a large number of documents in the police co-operation am have been approved by the Justice and Home Affairs Council, and before them by the "TREVI" ministers (i.e. police ministers) of Member States, I believe that they are mostly of the character of endorsements of convenient co-operative practices. This may be an area that could usefully be clarified for the Associated Countries. I doubt if there are any special *acquis* points here.

II.13. I do believe, however, that the EU, and its Member States do have a great interest in assisting the Associated Countries across the whole area of police organisation, training and equipment I hope that Phare will be able to take this into account in addressing these issues. Some of this assistance should certainly be directed towards the types of serious trans-national crime specified in Article K.1 of the Union Treaty, but in some countries the most basic and elementary needs of accommodation, communication, and transport are still unmet. Just as important

many of the Associated Countries emphasised their need not only for training in technical know-how but for on-going advice in transforming the structures and mind-set of their police forces in the democratic and open direction to which they were committed. I am not sure how specifically this can be related to Article K.1 of the Treaty, and I do not know how the EU would specify an *acquis* to articulate its expectations for good policing, since this is an internal matter to which I do not think that the Treaty generally applies. Nevertheless, I am sure of the relationship here with the integration process, and I have no doubt that it is very much to the benefit of the EU and of the Associated Countries for all these broader aspects of policing to continue to be seen as important parts of the assistance that is required, whatever the precise relationship may be to Article K.1.9 of the treaty.

Visas

II.14. For completeness only, I should include a reference to this topic. The clearest part of the whole *acquis* relating to immigration control is the specification of those third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States. This is a matter of European law under Article 100 c of the Treaty and at the time of accession a State joining the EU would have to accept the list decided under Article 100 c in whatever form it existed at the time. It is clear, therefore, that there will have to be an alignment of visa policy during the pre-accession process. This will doubtless be pursued under the structured dialogue, the present report will be silent the matter. At the purely practical level, however, one can envisage that Phare funding might support training courses for immigration officers where the physical characteristics of genuine visas issued by the Member States could well be a subject of study.

III. THE STRUCTURED DIALOGUE AND THE EUROPE AGREEMENTS

A) The Justice and Home Affairs Council

III.1. Although the conduct of the structured dialogue is outside my terms of reference, it is a fact that the development of discussion at official and ministerial level was clearly a matter of supreme importance to most of my interlocutors in the Associated Countries, and it would be unrealistic to proceed any further in this account without paying due regard to this dimension of the EU's relations with the countries that are preparing themselves for accession.

III.2. The current, structured series of post-Essen meetings under the Justice and Home Affairs Council was preceded, on 8 September 1994, by the Berlin meeting on drugs and organised crime between responsible Ministers of the Justice and Home Affairs Council and their ministerial interlocutors from the 6 Central and Eastern European Countries. That meeting which was convened by the German Presidency at the request of the Corfu European Council, promulgated the 'Berlin Declaration' which set out a list of topics in the following areas that, it was agreed, required further study;

- illicit drug trade
- theft of and illegal trade in radioactive and nuclear material - traffic in human

beings

- illegal immigration networks
- illegal transfer of motor vehicles.

The Berlin Declaration was of much importance in setting an agenda, though it was, of course, not set in the specific context of pre-accession strategy, and it was not concerned with matters outside the field. of drugs and organised crime.

III.3. During 1995 there have been two meetings since the Essen European Council at the level of the Justice and Home Affairs Council with ministerial interlocutors from the Associated Countries, each preceded by a meeting at senior official level with the Troika of the committee of senior officials established under Article K.4 of the Treaty, - and in addition there have been meetings at official level with the Third Pillar working group on drugs and organised crime and with the 'clearing house' working group on migration issues ("CIREFI"), plus a meeting with the directors of police training in the Member States At the last meeting at ministerial level (26 September) a judicial cooperation action programme was agreed with the object of more effectively combatting organised crime in general and, in particular, the trafficking in drugs, human organs, works of art and stolen vehicles. It was agreed that progress on this work programme should be reviewed at the end of 1996. Since the Europe Agreement with Slovenia has only been initialled Slovenia did not participate in any of these meetings.

III.4. From the discussions that I have had during my visits, I am sure that the Associated Countries regard the establishment of this series of meetings at both ministerial and official levels as a watershed of very great significance. Each aspect of the process that has been set in train - the regular ministerial contact, the preparatory meetings between officials and the meetings that are getting under way at expert working group level - is invested with its own importance. Undoubtedly, the work that has already been put into this from the EU side is greatly appreciated, and there is a recognition of the demand on resources that is involved in maintaining and preparing for a programme. of meetings of this character,

III.5. Against that background, however, it is also right to record the hope expressed to me that the meetings will develop in a sequential way, with particular topics being identified for discussion and specific proposals being prepared for consideration at ministerial level. Given the pressure that there will always be on facilities for meetings, and the inherent difficulties of a 15 plus 9 format, any move towards a more decision-oriented mode will involve ruthless prioritisation and very careful preparation at official levels. This represents quite a massive demand on experienced personnel who are already hard-pressed. But I sensed a certain feeling that the meetings would have to develop in that direction if they were not to risk being perceived as something of a ritual. It was generally felt that the routine meetings now getting under way at working group level marked a significant turning point towards an ordered and progressive approach, and they carry a high burden of expectation.

III.6. Several interlocutors in Associated Countries made the point that it was for the EU side to prepare detailed proposals and set the agenda, and for the Associated Countries to react. There would doubtless be points where problems arose on the

Associated Country side, and they could emerge in the process of discussion. But the Associated Countries had no machinery by which to prepare concerted proposals of their own. These interlocutors felt that there were many issues that could only be taken forward by the articulation of fairly precise proposals for parallel action in several countries. (The problem of stolen vehicles was mentioned in that connection.)

