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Maastricht immigration programme (1991) and follow up (1993)

Supplement to: “Key texts on justice and home affairs in the European Union,
Volume 1 (1976-1993)”

**Statewatch European Monitoring and Documentation Centre on
justice and home affairs in the European Union (SEMDOC)**

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REPORT from the Ministers responsible for immigration to the European Council meeting in Maastricht on immigration and asylum policy

Introduction

Report from the Ministers responsible for immigration to the European Council meeting in Maastricht on immigration and asylum policy (December 1991). Calling for more thorough harmonisation post-Dublin without dealing with the vexed issue of the institutional framework (the debate which became third or first pillar).

REPORT from the Ministers responsible for immigration to the European Council meeting in Maastricht on immigration and asylum policy

Reference:

SN 4038/91 (WGI 930)
3 December 1991

A. SUMMARY, WORK PROGRAMMES AND CONCLUSION

I. INTRODUCTION

The Luxembourg European Council, having received proposals from the German delegation, requested the Ministers responsible for immigration to submit proposals on the harmonization of immigration and asylum policies at its meeting in Maastricht.

This report is in response to those instructions.

The report addresses the various issues without stating an opinion on the institutional framework within which they should be dealt with in the future, as these problems will be examined at the Intergovernmental Conference on Political Union.

This issue was nevertheless the subject of an exchange of views during the ministerial meeting. Ministers attached great importance to a decision on this matter being taken at the European Council in Maastricht.

In accordance with these instructions, the attention of the Ministers responsible for immigration focused on the work to be carried out immediately by way of transitional measures and preparation of the policy which will be set in place progressively as from the entry into force of the Treaty on Political Union.

This report contains a brief outline of the various problems examined and a priority work programme for migration policy and asylum policy respectively, followed by a more detailed and more comprehensive analytical document.

II. TOWARDS THE HARMONIZATION OF MIGRATION AND ASYLUM POLICIES

Over recent years Member States have increasingly felt the need to harmonize their migration and asylum policies with regard to third-country nationals.

The prospect of attaining the objective of Article 8a, in particular in respect of freedom of movement for persons, will have consequences for the way in which Member States implement their national policies and will make co-operation between them even more necessary.

The initial results of co-operation between Member States - the Dublin Convention determining the State responsible for examining applications for asylum and the draft Convention between the Member States on the crossing of their external frontiers - in themselves call for more thorough harmonization.

Other phenomena indicate the same path, in particular the substantial intensification of migratory pressure now exerted on almost all Member States, which they obviously cannot contemplate resolving individually to the detriment of their Community partners, and the massive increase in the number of unjustified applications for asylum, a method which is used - in most cases in vain - as a means of immigration by persons who do not meet the conditions of the Geneva Convention.

The work programmes annexed to this report have been drawn up pragmatically: harmonization has not been regarded as an end in itself but as a means of re-orienting policies where such action makes for efficiency and speed of intervention.

As regards immigration, the main topics which would appear to require priority treatment are harmonization of admission policies, the development of a common approach to the problem of illegal immigration, labour migration policies and the situation of third-country nationals residing legally in the Community.

As regards asylum, in the first place the protection of persons who are victims of persecution should be reaffirmed and the Geneva Convention applied. As for the tasks to be performed, priority would appear to go to preparing implementation of the Dublin Convention and harmonizing the substantive rules of asylum law in order to ensure uniform interpretation of the Geneva Convention. Harmonization of procedural aspects, on the other hand, seemed less urgent, apart from the fact that every effort must be made to shorten asylum application procedures, particularly in the case of clearly unjustified applications.

Harmonization of expulsion policy would also appear to be necessary, as would examination of reception conditions for asylum-seekers and a permanent updating of knowledge regarding the various aspects of this question.

III. WORK PROGRAMME CONCERNING MIGRATION POLICY

On the basis of the above considerations, it is possible to establish a concrete work programme, the broad lines of which are set out below. In general, the Ministers responsible for immigration could perform a sort of management and monitoring function in respect of the implementation of this entire programme, on the understanding that preparation of certain measures may fall within the competence of other Ministers.

It is important that existing structures should assist Ministers in co-ordinating programme implementation.

Between now and entry into force of the Treaty on Political Union, the following subjects should be dealt with. They are listed in order of priority under each heading. If necessary, this work must be continued after that date.

A. Harmonization of admission policies

- harmonization of policies on admission for purposes such as family

reunion and formation and admission of students;

- harmonization of policies on admission for other purposes such as humanitarian aims and work as an employed or self-employed person;
- harmonization of legal provisions governing persons authorized to reside.

B. Common approach to the question of illegal immigration

- co-operation on border controls within the framework of the Convention on the crossing of external frontiers;
- harmonization of conditions for combating unlawful immigration and illegal employment and checks for that purpose both within the territory and at borders;
- harmonization of principles on expulsion, including the rights to be guaranteed to expelled persons;
- definition of guiding principles on the question of policy regarding third-country nationals residing unlawfully in Member States;
- co-operation with countries of departure and transit in combating unlawful immigration, in particular as regards re-admission.

C. Policy on the migration of labour

- harmonization of national policies on admission to employment for third-country nationals taking account of possible labour requirements in Member States over the years to come;
- increased mobility of Community nationals, in particular by improving the functioning of the SEDOC system.

D. Situation of third-country nationals

- examination, within the appropriate fora, of the possibility of granting third-country nationals who are long-term residents in a Member State certain rights or possibilities, for example concerning access to the labour market, held by Member State nationals once nationals of the twelve Member States enjoy the same conditions of freedom of movement and access to the labour market.

E. Migration policy in the broad meaning of the term

- preparation of agreements on re-admission with countries of origin and transit of unlawful immigration;
- establishment of an information programme and preparation of training and apprenticeship contracts for East European and North African countries in particular;
- strengthening of the rapid consultation centre.

The subjects under A, B and D could be dealt with by the Ministers responsible for immigration.

Suitable co-ordination with other Ministers, such as the Social Affairs, Employment and Foreign Affairs Ministers, will be necessary in the case of points C and E.