III.7. A totally different aspect of the structured dialogue on justice and home affairs that struck me quite forcibly was the sheer lack of knowledge about the EU system that exists in many of the Associated Countries. Most, though not all, of the Associated Countries seemed to have a good idea of the structure of committees and working groups that existed under the Justice and Home Affairs Council, but they also had the idea that this system was constantly producing a strewn of decisions; from which they were excluded. Clearly, the members of committees and working groups have to be able to pursue their discussions with frankness, and this requires confidentiality - especially about the positions being taken by individual Member States. But I think that it would nevertheless be possible to give the Associated Countries a better idea of the general way in which issues are being taken forward, without damage to any of the EU's decision-making capability.

B) The Europe Agreements

III.8. It should be noted that all the Europe Agreements contain specific Articles dealing with co-operation in the fight against drug abuse and drug trafficking and the Articles on money-laundering, which also appear in all the Agreements, draw particular attention to the laundering of money from drug-related offences. The Slovenian and Baltic texts include additional provisions on illegal activities including industrial crime, counterfeiting, drug trafficking and "illegal immigration and the unlawful presence of their nationals on the other's territory, while taking account of the principles and practice of readmission".

III.9. There does not yet appear to have been any specific discussion under these Articles in the Association Councils or Committees, though it is probably safe to assume that such a discussion will develop, and that the role played by Association Councils in this field can only grow in importance. If Phare becomes more deeply involved in Title VI issues, therefore, it will be against the background of developments in the dialogue both under the Justice and Home Affairs Council and under the Association Councils.

IV. THE PRIORITY AREAS FOR ASSISTANCE

IV.1. It will be convenient to make it clear at this point that I concluded that the priority areas where Phare involvement should be specially encouraged were those indicated in the discussion of the acquis at II.6 to H.13, i.e.

- combatting unauthorised immigration, including border control regimes in particular
- asylum procedure
- combating drug-related and other serious crime, and police training and equipment

IV.2. The above priority topics are a familiar litany but it is necessary to make some comments

First, the categories are not mutually exclusive, and there is some double-counting between them. Thus, action against illegal immigration networks could be seen as combatting either serious crime or illegal immigration.

Second, the emphasis that should be given to drug-related crime as opposed to other types of serious crime is a well-worn debating point and will doubtless remain one. It is clear that the distinction between the two is not absolute, as many criminals are involved in both drug-related and other forms of serious crime. It is also obvious that other forms of serious crime may warrant urgent and specific concerted action for which assistance may well be required. Nevertheless, I think that there is a widespread opinion that the threat of drug trafficking through and from the Central and Eastern European Countries, with its associated threat of increasing consumption within those countries, presents a unique combination of social, economic and security factors, and that the fight against drug-related crime should generally be kept in the centre of the frame, in the interests both of the EU and of the Associated Countries themselves.

I see the questions of immigration control and asylum procedures as interlinked, so that the adequacy of asylum provisions should be borne in mind along with any proposals for improving the effectiveness of control systems

IV.3. All the matters I have identified as priorities are within the "home affairs" part of Title VI - that is, they are mainly dealt with by Interior Ministers (though the distribution of functions between Justice and Interior Ministers varies a great deal, of course, as between one country and another). I have not identified "judicial cooperation" - i.e. part of Title VI which is the special concern of Justice Ministers - as a high priority in the same sense and I do not want that to be misinterpreted. There is no doubt about the importance of the judicial co-operation dimension, or the need to take action there in order to meet the acquis. What is at issue, though, is the more limited question of the current arrangements of the Phare programme and whether they need to be adjusted to meet the need in the judicial co-operation area, and I have concluded (see section IX) that in those respects the picture in the field of judicial co-operation is markedly different from that in the home affairs areas identified above.

The nature and scale of the problem

IV.4. A great deal has already been written about the problems of unauthorised migration, and of crime related to drug trafficking production and consumption which have arisen in the region of Central and Eastern Europe and the Baltic States following the historic commitments to democratic development by the countries concerned. It is a truism that these problems have largely arisen as a concomitant of the freedoms inherent in the democratic choice, and that they prey on those freedoms. For the purpose of this study there is no need to attempt to assess the precise scale or the detailed nature of either problem beyond what is contained in the next two paragraphs. It is sufficient to be satisfied that there is heavy pressure on these issues

and that it is not being mastered, and I am in no doubt whatsoever about that.

IV.5. It is probably true to say that 5 years ago there were widespread fears of a massive wave of West-bound migration across the liberated borders to the East, and many Western European countries thought that their immigration control and asylum procedures could be overwhelmed. In the event, that did not happen. Most Western European countries made their asylum procedures less open to exploitative abuse and Germany and Austria strengthened their Eastern border controls. At the same time, the Central and Eastern European Countries did much to strengthen their own border controls, to cut down on illegal transit of their territories, and there was a great expansion in the negotiation of readmission agreements, which enabled destination countries to return persons unlawfully present on their territory. These developments have undoubtedly done much to stabilise the situation, but there is still widespread unauthorised transitting of the Central. and Eastern European Countries, with increasing signs that this route to the EU is being used by people from Asia and Africa. It is commonplace for several of the Associated Countries to refer to themselves as "waiting rooms" for the EU, though the number of the transit population at any one time is speculative. Illegal networks of people-smugglers have grown up throughout the region. Additionally, the strengthening of borders has had the effect of discouraging some of the transit population from either going on or going back, so that they are trapped in the Central and Eastern European Countries. A much larger similar population is trapped in the New Independent States of the Former Soviet Union. This is probably not the place to consider the special problems caused by the conflict in former Yugoslavia, but it is certainly relevant to note the implications of the Schengen Agreement for the strengthening of the Eastern borders of Germany and Austria. Finally, there are beginning to be signs that illicit migration is no longer merely a transit problem for the more economically active Associated Countries, but that they are, becoming destination target countries themselves.

IV.6. The general nature of the drugs threat is also clear enough The loosening of the border regimes and control environment at the end of the 1980s led to a burgeoning of the traditional route of heroin trafficking through the Balkans, now pushed Northward by the conflict in former Yugoslavia. Other routes have developed, the trafficking has expanded to other drugs, notably cocaine, and Poland has become one of the world's major illicit producers of amphetamines. Countries - notably, the Czech Republic - that very recently saw themselves as simply a transit route, now have to recognise that they are experiencing a major growth in consumption. There has been an alarming growth in associated crime. The worst scenario is that the whole region could become a vast consumption area as well as a transit highway.

IV.7. Many of the Associated Countries are struggling with the most daunting problems of institutional reform and lack of resources. These problems are freely acknowledged; for example, officials in many of the countries that I visited drew my attention to the risks of corruption that were inherent in a situation where law enforcement officers were paid so little by the standards of the lawbreakers. The problems go wider than that of course. To quote UNDCP, there is a need to "provide technical assistance in institution building, development of enforcement concepts and improvement of legal systems, before offering specialised training programmes or providing equipment" and the validity of that comment is not confined to the drugs

field.

IV.8. Against that background, it is right to acknowledge the efforts to control the situation that are already being made by the Associated Countries. Since 1991, for example, more than 2 million foreigners have been refused entry by Hungary alone, and many countries can point to steadily increasing seizures of drugs. The next section looks at the multilateral and bilateral assistance that has been provided to support those efforts.

V. CURRENT ASSISTANCE PROGRAMMES

V.1. A very great deal of assistance in the priority areas. is being provided to the Associated Countries under programmes of various kinds. The following notes do not purport to be comprehensive, but simply to give an indication of the scope and spread of these activities.

Migration

V.2. A forum. for the discussion of all the developments summarised at IV.4. has been provided since 1993 by the Budapest Group on uncontrolled migration that was established by the ministerial meeting convened in Budapest by the Hungarian Government in February of that year. The Budapest Group includes 36 national delegations (including USA, Canada, Australia, Russian Federation, Moldova, Ukraine) and a number of international organisations. While it does not provide or co-ordinate assistance itself, it is the only forum that regularly brings together immigration specialists from Member States of the EU, the Associated Countries and at least some of the NIS.

V.3. A recent paper prepared for the Budapest Group by Hungary, Croatia and the International Centre for Migration Policy Development (ICMPD) brings together available information about assistance to the Associated Countries on migration-related matters. The paper (which, incidentally, recommends an approach to the EU for Phare funding for border control in Central and Eastern Europe, and which also points to the need for better exchange of information on bilateral assistance) records, so far as border control is concerned, that:

- little or no multilateral assistance has been made available
- there has been a great deal of training offered to the Associated Countries by Member States (and USA, Canada and Switzerland)
- a certain amount of equipment has been offered, including in particular police cars and patrol boats offered by Sweden to the Baltic States
- the only substantial financial offers have been by Germany, including particularly 120 million DM to Poland and 60 million DM to the Czech Republic in connection with the agreements between Germany and those countries. In both cases the money was intended for the improvement of the border control infrastructure and the related information system.

In a few cases the assistance was coordinated between a small group of donors, and in a few more it was part of a coordinated approach to the beneficiary country in

question. But most of it was not coordinated in either sense.

V.4. As regards asylum and more general migration management systems, the Budapest Group paper concludes that there is a different equilibrium, and that most assistance has been offered by international organisations, notably ILO, IOM and UNHCR. Notably, UNHCR, in addition to their protection role, have been active in "institution building" and have provided training and advice to the local institutions. IOM, often acting along with UNHCR, have been active in training and in advising on the "institution building" of migration management systems, and have also promoted the use of their voluntary return facilitation for refused asylum seekers and people trapped in transit countries (see V. 1).

Drugs

V.5. These notes must be seen as highly selective, since there is manifestly considerable drug-control interest in the area and a number of agencies- and bilateral contacts are involved. Some of the police assistance mentioned below was specifically directed towards drugs control. This section will concentrate on only two players - UNDCP and Phare itself.

In 1992, at the request of major donors, UNDCP took on the leadership of a Task Force to co-ordinate drug control assistance programmes to Eastern Europe, the Baltic States and the CIS (28 countries, in all). The Task Force (donors, the Commission, UNDCP) meets periodically to agree priorities. The - donors involved include Belgium, Denmark, France, Germany, Italy, the Netherlands, Sweden, UK and USA- Under this scheme UNDCP have established a computerised monitoring system to keep donors' activity under constant review so as to avoid duplication, overlap and gaps, and they have also produced detailed country assessments that are kept up-to-date. A number of specific assistance projects have been developed and in October 1995 a Memorandum of Understanding was signed with ministers of the 4 Visegrad countries and Slovenia for the development of a sub-regional strategy for that area. A sub-regional office has been established in Riga, Latvia, and a strategy for the Baltic States is being developed. UNDCP aim to develop a balanced strategy addressing various aspects of the drug phenomenon, including control and enforcement aspects. The Berlin Declaration (see II.2) specifically included the co-ordinating function of the UNDCP Task Force among the means of co-ordination that should be particularly examined.

Also in 1992, and following the European Plan to Combat Drugs, the Commission set up a Phare Regional Pilot Programme for the Fight Against Drugs, funded at 2 MECU. In 1993 the programme was expanded to include 11 countries, including Albania, the funding was expanded by 10 MECU (1994-96), the programme was re-titled the Multi-Country Programme for the Fight Against Drugs, and new objectives were set.

The programme emphasises a global approach, and current objectives include

- Multi-disciplinary training
- information systems
- demand reduction

- precursors
- money laundering
- control of psychotropic substances

Hitherto, there has been little involvement by the Phare multi-country programme in enforcement issues but this may change. In accordance with normal Phare practice for multi-country programmes this programme has a Programme Co-ordination Unit (PCU) and national coordinators in the participating countries. The PCU is established in Riga, Latvia.

V.6. Both UNDCP and the Phare multi-country programme have been deeply involved in some of the same aspects of the fight against drugs eg. advice to beneficiary countries on money laundering., The machinery for resolving priorities and co-ordination is the Task Force, on which the Commission is represented.