In addition to the priority subjects referred to earlier, a number of more general measures need to be taken, for which action by the Ministers with responsibility for immigration would depend on the proceedings of other bodies, including European Political Co-operation and Community action properly speaking:

- analysis of the causes of immigration pressure;
- removal of the causes of migratory movements by an adjusted policy in the field of development aid, trade policy, human rights, food, environment and demographics;
- strengthening of support for accommodating refugees in their

countries of origin;

- incorporation of the migration aspect into economic, financial and social co-operation.

IV. WORK PROGRAMME CONCERNING ASYLUM POLICY

This work programme for harmonization of asylum policies has been drawn up on the basis of the objectives laid down by the Luxembourg European Council. The subjects mentioned below should be dealt with between now and the entry into force of the Treaty on Political Union, if necessary this work must be continued after that date. Moreover, the work programme may be supplemented subsequently in the light of discussions, with the result that the list is not exhaustive.

A. Application and implementation of the Dublin Convention

1. Determining a common interpretation of the concepts used in the Convention;
2. Exchanges of information;
3. Implementing mechanisms;
4. Drawing up a practical manual for application of the criteria in the Convention;
5. Combating asylum applications submitted under a false identity.

B. Harmonization of substantive asylum law

1. Unambiguous conditions for determining that applications for asylum are clearly unjustified;
2. Definition and harmonized application of the principle of first host country;
3. Common assessment of the situation in countries of origin with a view both to admission and expulsion;
4. Harmonized application of the definition of a refugee as given in Article 1A of the Geneva Convention.

C. Harmonization of expulsion policy

1. Common assessment of the situation in the country of origin;
2. Determination of various aspects of an expulsion policy.

D. Setting up a clearing house

Setting up such a centre at the General Secretariat of the Council:

1. Written exchanges of information on legislation, policy, case law and information concerning countries of origin, together with statistical information;
2. Oral exchanges of information through informal meetings of officials responsible for implementing asylum policy.

E. Legal examination

Examination of the problem of guaranteeing harmonized application of asylum policy.

F. Conditions for receiving applicants for asylum

1. Collection of data on current conditions for receiving applicants;
2. On the basis of that collection of data, study of possible ways of approximating these points.

V. CONCLUSION

The Ministers responsible for immigration invite the European Council to signify its agreement to the above work programmes. If implemented, they could considerably increase the effectiveness of Member States' policies in these fields in the new and gradually developing context and will constitute a stage - an ambitious but

realistic stage - along the path to harmonization.

ANNEX

B. DETAILED NOTE

I. GENERAL INTRODUCTION

The European Council in Luxembourg asked Ministers responsible for immigration to submit proposals on immigration and asylum.

This note defines a general framework for immigration and asylum policies, as set out in sections I and III respectively. The two sections provide a concrete work programme and establish priorities.

1. Why harmonization?

It is specifically when setting priorities regarding the topics to be harmonized in the framework of immigration and asylum policy that it is important to formulate a number of basic principles for the harmonization process. Harmonization is not an end in itself, but stems from a need felt by Member States for a common policy in this area.

The need for harmonization of immigration policy has grown increasingly in recent years. Until the mid-80s, European co-operation in this field had been very limited: admittedly, Member States had been co-operating for many years with regard to freedom of movement for EC nationals and a coherent system of European law had been established. However, policy regarding third-country nationals was still essentially the subject of national measures.

Co-operation in other areas became more intensive only after discussions had started in an intergovernmental framework (ad hoc Group on Immigration, Ministers responsible for immigration), spurred on by the determination to achieve the Internal Market by 1 January 1993. In this regard, considerable attention was paid to drafting Conventions on the responsibility for examining applications for asylum (Dublin Convention) and on the crossing of the Community's external frontiers.

Although apparently of only limited scope, the ultimate effect of these Conventions is much greater than was perhaps originally expected. For example, the establishment of responsibility for examining applications for asylum implicitly presupposes that Member States have confidence in each other's asylum policies, as one Member State consents to an application for asylum lodged with it being processed by another Member State in accordance with the latter's national legislation.

Harmonization of basic asylum policy is therefore merely a logical step towards giving this confidence more substance.

The Convention on the crossing of external frontiers is also an inducement, in many respects, to carrying harmonization further. Firstly, it stipulates that foreigners in possession of a residence permit for one of the Member States are exempt from visa obligations for movement through other Member States. This makes it easier for this category of foreigners to stay in other Member States for short periods. By the same token, there is an increased danger of such foreigners taking up residence in another Member State as employees or self-employed persons. This process may result in a certain tension and pressure on national immigration policies.

In addition, the Convention provides for co-operation on expulsion policy: the Member States generally assume responsibility for escorting illegal foreigners to EC frontiers. However, if one of the Member States subsequently re-admitted the foreigner in question on the grounds that it was permissible under its national immigration policy, the expulsion would immediately lose its effect and co-operation between Member States would be impaired.

A similar phenomenon occurs when a foreigner is entered on the common list of inadmissible persons: if the foreigner is already entitled to reside legally in one of the Member States but poses a threat to public

order or national security for one or more other Member States, he can be entered on the common list only if the Member State concerned is prepared to withdraw his residence permit. Thus, here again there is a certain discrepancy which can be solved only through harmonization.

The reverse may also occur: if national immigration policy results in the admission of a foreigner notified as an undesirable person, he must consequently be removed from the common list.

The above examples show that the Convention on the crossing of external frontiers starts from a situation in which immigration policies have not yet been harmonized, but that its effect would be considerably improved if these policies were in fact harmonized. The two Conventions are therefore an inducement to harmonize policy.

Beyond that, deeper causes calling for a harmonized immigration policy may be instanced. The pressure of immigration on most Member States has increased significantly in recent years. The conviction that, confronted with these developments, a strictly national policy could not provide an adequate response has been consistently gaining ground: although differences still exist between Member States with regard to the nature and size of migratory movements, major similarities may also be observed.