Policing

V.7. I am not aware of any recent census of assistance that has been offered in the general policing area, but it is clear that there is a very great deal of activity, virtually all at the bilateral level and, so far as one can see, not coordinated in any way.

It seems clear that, once again, Germany is the country that has offered the, most direct financial assistance (about 55 million DM in 1992-94) in addition to a great deal of training and equipment. Judging from what I was told on my visits, there is a very noticeable regional dimension to the assistance so that the Member States in the geographical area are manifestly the most prominent donors in their region, and the German Laender have similarly offered extensive assistance in training and equipment in the same spirit Having said that, there is heavy involvement by more distant Member States also, notably France and the UK, both of which have carried out a great deal, of police training with the Associated Countries, including exchange visits and courses at their national training facilities. In the case of the UK, at least, this connection has gone beyond training in some cases to involve a full review of procedures and advice on re-orientation and motivation of the police function as a public service.

V.8. In the context of police training two multilateral institutions should be specially mentioned.

The International Law Enforcement Academy (ILEA) is jointly established by the governments of USA and of Hungary in Budapest under a Director from the USA. The ILEA aims to provide an 8-week programme, broadly on the lines of the FBI National Academy programme, for 5 groups per year of 50 students per group. The students will be drawn from the NIS as well as Associated Countries, but each group will be made up of students from only three countries, to minimise simultaneous translation problems. The courses are aimed at well qualified middle-managers who, can be expected to have good prospects in the police service, and there will be a conscious effort to maintain contact between alumni after experience at ILEA, in order to maximise the usefulness of the mutual confidence that can be expected to develop

there. The curriculum is intended to be specially constructed for Eastern European clients, but it will be kept under review and changed if that is what experience suggests. In any event however, it will extend to broad issues of policing in a democracy as well as to more technical policing issues and general training in management principles. The ILEA management are keen to involve the Member States through participation as instructors and/or through the use of ILEA facilities for their own police training purposes, and they have made it clear that they would welcome an input from the Member States into their curriculum development.

The Central European Police Academy (CEPA) is a joint Austro-Hungarian enterprise in which Germany, Poland, Slovakia, Slovenia and the Czech Republic are now involved. The aim is to promote swift unbureaucratic cooperation between police, officers engaged in investigations or operations and the courses (of 3 to 4 months) include practical experience on the ground. The courses are conducted in German only and are directed at specific policing issues such as drug-related crime and illegal immigration. As with the ILEA, a deliberate effort will be made to encourage contacts between alumni after their experience of CEPA.

Assistance for ministries of justice and judicial co-operation

V.9. Several countries reported small-scale judicial exchange schemes and training arrangements with Member States. The American Bar Association and other national lawyers' representative bodies have also been active at that level. The most prominent international organisation that has developed a structured involvement is certainly the Council of Europe, which through its Themis plan for the development of law undertakes a wide range of relevant initiatives on a bilateral and multilateral basis

Other Phare involvement in justice and home affairs

V.10. In addition to the multi-country drugs programme described above (most of whose activity hitherto has been directed at fields of drugs policy that lie outside the Third Pillar's area of interest), certain other Phare multi-country programmes are relevant. Both the Customs co-operation programme (1993. programme funding; 10 MECU) and the transit facilitation programme (1995 funding; 30 MECU) are partly devoted to supporting Customs activity in the fight against drugs.

V.11. Figures are not readily available for the proportion of activity that the above 2 programmes direct toward's the fight against drugs, though I have seen. an estimate that 10% of the Customs programmes expenditure is deployed on measures to combat fraud of all kinds. The fact is that both programmes have very much wider objectives and that the fight against drugs is not necessarily their top priority. The Customs programme, for example, is concerned with all kinds of Customs management and revenue collection issues, while the overall thrust of the transit facilitation programme is aptly summarised in its very title. If there is to be a reappraisal of Phare's involvement in justice and home affairs issues, therefore, it appears that the balance between drug control and other objectives in the Customs and transit facilitation programmes should be reviewed. A paradoxical feature of the situation is also the fact that the transit facilitation programme is exclusively directed at transit

between the Associated Countries, and between them and the EU, while no Phare money has yet been deployed in respect of crossing points that would be on external frontiers if all the Associated Countries were in the EU. Given the universally recognised prominence of these routes for bringing drugs into Western Europe the drugs control argument alone would point to much higher priority being given to the adequacy of control at the initial entry points.

V.12. Finally, one country has secured an allocation of 10 MECU for a program of management improvement in the Ministry of the Interior, reorganisation of emergency services and criminal identification information systems.

V.13. In addition to the multi-country programmes described above, 1.2 MECU was allocated to the Baltic States in 1993-94 for programmes jointly financed with the Council of Europe and aimed at strengthening the role of Ministries of Justice, training judges and lawyers, assisting legal reform, creating Ombudsman institutions, and legal reform.

V.14. The conclusion I draw is that there has probably never been any bar to Phare financing projects in the justice and home affairs area, which could be tailored to fit recognised Phare programme objectives without much difficulty, but that countries have not been encouraged to come forward with proposals.

The character of assistance

V.15. A noticeable feature of the assistance in the home affairs area summarised above is the high degree to which training and advice was offered as between fellow-professionals - police, Customs or immigration officers, and recognised migration/asylum experts. This is likely to remain a characteristic of the home affairs area. There will doubtless be some situations in this field that call for conventional management or legal expertise and where conventional consultancies with private sector suppliers can deliver what is required. But it should be assumed that the reliance on professional-to-professional contact is likely to remain true of anything close to the operational business-end. This has implications both for the management of any enhanced programme and for the capacity of Member States to deliver.

VI. THE ASSOCIATED COUNTRIES' VIEWS: HOME AFFAIRS

VI.1. Part of my remit was simply to ensure that the Associated Countries were aware of the Essen Council's statement of Phare availability to support justice and home affairs programmes, and that the interior and justice ministries were alive to the possibilities. I have no doubt about this part of the mission; the range of spending proposals that was put to me is testimony of the ministries' enthusiasm. Most countries had, I think, assumed that border controls and police co-operation would be top of the list of priorities for discussion but I made a point of always putting asylum on the agenda in view of the clear acquis that exists in this field, which I explained in each visit

VI.2. Many of the Associated Countries went out of their way to stress their firm

commitment to regulating their borders on behalf of the EU as well as themselves, and to approaching the pressures of immigration and crime from the point of view of participants in an integrated EU policy. They repudiated any thought that they might regard these matters as no more than questions of transit. They stressed though, that they would need help to do the job and - see below - several of them expressed the view that for this purpose they should be locked much more closely into the information systems that existed in the EU. They explained the institutions that they had put in place - in some cases, starting from scratch - but in the time available I was quite unable to form a sensible view of that aspect (which is nevertheless an important one).

VI.3. I think that all the Associated Countries were generally aware of the *acquis* without any need for a reminder, and most of them could point to ratification of the Geneva Convention and 1967 protocol, together with implementing procedures. In some cases UNHCR mentioned to me the kind of improvements they would like to see by way, for example, of better training of border guards, language training for interviewers and better equipment.

A point that was made to me by one country was that if the EU expected countries preparing to accede to operate asylum procedures at the same level as the Member States, then they should provide assistance, especially by access to their assessments of the safety of third countries. This is the kind of issue that could be pursued through the specialist working group if there was an opportunity.

VI.5. Even from superficial enquiry, however, it was clear that the position was not so satisfactory everywhere, even on paper. For example, none of the Baltic States has yet ratified the Geneva Convention, though Lithuania has prepared legislation that would enable her to do so. One country has attached a reservation to her ratification of the 1967 protocol that empties it of most of its force. Another country has ratified the Geneva Convention and the protocol, but has not yet provided any specific implementing procedures; although I understood the Convention to be incorporated in that country's domestic law by ratification, I understand that access to procedures there was not perfect.

VI.6. Where there are problems in establishing or improving asylum procedures -and it is easy to understand the background of competing priorities in some countries that are establishing virtually all institutions from scratch - it is suggested that one fruitful approach might be to see this as part of an overall migration policy, so that progress on the asylum dimension could be expected as, for example, assistance was offered on border control.

VI.7. I was not able to form any view on the structures of the government institutions dealing with migration matters, save for the militarised immigration control in one country, which the authorities there themselves recognise to be inappropriate. It may be that some countries should develop more comprehensive migration policies and migration management systems and, if so, that would be an object that was in principle worthy of support. But that is a specialist subject that is worth a study of its own.

Border controls: Schengen

VI.8 Every country that I visited mentioned the strengthening of its border controls as a high priority but the detailed picture varied considerably. One country vividly demonstrated its need for simply putting in place the basic infrastructure of a border control system along a long external frontier that had not been regulated until the democratic realignment. Another country not only had a political demarcation problem with the border but was painfully short of basic transport and communications - in contrast it was claimed, to the people-smugglers. Another had a modern computerised border control information system and wanted to extend it (along with communications linkages to its associated vehicle support system) to a further segment of the frontier. Nearly every interlocutor wanted assistance with computer projects. Additionally, there was a very strong interest expressed throughout in training, know-how, more contact with similar professionals in the EU, and in the provision of technical equipment for the examination of documents (though one country claimed to be better equipped in that direction than most, or all, of the Member States). Equipment for patrolling the "green border" was also mentioned, in some cases in a very detailed way.

VI.9. It was clear that there was every sort of geographical, historical, political and economic background to the needs that the different countries pointed to, and it would be impossible to make a detailed assessment without a good deal of country-specific study. For what it is worth, though, I was struck by the very genuine tone of the requests for more training and operational equipment, and it did seem clear that some countries lacked very elementary provision.

VI.10. At this point it is worth noting that border controls other than at airports essentially consist of recognised crossing-points through which travellers and goods pass to be examined, and the intervening "green borders" or coastline, which has to be patrolled. An effective border control has to do both jobs well. The Schengen Convention, which many of the Associated Countries want to join on accession, lays down requirements for the adequate supervision of the Schengen external frontier between crossing-points and also specifies the regime for the admission of third country nationals for short stays. The backbone of the Schengen disposition is the computerised Schengen Information System (SIS) which includes information on, inter alia, the persons that the contracting parties have asked to be refused admission to the Schengen area. The SIS also includes provision for other information including stolen vehicles. The Schengen provisions relating to the external frontier are reflected in the draft External Frontiers Convention and the draft European Information System (EIS) Convention. It should be noted that the SIS is not confined to border-crossing points, and that the points in the next paragraph apply to police computer proposals generally.

VI.11. It was clear to me that some of the computer systems that were suggested to me had been conceived as, in effect, part of the national component of the Schengen Information System when the country in question joined Schengen. Other suggestions were less clear, and probably represented limited sectoral projects. It seems to me that, if Phare is going to get involved in funding projects of this kind, there should be a considered policy towards this. On the one hand it would not be feasible or

financially manageable for Phare to think in terms of funding countries installing their components of the SIS as a monolithic en bloc operation. On the other hand, it would be short-sighted to ignore the Schengen dimension, even though the legal basis for shared information systems is not in place. Countries wishing to move in that direction would probably be best advised to proceed with developing their systems incrementally and to serve their own requirements, but in a way that is compatible with the architecture of the SIS/EIS. If Phare is involved in funding such projects, then one of the things it should look to is that this dimension of comparability had been taken into account.

VI.12. The above is written, of course, on the assumption that the Schengen organisation would welcome new members of the EU and that the technicalities of the SIS would enable it to take the new extensions on board. I have no licence to comment on that, but if Phare does get involved in these matters there will be a point here for discussion with the Schengen experts.