On that basis, it would appear advisable to define a common answer to the question of how this immigration pressure can be accommodated. It is neither judicious nor politically desirable to shift migratory movements from one Member State to another: the aim is to make the problems manageable for the entire Community. This will require instruments which are based on an extended form of co-operation among Member States while ensuring that the policy of one Member State does not have negative effects on other Member States' policies.

2. A pragmatic approach to the harmonization process

In general, the harmonization process will need to be pragmatic in character: re-orienting policies where such action improves efficiency and speed of intervention.

In some areas, this may lead to the conclusion that harmonization should be rapid and deep-going. This is true in the case of material asylum law, for example. In recent years, submitting an application for asylum has increasingly become the alternative route for migrants who do not meet the requirements of (restrictive) immigration policies. The immigration pressure referred to above applies by definition to policy aspects that are still flexible to some degree. If admission to the status of employee or equivalent becomes in practice extremely limited, foreigners will look for other ways. Since submitting an application for asylum indicates that a foreigner considers that he has a well-founded fear of persecution in his country of origin within the meaning of Article 1 A of the Geneva Convention, Member States must consider such a request carefully. This justified meticulousness in turn results in lengthy processing periods and, in conjunction with the growth in the number of asylum-seekers, increasingly strong pressure on asylum policy as such.

The asylum problem has become a matter of urgency for virtually all Member States and is a perfect area in which common answers can be found to common challenges. While recognizing the need for a procedure based on essential guarantees, Member States will have to attempt to reduce procedural abuses in this area. A first requirement would be that in all cases the same interpretation is given to the Geneva Convention, so that the conditions for recognition of refugee status are the same in all Member States. In addition, expulsion policies for rejected asylum-seekers will have to be implemented in accordance with the same procedures in all Member States. Only with regard to the procedural aspect of asylum policy may it be held that harmonization is of a less urgent nature, due in particular to the situation of the administrative and legal system in the Member States.

Immigration policies are a more complicated issue as not all areas lend themselves to immediate harmonization. Section B will return to this point in greater detail, but it will be seen that, even in this area, some policy elements lend themselves very readily to harmonization and that this too is a necessity for a dynamic policy. In the area of family reunion and formation, for example, Member States' policies can and will have

to be harmonized within a relatively short period. The same also holds true for policies to combat illegal immigration: by definition, immigration has little concern for national borders and will have even less once checks are relaxed and/or abolished. A common response to these problems is therefore considered generally desirable.

3. Basic principles for the level of harmonization

If the harmonization process were initiated without defining basic principles, harmonization might be carried out at the lowest level. Assuming that immigration into Member States must remain limited, it is above all the restrictive opinions which could dominate. It is clearly true that a European immigration policy is of necessity restrictive, with the exception of refugee policy and family reunion and formation policies, as well as policies providing for admission on humanitarian grounds. It must, however, be borne in mind that the European tradition is based on principles of social justice and respect for human rights, as defined in the European Convention on Human Rights.

The social justice aspect is particularly evident in the ways Member States deal with foreigners entitled to lawful residence. The basis for this policy is that these persons integrate into the society of the particular Member State. This integration process can be promoted by a policy regarding legal status which is strongly based on form and substance.

This issue is all the more topical as a number of Member States are experiencing growing tensions between foreign and native populations. Recent xenophobic developments call for vigorous counteraction. On the one hand, this means that anti-discrimination policies in Member States must be expanded and consolidated. On the other hand, this will intensify the need for thorough integration policies and legal-status policies which would remove legal obstacles to integration as far as possible where the nationality of a Member State is not required for the pursuit of certain activities.

Once nationals of the twelve Member States enjoy the same conditions of movement and access to employment, the question will arise as to whether the difference made between EC nationals and non-EC nationals takes sufficient account of the position of this group of foreigners who, at national level, have often acquired a legal status comparable to that of a Member State's own nationals. As endeavours are made to give greater substance to a Citizen's Europe for EC nationals, these foreigners will also have to be able to associate with this process: they too will have to be able to identify themselves increasingly with Europe. Section 11 will therefore specifically examine the position of foreigners legally resident in Member States of the Community.

The European Convention on Human Rights has for many years provided a legal framework which also sets guidelines for certain components of immigration policy. This is particularly true of Article 8 thereof, which deals with the protection of family life and which the European Commission on Human Rights and the European Court of Human Rights interpret as also being decisive for policies on admission for purposes of family reunion.

Article 3 of the Convention sets limits on the possibilities for expelling foreigners. If they can expect inhumane or humiliating treatment in their country of origin, according to the case law of the institutions in Strasbourg they cannot be expelled.

Other Articles of the Convention (5, 13) can also influence immigration policy in that they establish in particular guarantees for the procedures and administrative measures to be applied. Finally, Article 14 (non-discrimination) could play an important role here, at any rate in relation with other rights listed in the Convention.

The harmonization process must therefore of necessity fulfil two criteria: first, it must promote a dynamic migration policy and, second, it must be strictly in keeping with the European traditions of social justice and human rights. This implies the definition of a just and balanced immigration policy. That will be no mean task and will certainly require much more time and energy. Section B of this memorandum attempts to indicate how this process can be started in

practice.

4. Presentation of the harmonization policy

The discussions by the Twelve on the free movement of persons attract considerable public attention, sometimes of a critical nature. Such criticism is particularly aimed at the fact that deliberations are not public. Despite informal contacts made by different Presidencies with the European Parliament, the various non-governmental organizations and each government's contacts with its national parliament, the impression remains that there is insufficient transparency in this area. That view ignores the fact that, while at international level negotiations are exclusively between governments, the results of negotiations are submitted to national parliaments so that there can be public and parliamentary discussion. Furthermore, contacts with the press are invariably organized whenever a ministerial meeting is held.

It may be advisable to step up the briefing of the European Parliament, the Twelve's national parliaments and those of non-member countries insofar as the measures adopted concern them. Consideration should also be given to the manner in which contacts with external organizations could be formed in the framework of discussions on a uniform European immigration policy and how the results could be presented.