VI.13. My general police interlocutors generally reflected the same sort of perceived needs as their colleagues specifically concerned with border control, and I need not repeat the previous section. The equipment they desired ranged from the simplest vehicles and non-secure communications links to computer systems of varying complexity and digitalised fingerprint registers. Again, there was great perceived need for more training, know-how and contact with the police of Member States. Several interlocutors stressed the scale of the institutionalised problems that they had inherited and the need for help in motivational training and establishing the police as a public service in a democracy.

VI.14. As noted at II.11, many police interlocutors also expressed the wish to be involved in-Europol very soon, and generally to be linked with the operational information systems that were believed to operate in the EU. In fact, I do not believe that there are such systems at the level of the EU - Europol win itself be the only police intelligence information system at that level when it is eventually established. These requests do, however, reflect a deep desire to be locked into the Member States' arrangements for combatting serious crime and, as crime knows no frontiers, it must be right for the police of the Member States and of the Associated Countries to co-operate as closely as is practicable. What that means in practice is a matter that should be pursued under the structured dialogue at meetings such as the one held in June in the forum of the Third Pillar working group on drugs and organised crime, but - as the Berlin Declaration noted - one obvious way of deepening co-operation is the exchange of liaison officers, and the recent expansion of that sort of arrangement is very evident.

VI.15. As for formal multi-national information systems, these do present problems of their own, notably through the data protection requirements that all Member States have accepted. (Incidentally, the data protection requirements of the Europol Convention are likely to be one aspect that the Associated Countries will need study with particular care.) If such information systems are developed between, the Member States and the Associated Countries - and the Berlin Declaration hints at that possibility in respect of stolen vehicles - then perhaps Phare could consider offering some support. But that kind of co-operation can hardly be Phare-driven. The policy

and legal aspects would have to be settled first, and any question of Phare funding involvement would come second.

Drugs

VI.16. When I spoke to drugs specialists they echoed the general wish for more training, know-how and contacts with their opposite numbers in Member States-They also had their own agenda of screening devices at border-crossings and specialised analytical equipment

VII. THE ASSOCIATED COUNTRIES' VIEWS; JUDICIAL COOPERATION

VII.1. In accordance with my remit, I specifically asked each Ministry of Justice about the part of the acquis that is directly associated with Title VI - that is, the various Conventions mentioned at II.3. One or two of them expressed the need for assistance on these, -but the overwhelming majority appeared to be, sufficiently familiar with this area. One senior official who had obviously mastered the brief commented that there was no special problem in drafting-legislation to implement, for example, the European Convention on Extradition since its requirements were reasonably clear to a legal eye. The problems came when one tried to implement it, since a body of received wisdom and understandings naturally built up around an international arrangement of that kind, and it was extraordinarily difficult for a country staffing from scratch to find its way round. In short, what he needed was advice on practitioner's know-how, and not an adviser to tell him how to draft. I thought these comments very shrewd.

VII.2. The matter on which all Ministries of Justice elaborated their problems to me was the weight of the programme of approximation of laws relating to the internal market as set out in the White Paper. In comparison with that, they implied, any problems with the Council of Europe Conventions paled into relative insignificance. I could understand that. It has been made clear that Phare assistance for approximation of laws is a priority of the programme, and many Associated Countries have already arranged Phare projects to support them. Insofar as the Conventions relevant to Title VI present a special problem, it seems to me that they should be regarded as an addition to the approximation of laws dossier and supported through the same channels.

VII.3. The other matters that were mentioned by several Ministries of Justice were all related to the training of judges. The emphasis tended to be on European Union law and on the casework of the European Court of Justice, but one Vice-Minister of Justice stressed to me very strongly that the particular circumstances of his country had resulted in a very young judiciary and that nothing would help his country more, in the area for which he was responsible, than to be able to arrange extensive exchange schemes so that his judiciary could really get the feel of how the judiciary operated and behaved in a Western democracy.

VII.4. One or two countries mentioned their need for help in overhauling their domestic criminal and civil codes for reasons that had nothing to do with the EU.

Other points on which assistance would be welcome included comprehensive information systems embracing all the agencies in the justice system, mentioned by two countries, and a variety of miscellaneous matters.

VII.5. Virtually all ministry of justice interlocutors mentioned the special problem of language training, not just in the ordinary sense which was common ground to everybody with whom I had discussions during my visit but in the precise area of finding exact and consistent equivalents for legal phraseology.

VIII. CONCLUSIONS; HOME AFFAIRS

VIII.1. At this point in the report I will assume that it is accepted that the freedoms of economic and political liberalisation are inherently open to exploitation and that it is greatly to the mutual benefit of the EU and the Associated Countries themselves for all practicable assistance to be extended to them in fighting against the pressures of crime and illegal immigration that have arisen. I will also assume that the present exercise will, if nothing else, have attracted a good deal of interest to the relevant passage of the Essen Conclusions, so that many of the Associated Countries may now be preparing requests for Phare support in these areas.

VIII.2. My visits to the Associated Countries have left me in no doubt at all that there are very considerable unmet needs in the fields under review - some of them being at a fairly basic level. Equally, the previous section demonstrates that there is a great mass of bilateral assistance currently in progress, characterised by

- a strong tendency towards direct service-to-service transfer of experience and know-how, as opposed to generalist consultancy expertise,
- a recognisable pattern of regionality, so that intimate knowledge of beneficiary countries tends to be concentrated in groups of donor countries.

Another characteristic is the deep involvement of specialist international players - notably UNHCR and UNDCP. I believe that any deeper involvement of Phare in this area should accept the current pattern of assistance programmes as being well established and mould itself to complement and facilitate them. That will demand a flexible partnership approach, and may well require the development of some new administrative techniques and mechanisms.