It is impossible to over-rate the importance which political circles must attach to the question of immigration policy in a period of great tension; the more the activities undertaken in the harmonization process are favourably perceived by society and the political world, the greater will be the chances of success.

II. MIGRATION POLICY

1. Introduction

The title of this Section contains the concept of "migration policy". The term "immigration policy" is often used in this context, but it may be misleading in that no EC Member State currently conducts a policy focused on immigration. It is on the contrary the control of immigration that is involved. If the term "migration policy" is used, the focus is also widened in two respects: on the one hand, emigration and return of foreigners to their countries of origin or third countries can also be taken into account and, on the other hand, the legal or illegal movements of foreigners already residing in a Member State may be considered as an element of migration policy.

A European migration policy must cover not only migratory movements from third countries to the Twelve and vice versa, but also migratory movements of non-EC nationals within the Twelve. However, migration of EC nationals is not taken into consideration here, as policy on this matter has already crystallised to a large extent and is administered by Community legislation.

In addition, this memorandum covers a wide area which partly goes beyond the competence of Ministers responsible for immigration. However, for a proper approach to the migration problem, it is very important to consider the various aspects in relation to each other. Areas such as labour market policies, human rights policies, development aid and integration policies are all of direct importance for supporting a European migration policy. A measure of co-ordination between these areas and more traditional policies on foreigners will be necessary, both at national and at European level. EC Ministers responsible for immigration must in particular pinpoint those aspects which are related to migration policy in the strict sense of the term.

2. Developments in migratory movements

Although none of the Member States conducts a policy to promote immigration as such, it must nonetheless be noted that they have all become de facto immigration countries, with the exception of Ireland.

The most important migratory movements to the EC are based on:

- asylum;
- family reunion;
- temporary migration for education, training periods and similar activities;
- illegal immigration

In addition, foreigners are admitted for imperative humanitarian reasons and for reasons of national interest. In the latter case, admission for employment is the main category. After this type of immigration flourished in the 1960s and 1970s, labour market conditions in subsequent years were such that immigration for reasons of employment virtually disappeared.

Insofar as admission for reasons of national interest was possible, migratory pressure could be channelled by that means. When that door was closed in most Member States in the late 1970s, increasing recourse was had to the asylum procedure because, apart from family reunion, it became the only remaining path of admission. If the Member States succeed in conducting an asylum policy which guarantees solely the protection of refugees and which, at the same time, results in more rapid rejection of applications for asylum that are clearly unjustified, other channels may well be used once again. In that event, possibilities for illegal immigration would probably be used increasingly. The first signs are already there: some rejected asylum seekers are residing illegally in Member States, and illegal migration is also on the rise.

Although the formal analysis given here is logical from the standpoint of the immigration countries themselves, the picture becomes quite different if the immigration phenomenon is considered from a geographical angle. Thus, the Twelve are facing migratory pressure from three directions:

- North Africa;
- Eastern Europe;
- other countries of origin of asylum seekers, as well as countries with which Member States have very long standing ties.

The preceding distinction then loses some of its explanatory value: it is a case of an immigration pressure selecting the path of least resistance at that time. Beyond that, it should be noted that due to their geographical location and certain historical considerations, some Member States experience pressure from these regions to greater or lesser degrees. For example, pressure from North Africa is highest in the Mediterranean countries, whereas the United Kingdom, for historical reasons, has many immigrants from Asia.

It is therefore important for the Twelve to work along two tracks. On the one hand, harmonisation of elements of migration policies is conceivable and desirable. This memorandum provides a number of specific proposals in this regard. However, even if agreement were reached on this matter soon, results will be limited unless the causes of migratory pressure are also addressed. For this reason, European migration policy will have to have a broader scope than harmonisation of admission policy alone.

Finally, a distinction should be drawn between migration to EC Member States and migration among EC Member States. Detailed Community legislation already provides for the free movement of EC nationals. For non-EC nationals, this principle is applicable only as a derived right, ie, if they are members of EC nationals' families. In parallel with the development of a European migration policy, attention must also be paid to the position of such persons.

3. Migration policies in the broad sense

Migratory pressure on Europe is coming from three sources, each of which requires its own approach, ie, from North Africa, Eastern Europe, and other countries in Africa, Asia and other parts of the world that are home to many asylum seekers, or with which Member States have long standing relations.

(a) Countries neighbouring on Europe

The migratory pressure coming from North Africa and Eastern Europe is due to a number of factors. In general, there are factors relating to the

economic and social situation, and ethnic tensions. In addition, in certain regions demographic growth is posing further problems for economic development and also gives rise to migratory pressure.

It is not possible in a general sense to put forward solutions which would eliminate causes of immigration from those countries without taking into account the specific situation in each country. In some countries the main reason behind migration would be the socioeconomic situation, whereas in other countries ethnic tensions or demographic factors might be predominant.

Nevertheless, the following approach might be taken. Whenever the socio-economic situation could be regarded as the dominant factor explaining the migration pressure, attempts could be made to expand economic, social and financial co-operation. If the required economic reforms are carried out and job opportunities in the region could be increased as a result, such co-operation could indeed be successful. In this respect, co-operation presupposes the full responsibility of the countries concerned to do their utmost to bring about the necessary economic reforms.

Economic developments could possibly be increased by offering work placement programmes for training and work experience to citizens of the countries concerned. With the experience obtained in Member States, those citizens might have better opportunities to strengthen the economic structure of their home countries. These kinds of facilities might be incorporated into special agreements with these countries. Participation in these programmes should be possible especially for those who, after completing the programme, would have adequate opportunities in their country of origin so that not only their formal return is guaranteed, but also their material well being. If these exchanges are left to private initiative and migration policies are secondary in this regard, the chances that these foreigners will return are less likely. Thus, the temptation to prolong the stay in EC Member States on the part of business as well as on the part of participating people themselves might turn out to be relatively strong.

Where ethnic tensions are the basic factor causing migratory pressure, every effort should be made to try to reduce such tensions, primarily by political co-operation and an adequate human rights policy. Whenever economic factors exacerbate ethnic tensions, for example because of high unemployment or general social unrest, the economic co-operation measures as outlined above might also help to alleviate them.

Demographic factors are by their very nature the most difficult to influence. Very often traditions and religious factors are behind a certain demographic development. Insofar as population growth is connected to a bad socio-economic situation, one might expect the demographic factor to decline over the years, once the general socioeconomic situation improves. On the other hand a high population growth might also undermine economic policies where economic growth does not keep pace with population growth.

Apart from the factors mentioned above, there is a general tendency for immigration to increase whenever a certain number of people from a specific country are already present in the host country. The Member States of the EC have long established ties with their neighbours. This implies that from those countries there are already a considerable number of migrants residing in the EC. Within overall migration policy, specific attention should therefore be paid to these very countries.

The traditional ties with the countries concerned, however, also provide many opportunities for close co-operation. Apart from the general economic, social and financial co-operation, as referred to above, specific agreements could be made with these countries in order to combat illegal migration and to further the repatriation of the citizens of those countries who have entered or stayed illegally within the Community.

In addition, policies might be conducted to provide information to the population in the countries concerned. The objective of such information policies would have to be that honest and clear information be given with regard to the possibilities and impossibilities for long term stays in EC Member States. At the moment, many foreigners have difficulty understanding the relevant regulations. On the one hand, arrangements have been made to further contacts between the various populations. For

example with regard to Eastern Europe, the CSCE process contains specific measures concerning "contacts between people" as part of the "human dimension". On the other hand, these arrangements do not allow for unlimited possibilities for immigration.

In addition to this structural approach, policies for dealing with incidents are required as well. These could be a sudden deterioration in living standards, such as food scarcity or the lack of basic medical facilities. Emergency aid policies might alleviate these problems.

(b) Other countries of origin

North Africa and Eastern Europe have in common that they border on EC Member States. From a physical viewpoint at least, this makes migration fairly simple. In most cases, the situation is quite different for the other countries of origin. Foreigners from these countries often have to travel long distances by boat or aeroplane before they can reach Member States. Often, agents are used to arrange their trip.

There are various causes for immigration from these countries. Sometimes, traditional colonial ties are a pulling factor. Also, the presence of compatriots may be an important factor for migration. In that case, no specific pushing factors need to exist in the country of origin. On the other hand, there are often circumstances in the country of origin which cause migration, such as human rights violations, civil war, poverty, famine, natural disasters, etc. These may be reasons for people to make big financial sacrifices in order to travel all the way to EC Member States.

In this regard as well, European migration policies will have to deal with the pushing factors that are present in those countries. This means: relevant human rights policies, substantial development aid, global food and environmental policies, and controlling regional conflicts. Even if these structural problems could be tackled through such a set of measures, no short term reduction of migratory pressure could be expected. On the contrary, the opposite might be true in some cases: due to improved living standards, increased numbers of people in those countries would be able to overcome the geographical barrier of long distances. A "brain drain" from these countries should not be excluded, but it should be prevented as far as possible.

For this reason, such policies will not result in short term miracles to reduce migratory pressure. However, these measures are essential for situations where conditions in the countries of origin are so hopeless that, for some people, migration appears the only way out of their misery.

In addition, relevant policies could be conducted in order to curb or prevent sudden migration. In this regard, an early warning system could first be developed, either within the framework of the system for monitoring migration flows, established by the European Commission in co-operation with the ad hoc Group on Immigration, or within the activities of a "clearing house" managed by the Council Secretariat. Such a system would register, in good time, any sudden increase in migration from specific countries of origin, so that relevant measures could be taken in order to find and overcome the causes for this sudden migration. The system would have to operate on a global level, ie, also control sudden migration flows from Eastern Europe and North Africa.

Thirdly, contacts with the main countries of origin should not only be focused on limiting migratory pressure, but also on supporting the UNHCR in the Organisation's quest for possibilities for providing refuge to asylum seekers in the region itself. UNHCR has consistently indicated that refugees should be given refuge in their own region rather than be relocated elsewhere.

In the fourth place, the travel route of these foreigners could be taken into consideration. A common policy for airlines which transport large numbers of undocumented foreigners without good reason might increase the effectiveness of current national policies. The same applies with regard to policies on mala fide agents.

4. Migration policy in the strict sense

The development of a European migration policy, in the strict sense, involves on the one hand harmonisation of admission policies and

expulsion policies and, on the other hand, finding a common response to illegal migration. European migration policy must comprise a restrictive admission policy in order to enable immigrants resident in Member States to be satisfactorily integrated. Obviously these considerations do not hold as regards family reunion and admission on humanitarian grounds.

Beyond that it is important to check regularly whether the justification for a restrictive admission policy is still valid. For example, demographic developments in the shorter or longer term might lead to the authorisation of limited or temporary forms of migration. However, current developments are not such that they could cast doubt on the case for a restrictive policy.

(a) Harmonisation of admission policy

The conditions of access for third country nationals to the labour market of the Twelve are an important aspect of the harmonisation of admission Policy.

Full harmonisation of admission policy linked to employment presupposes that this policy will cease to be defined exclusively at national level, as it will no longer be possible unilaterally to extend or tighten the national labour market when conditions for admission are determined at European level. It therefore seems necessary to intensify talks in this regard while endeavouring to achieve harmonisation, in order to achieve a European labour migration policy.

It is very important to react in time to changes on the labour market in order to introduce a European migration policy in practice. If a sudden labour shortage occurred in one specific market segment of one of the Member States, the proposed improvements to the existing SEDOC system would be capable of producing greater mobility on the part of nationals of the Twelve in order to cope with the shortage, in accordance with the system of Community preference.

In addition, once full equality of rights has been secured between nationals of the Twelve, it would perhaps be possible to make use of the potential of foreigners residing legally in the Member States. For that purpose, consideration could be given to the possibility of creating a SEDOC type system for such foreigners or integrating them into the system itself, with employers first being obliged to consult the system before being able to recruit outside the Twelve.