Keeping track of assistance programmes

VIII.3. Before considering points that are specific to Phare, I want to make a general point about the co-ordination of assistance in the justice and home affairs field. This topic surfaced quite often during my visits and I believe that it is quite a familiar issue, but it seems no closer than ever to a general resolution. The simple point is that without some system to monitor the assistance that is being offered bilaterally there is no possible way to avoid the risks of duplication, gaps and overlaps. This problem has been gripped by UNDCP as regards projects by major donors that are

specifically directed at the drugs problem, but nothing comparable exists for general police assistance or for immigration control.

VIII.4. It may be that in the past the best has been the enemy of the good, and the ideas that have been floated have been too elaborate or burdensome. Be that as it may, I suggest that what is needed is fairly simple user-friendly arrangements -that should probably not attempt to cover more than one sector. The drugs area has already been covered by UNDCP and there is obviously no point in trying to duplicate that. What is now needed is coverage of the fields of equipment and training for general police activity and immigration control. There is no special requirement that the systems should be kept in one place or by one body; the essential thing is that they should be open to any institution that has a valid interest.

VIII.5. In the Budapest Group paper mentioned at V.3 it was suggested that the simple idea of a monitoring system might be elaborated into a 'clearing house' that would take delivery of notifications of requirements from the beneficiary countries, as well as details of donor countries' offers. That idea seems well worth exploring, and a simple, practical device of that kind could well have a disproportionate effect in facilitating the most effective targeting of donors' activities.

VIII.6. This question of recording donor activity is not specifically for Phare to pursue, but if it can be developed in the appropriate fora it would be of great value. Potential donors, Phare included. An idea worth considering would be to make use of the structured dialogue to explore the possibilities with both the EU and the Associated Countries.

The need for Third Pillar expertise

VIII.7. In view of Phare's hitherto limited involvement in Third Pillar matters, it can be expected that Phare personnel have had little opportunity to become familiar with the highly specialised background of police and border control issues, though there will, of course be some familiarity with the specifically Customs aspect of drugs programmes. In view of the high degree to which expertise in these fields is concentrated in the relevant services of governments, it seems highly likely that Phare will need to find a way to tap into that body of knowledge, and equip itself with some kind of management arrangement that would capture the experience of people who were familiar with both the general political background of these matters, and also the practical end of the business.. I believe that an arrangement of that kind would be needed whether or not Phare decided on some kind of centrally-steered initiative in this field, and I certainly do not think that the present] arrangements for running multi-country programmes would be appropriate for the areas under consideration.

Equipment and institutions

VIII.8. It was clear from my visits that one area of demand from interior ministries is likely to be expensive electronic equipment of various kinds -especially computerised information systems, some of them highly specialised, others not. Modern policing and immigration control (at the border or elsewhere) increasingly makes use of

information technology and there are undoubtedly many good cases to be made. On the other hand, there is no virtue in lavishly equipping a crossing-point that can be easily circumvented by whatever means and all requests of this kind must raise the question of the institutional and human resources of the organisation that the system is expected to assist. In other words, there are undoubtedly considerable equipment needs and it would be right for Phare to get involved in that area, but all requests for elaborate equipment systems raise the whole question of institution building and forming a judgement whether the organisation in question is ripe to warrant an investment of the kind being proposed. It is very probable that the best sources of advice on this reflect the existing patterns of bilateral assistance, since the countries, and services, that have been most deeply involved in training and equipping their opposite numbers in the beneficiary countries are likely to be uniquely well informed about their progress.

Dialogue with international bodies

(i) UNHCR and UNDCP

VII.9. The previous descriptions of current activity are a clear indication of the extent to which international organisations are involved in Third Pillar work, and this is mirrored by the customary way in which the Member States work in close co-operation with them. Asylum and refugee work obviously involves an effective working relationship with UNHCR, which has a special position in respect of the 1951 Convention which lies at the heart of the EU commitments in this field and IOM's positive role is also acknowledged. If and when Phare becomes involved in this area it will be important to maintain a constructive dialogue with the major participants in this dimension.

VIII.10. As noted at V.5., UNDCP's Task Force role was specifically endorsed by the Berlin Declaration and, if only for that reason, their voice should be listened to with particular attention. Both the Phase multi-country drugs programme and UNDCP have been active in the Associated Countries, and they have developed with different emphases. Thus, the Phase programme concentrated in the past on a number of areas (institution building, approximation of legislation, prevention -demand reduction - and information), which lie outside the Third Pillar area of drugs interest, while UNDCP has in its work programme included the enforcement and control aspects which are specifically Third pillar concerns. Taking into account the global strategy as laid down in the European Union Action Plan to Combat Drugs (1995-1999) adopted by the Cannes European Council, combined with the Essen European Council Conclusions on justice and home affairs in relation to Phare, it is important that future drugs related projects in the region should pay due regard to the law enforcement and control dimension, and it was certainly the general expectation of the practitioners to whom I spoke in the Associated Countries that this emphasis would be reflected in whatever came out of the mission.

VIII.11. Against that background, it is suggested that it will be particularly important that UNDCP's experience is taken into account in relation to any drugs control and enforcement proposals that come forward from Associated Countries, and that joint planning between Phare and UNDCP continues to be seen as a matter of high

importance, so that these programmes complement each other effectively.

(ii) The Budapest Group

VIII.12. The Budapest Group is not an international body in the same sense as UNHCR or UNDCP, but it does have a particular importance as the only migration forum that routinely brings together most of the Member States and Associated Countries, as well as some of the NIS, along with other players. It was made clear to me during my visits that it is precisely for this reason, as well as for the high quality of the preparatory work and research, that the Group is valued by very many of the Associated Countries. A formal and institutionalised dialogue with a body of this constitution may not be appropriate, but I believe that it is important that its role should be understood and full weight attached to its views.

Training

VIII.13. Subject to the availability and packaging of finance (see below), one area where Phare could make a special contribution is training involving more than one country. It

would be a mistake to get the multi-country aspect out of proportion, most training has to be country-specific and delivered accordingly; and multi-national training is always more expensive. But there is still an important place for training that involves more than one country, if only because of the dimension (consciously identified by the managers of ILEA and CEPA) of developing working contacts that endure. Furthermore, there are an increasing number of matters (even briefing about developments in the construction of Europol, perhaps) where what needs to be delivered is information and advice about the institutions in which the Associated Countries will in due course participate.