Identical problems occur with the harmonisation of the admission of self-employed persons. In this regard, however, a move should be made to approximate Member States' policies restrictively to take account of their economic and social situation.

Special attention must be paid to harmonisation of policy on admission of students and trainees, some of whom are inclined to stay beyond their study or training period. Harmonisation of the policy on admission of artists is a very complicated matter given the differences currently observed in this field.

As for harmonisation of family reunion policies, the interpretation of Article 8 given by the European Commission on Human Rights and the European Court of Human Rights has already provided a measure of uniformity. Within that legal framework, however, national rules still contain a fair number of differences, particularly as regards the waiting period and majority threshold. Nonetheless, harmonisation of these features is, in itself, conceivable.

The possibility of harmonising humanitarian policy is much less certain. By definition, this policy is determined by the person's specific individual circumstances; these are persons who do not meet the other conditions for admission but who cannot be reasonably required to return to their country of origin given their individual situation. Even at national level, few or no written rules exist for humanitarian policy; at most, rules of thumb are given to the official handling the case. Only objective factors such as the actual period of stay would be open to greater harmonisation between Member States.

Harmonisation in this area therefore seems an uphill battle. More can be expected from setting up a clearing house, as has been proposed in the

case of asylum. A system of this nature, together with personal contacts between the officials responsible, should promote the emergence of common implementation practices among the Twelve.

In addition to the harmonisation of the above aspects of admission policies, policies regarding the legal situation of foreigners already admitted, and in particular conditions for renewal of residence documents, also call for specific attention. The rules governing the loss of this legal situation should also come under close scrutiny. These matters are largely related to issues of public order and national security. Given that questions of public order fall within the competence of Member States, full harmonisation in the short term will not be possible in this case either. However, it is conceivable that certain agreements would be concluded, particularly as regards the proportions to be respected between the duration of the residence permit, the punishment incurred and the consequences drawn as regards the person's legal situation.

(b) Position of third country nationals

As from 1 January 1993, the nationals of the twelve Member States will enjoy equal rights as regards freedom of movement and access to the employment market. In the context of a future European migration policy, attention must also be given to inter-European migratory movements by foreigners already residing in one of the Member States. These types of migration vary considerably in their legal nature:

- migration which is at present legally possible;
- migration which is legally impossible at present for foreigners residing in an EC Member State;
- illegal immigration.

An example of migration which is at present already legal would be admission to another Member State for the purposes of family reunion. An example of migration which is not yet possible legally for third country nationals would be freedom of movement for employees and self-employed persons. Instances of illegal migration would be illegal migration by third country nationals and illegal residence by foreigners. These could be foreigners who have entered the Community illegally, foreigners who were admitted for short stays and then stayed on afterwards, or ex-nationals of third countries who no longer fulfil the conditions for a long stay.

Possibilities for legal migration covered at present may be left aside in the remainder of this text. They already form part of the admission policy referred to earlier and will be implemented in that framework. Only illegal migratory movements will be dealt with below: these call for a global approach, whether in the case of intra-European migration or illegal migration from outside the EC.

From the viewpoint of social justice, the general approach here should be to examine which rights third country nationals should be able to enjoy among those enjoyed by Member State nationals. However, this aspiration may not be seen independently from the process of harmonisation of admission policy and from the development of a Community approach to illegal migration.

This approach may be illustrated by dint of the following example. The volume of third country nationals is at present still completely determined by national admission policies. Whereas the group is currently estimated at approximately 8.3 million persons, that number could increase considerably following a sudden regularisation measure. If the Twelve wished to grant further rights to third country nationals it would be necessary to have at least a probable estimate of the size of the group. In other words, Member States will have to have such confidence in each others' policies that the consequences of a gradual extension of rights may be readily evaluated and that an effective integration policy is not constantly undermined by the addition of further groups of third country nationals.

This does not mean that admission policy has to be fully harmonised before the situation of third country nationals is improved. The process of European integration is by its nature fragmentary: the rights of EC nationals were not created overnight. What is involved here is the progressive strengthening of their legal position.

It must be known here exactly which rights are involved and a differentiated approach must then be applied according to the topic. The ERASMUS programme, for instance, is already open to third country nationals without that being considered a problem by Member States. Other similar programmes could also be established for third country nationals and consideration could be given to according priority to third country nationals when filling job vacancies that could not be filled by EC nationals. It seems very important to draw up such an inventory of rights in the short term and to set out the conditions for equal rights in an action programme. That action programme could be accompanied by a timetable in line with the progress achieved in harmonising admission policy and the development of a common approach on illegal immigration. Finally, within that action programme, a distinction could be drawn between various groups of third country nationals. For example, the legal position of foreigners established within Member States for a very long period could be more favourable than for those who had only been resident for a short period.

Illegal migration

Harmonisation of admission policies must be combined with a common approach to the problem of illegal immigration.

To the extent that policy on acceptance of new immigrants is inevitably restrictive, with the exception of the acceptance of refugee and family reunion, allowance will have to be made for an increase in illegal immigration as long as migration policy in the broad sense has not been able to eliminate migratory pressure. The question will then arise as to the extent to which it is possible effectively to curb illegal immigration without infringing the democratic principles of the Member States of the EC.

Strict surveillance would be required both at borders and within Member States for an approach to be efficient. The first consideration in controlling borders is the long sea borders of the Member States. It seems practically impossible to introduce border controls there which would entirely eliminate clandestine immigration.

The points set out above do not call into question the principle that border controls can play a certain role in practice. Collaboration between EC Member States on the basis of the Convention on the crossing of external frontiers may fulfil an important function in this respect. In addition, the Convention provides for the adoption of measures to combat illegal immigration.

Checks within the territory of Member States on persons who have entered illegally are also an important feature in the fight against clandestine immigration, although such checks must be carried out without infringing individual freedoms.

The following features appear when specifying and refining that policy of public authorities. Firstly, it must be ensured that social measures do not offer an invitation to illegal residence given that, for humanitarian or emergency reasons, illegally resident persons could qualify for such measures. Secondly, policies for reducing illegal employment will have to be intensified. Here the role of the employer as guilty party who takes advantage of the precarious position of the foreigner in a situation of illegal residence must take centre stage.

Thirdly, an extremely reserved position will have to be adopted regarding the large scale regularisation of illegal residence. Apart from the (by definition) rather arbitrary nature of such regularisation measures, this bolsters the hope that in the long term illegal residence is rewarded, which merely serves to encourage further waves of illegal immigration. Such measures also undermine the situation of foreigners in legal residence: by abruptly extending this group, the margin of manoeuvre for effective political integration is in many instances reduced.

Finally, a flexible, humane but effective expulsion policy will have to be implemented. The expulsion policy will have to reckon with the hopeless existence of numerous foreigners in illegal residence and put forward solutions in the country of origin or in a third country of emigration. It is desirable that the Member States of the European Community develop a

common return policy for this purpose.

Harmonisation of this policy will be possible only little by little given that an entirely new area of co-operation is at present being opened up for co-operation between the Twelve. Many areas of national policy are involved. However, it would be possible to give shape to a common European approach by setting down the basic principles for such a policy along the broad lines set out above.

5. Work programme concerning migration policy

See A, VI

III. ASYLUM POLICY

A. Outline of a harmonized European asylum policy

In line with their common humanitarian tradition, the Member States, all of which are signatories to the Geneva Convention, have offered and continue to offer a refuge and protection to those who have reason to fear persecution for the reasons cited in that Convention.

It is on those humanitarian principles that any action to harmonize asylum law, as regards both form and substance, must be based.

Harmonization of asylum policy is a logical component of the increasing co-operation amongst the Twelve on immigration.

The Member States' signing of the Dublin Convention means that a common asylum policy must be defined.

At the same time, almost all the Member States are confronted with sharp increases in applications for asylum.

By way of illustration: in 1988, 1989 and 1990 the number of applications for asylum lodged in the twelve Member States of the European Community was respectively 156 000, 214 000 and 321 500.

International co-operation, and, in particular harmonization of asylum law, are increasingly being regarded as a means of dealing concertedly and effectively with the asylum issue.

1. Harmonization of formal asylum law v. harmonization of substantive asylum law

Harmonization of asylum law can be split up into harmonization of the procedures involved in examining applications and harmonization of fundamental policy rules. Certain matters, such as the principle of "first host country" and the treatment of "clearly unjustified applications" involve both procedural and substantive aspects.

Asylum procedures are strongly influenced by national tradition. It may be noted that, beyond the differences in these procedures, there exists an overall equivalence. In most Member States the initial decision on an application for asylum is taken by an administrative authority. After that stage, however, procedures differ strongly, depending on both the type of application for asylum and the system opted for by the Member State concerned. In some cases, an initial rejection can be appealed against in court, while in others the administrative authority itself can be requested to review the earlier decision; a number of Member States rely on independent bodies for part of the decision-making process.

If, in harmonizing asylum law, too much emphasis were put on uniform procedures in the Twelve, the harmonization process could become bogged down quite simply through the complexity of the issue. This is because the status of administrative bodies of varying degrees of independence and the role of national courts in asylum procedures are matters which concern fundamental aspects of a State's organization.

Yet this by no means implies that no attempt should be made to harmonize formal asylum law. Agreements would certainly be desirable on a time limit for examining applications, on the introduction of a uniform priority procedure for clearly unjustified applications, etc.

In the short term, priority should, however, be given to harmonizing substantive rules. Tangible results in this area will in any event guarantee that, irrespective of how the procedure is organized in each Member State, the outcome will be the same everywhere.

2. Harmonization of substantive asylum law: the context

Harmonization of substantive asylum law in the Twelve centres on a uniform interpretation of the Geneva Convention and the New York Protocol. Here Member States' replies to the questionnaire issued by the ad hoc Group on Immigration are highly relevant.

However, before discussing major principles in this area, the Twelve should consider what direction to take and what is feasible and what is not.

On the one hand, substantive asylum law is the subject of many textbooks, which deal with it on the basis of theoretical principles. Most States also have substantial national case law on the matter. On the other hand, asylum law is a daily reality for officials facing a host of individual applications for asylum. Each application is different and has to be judged carefully on its own merits. Special considerations intervene in each case. The officials concerned build up personal experience, judging cases on the basis not only of textbook instructions but also and especially of their knowledge of many individual cases.

Against this background the concept of the harmonization of substantive asylum law becomes much more complicated. It is wrong to asylum that a set of legal rules can be introduced at European level alone so as to form a system capable of guiding the whole process of examining applications for asylum. A more or less abstract legal framework for assessing applications for asylum is quite conceivable, but dealing with them in practice requires more than that.

It must be realized that the abstract legal concepts present in asylum law usually become practicable only after having been amplified by data on the countries of origin. If one wishes, in general, to introduce the idea of indicators, i.e. data showing whether an application for asylum is justified, it should be possible for general indicators to be provided by the general legal framework; however, these indicators would still leave the responsible official with too little to go on. In order to be relevant in examining applications for asylum, such indicators need to be supplemented with information on countries of origin.

It must therefore be realized that harmonizing substantive asylum law is not to be equated with reaching agreement on a legal structure. Much more important in practice appears to be the existence of a consensus on appraisal of the situation in the country of origin wherever it is relevant to consideration of the asylum application. Over the next few months an inventory could be drawn up of precise information requirements in this area. After that, the means best suited to meeting these information requirements could be considered.

However, the fact that uniform rules have been drawn up does not mean they will be applied in the same way. In each individual case, further factors are important for the actual assessment. Examples of such factors are the manner in which an application for asylum is lodged, how particulars of the escape are recorded and the extent to which the asylum-seeker is given an opportunity to supply new or adjust previous data. Consequently, uniformity is not effectively achieved even where both the legal framework and the country data are streamlined.

More is needed to attain this goal. In that connection the Ministers of the Member States of the European Community responsible for immigration have decided to set up a clearing house, whereby in addition to a written form of information exchange, provision is made for periodic informal meetings of representatives from the executive authorities responsible for dealing with individual asylum applications.