VIII.14. There are various possibilities for supporting multi-national police or immigration control training that Phare might consider down this road, and there is no point in hypothesising in detail at this stage. If the idea is to be kept open, however, it would need to be deliberately recognised from the start and funded accordingly, since projects of this kind are inherently not likely to be put forward, through national programmes. It may very well be that ILEA, which is clearly anxious to play a wider role, could be involved as part of a broader pattern of multi-national police training programmes, but a judgement on that should perhaps be deferred until the academy has settled down and its most effective characteristic contribution has become clearer in the light of experience of the first few courses.

VIII.15. The single most useful step in facilitating working contacts between the Associated Countries and between them and the Member States of the EU would probably be to encourage and support language training in the most commonly used Western European languages. This could well be a fruitful field for Phare to explore.

Finance

VIII.16. Whilst one or two countries are putting forward proposals (predominantly related to frontier control) in their existing national programmes, it can be assumed

that there will not be a very significant general orientation towards justice and home affairs issues unless more money is made available, over and above existing national programmes.

XI. CONCLUSIONS: JUDICIAL COOPERATION

IX.1. The previous section concluded that the situation on home affairs issues (border control, serious crime police training, asylum) was very special for a number of reasons, including the scale of existing assistance programmes, and that it would require some special handling arrangements in Phare. The situation on judicial co-operation (Ministry of Justice issues) presents itself differently.

IX.2. As noted at VII.1 above, the specifically Third Pillar dossier of Conventions etc. does not seem to be generally perceived as a major problem in itself, and insofar as assistance is required it should be straightforward to add it to the approximation of laws assistance programmes which many Associated Countries already have under way. Familiarising the judiciary with EU law is not part of the Third Pillar field of operations, and domestic law reform and exchange schemes for the judiciary are topics that are already met in principle by existing Phare categories of programme assistance, such as European integration and public administration, in addition to the Council of Europe programmes already mentioned. Furthermore, the existing situation on judicial co-operation assistance does not show anything remotely like the heavy bilateral involvement which is such an important factor in considering how best to approach the home affairs aspect of Phare involvement.

IX.3. I am therefore left unconvinced that the judicial cooperation sector requires any special handling arrangements, and I am tempted to think that it would be left to find its own level under national prioritisation. Having said that, however, I am bound to be impressed by the weight given to exchange-programmes and training schemes in the action programme that was agreed at the Joint meeting of the Justice and Home Affairs Council and Ministers of the Associated Countries on 26 September. Perhaps the best way forward would be to pursue the possibilities for some small scheme with the Council of Europe, as the main international players in this field, who are already accustomed to working in partnership with Phare.

IX.4. Whatever may be decided on assistance for justice issues, I do believe that this should be kept separate from any arrangements for home affairs, as the considerations and mechanics are quite different.

X. THE WAY AHEAD

XI. Section VIII suggested a number of points that appear likely to need attention if Phare is to become more deeply involved in the regulatory home affairs aspects of the Third Pillar. In particular, it is suggested that arrangements will be needed to access the expertise of practitioners in these fields, and that simple systems (whoever might be responsible for them) to keep track of donors offers and of Associated Countries' perceived needs would themselves do a great deal to enable a proper appreciation to

be made of the whole area, and to identify disparities. It is also suggested in section V.10 that it would be appropriate to review the balance of the existing Customs and transit facilitation programmes, to ensure that adequate attention is given to the threat of trafficking in drugs and other prohibited goods.

X.2. The way forward depends very much on the action that is taken on these proposals, but the task of adapting to a largely unfamiliar Third Pillar workload; and building up the new network of information sources that will be required, could well turn out to be quite considerable. It can be expected that a large number of proposals in the areas identified in this report will now be germinating in the Associated Countries in view of the Essen Conclusions and the attention drawn to them by the very commissioning of this study. Subject to the financial envelope, it can be assumed that many of these proposals will come forward, or at least that the Associated Countries will want to discuss the possibilities for them with the Phare authorities. That itself would involve Phare in indicating the kind of assistance that they might be able to provide in connection with the priority issues identified in this report.

X.3. This could all add up to a substantial exercise of adjustment, and it would be a mistake to underestimate its demands, even if the matter was approached on the basis indicated in the previous paragraph. There is a good deal to be said for allowing these new arrangements to bed down and for expertise to be accumulated before considering any more planned approach.

X.4. On the precedent of the multi-country programmes, however, it would be possible to contemplate a more planned and directed approach (though I do not believe that the existing management models for such programmes would be appropriate for Third Pillar issues). Such an approach would need to have a clear objective, and the obvious one amongst the issues considered in this report would be the Third Pillar aspect of the regulation of the border that will become the EU's external frontier, including the frontier with the NIS countries. That topic is implicit to some extent even in the demand-led approach to the priorities that have been noted, but deliberately identifying it as an object of concerted policy would be a significant step to take. It would require a full needs assessment of the Associated Countries, which would be a very substantial undertaking in itself. I also believe that it could not be taken very far without considering the reciprocal aspect of co-operation with the relevant NIS authorities, and so the relationship with Tacis becomes of obvious importance. In that connection, the following part of Commissioner Van den Broek's statement on the publication of the Tacis 1994 Annual Report may point the way to future developments;

"Another area of joint concern between the EU and the NIS is the significant increase in violent crime, drug trafficking and smuggling of nuclear material. This development threatens not only the overall reform process in the NIS themselves but will also have considerable side effects at the international level. The Commission is therefore planning to use Tacis funds in such a way that it will help to prevent or combat crime. In this context Mr Van den Broek suggested an enhanced cooperation with the EU Member States under the umbrella of the third pillar, comprising justice, immigration and home affairs."

(Source of this document, Statewatch)