Where certain parts of asylum law have been harmonized, the guarantee that asylum policy will be uniformly applied must be examined. In that context the question of judicial control will be taken into consideration during the discussions.

The adoption of a harmonized asylum policy should influence the flow of asylum-seekers in that the chances of being granted refugee status or admission will be the same everywhere. In that situation, other factors will influence foreigners to a greater extent than at present in choosing a particular country in which to apply for asylum. One such factor is the treatment given to asylum-seekers during the asylum procedure. If the allowances granted in the twelve Member States differ widely, certain countries will be more attractive than others. Should there be large differences between the Twelve in the treatment of asylum-seekers, in the context of a uniform asylum law asylum flows could easily shift towards those countries where the arrangements are relatively more favourable, i.e. not only in terms of material conditions but also as regards the degree of freedom of movement accorded, for example.

Accordingly, it will be necessary in the longer term to consider aligning reception policies as well. As a first step, a questionnaire could be issued in order to collect information on current policy; subsequently, more precise decisions could be taken on what the reception arrangements should be.

Asylum-seekers will also let themselves be guided by many other factors: the possibility of being admitted other than as refugees or at any rate of not being expelled - i.e. of being able to remain in the country de facto - is an important factor. Consequently, these aspects too will need to be inventoried and discussed in greater detail if a harmonized European asylum policy is to be brought about.

A questionnaire has been drawn up on expulsion policy even though in the main this concerns matters that can be addressed only in the longer term. An inventory should also be made of the information on the country of origin needed for the actual expulsion of an asylum-seeker who has exhausted all remedies, and proposals should be formulated for closer co-operation at European level in collecting such information. A clear analogy exists with the abovementioned country data.

3. Harmonization of substantive asylum law: determining priorities

The first step to be taken in discussing the harmonization of substantive asylum law is to draw up an inventory of specific topics. The replies to the questionnaire provide a sound basis for such an inventory. The UNHCR Handbook and the use made of it, as well as the reservations expressed by the States involved, could also be taken into account.

A survey of the most striking similarities and differences in the substantive asylum law of the Twelve has been established. This survey has led to a concrete work programme being prepared (see A). On the basis of the replies to the questionnaire and earlier discussions in the ad hoc Group, the Presidency has already given priority to two topics, viz. the principle of first host country and interpretation of the concept of clearly unjustified applications for asylum. These two subjects are set out below.

Special attention must also be given to maintaining the exchange of information. The replies to the questionnaire are in fact a mere snapshot. Examining individual applications for asylum is a continuous process that constantly poses new questions. Developments in national case law are of major importance in this connection. From time to time, courts deliver judgments that affect policy in this area. In that connection use could also be made of a clearing house, to be set up as indicated above.

4. Clearly unjustified applications for asylum

A distinctive feature of the current asylum issue is the fact that applications for asylum are submitted by many foreigners who are not refugees as defined by the Geneva Convention. Their real aim is to migrate for other (mostly economic) reasons. Because of the necessarily restrictive nature of the immigration policy pursued by the Twelve, other legal immigration possibilities are thwarted, forcing those concerned to fall back on submission of an application for asylum. In this connection, being able to stay on during the examination of the application for asylum and the hope of not being expelled in any case, even if refugee status or admission on humanitarian grounds is not granted, are strong incentives for lodging

an application for asylum. In practice, many asylum-seekers also achieve their aim: although few seem to qualify for admission, most have a chance of remaining in the country concerned nevertheless, either lawfully as "tolerated" persons or unlawfully. Expulsion difficulties that arise are greater the longer the foreigner has stayed in the country.

These and other considerations have prompted a number of States to make a distinction between clearly justified applications for asylum, clearly unjustified applications and those requiring further examination. The first two categories should be dealt with as quickly as possible. Clearly unjustified applications for asylum reflect the above trend on the part of many to consider the asylum procedure as a last resort for what amounts to deliberate migration for what are in fact economic reasons. However, these applications encumber the procedures for other categories of applications. Particularly sad is the case of clearly justified applications for asylum made by refugees who sometimes have to wait for a long time before being granted that status. It is equally important for this category that a decision on the application should be taken as quickly as possible.

Definition of the concept of a "clearly unjustified application for asylum" should result in rules on the minimum conditions to be fulfilled by any simplified or priority examination of such applications in the Twelve. The Ministers of the Twelve responsible for immigration concluded at their meeting in Brussels on 28 April 1987 that in certain cases applications for asylum could be examined using a simplified or priority procedure (in accordance with national legislation). In this context those Member States which have such a simplified or priority procedure, or are planning to introduce one, could envisage agreements on the duration of the procedure and on the rights to be accorded such applicants for asylum, while ensuring that the desire for more efficient processing of this category of application does not stand in the way of proper legal protection and legal assistance.

The UNHCR Executive Committee also recognizes in Conclusions Nos 28 and 30 that it is important to introduce a special accelerated procedure for clearly unjustified applications for asylum, provided that a number of minimum conditions are satisfied regarding procedure and legal protection. Conclusion No 30 refers in this connection to applications for asylum which are clearly unjustified because they involve misuse or improper use of the asylum procedure. These Conclusions were further confirmed by the UNHCR's 42nd EXCOM of October 1991. Recommendation No R(81) 16 of the Committee of Ministers of the Council of Europe is based more or less on similar principles and guarantees.

The first thing to be done now is to define better this concept of clearly unjustified applications for asylum. Various criteria are important in deciding whether an application for asylum can be accepted. They are of a formal/procedural, or a substantive, nature in that the credibility and relevance of the account of the flight may be decisive. The following survey includes criteria of both sorts.

Moreover, assessment of the justification for an application for asylum is indissolubly linked to an (as) clear (as possible) interpretation of the Geneva Convention and the New York Protocol.

An application may be regarded as clearly unjustified if:

(a) the applicant for asylum comes from a "safe" country, i.e. a country which can be clearly shown, in an objective and verifiable way, not to generate refugees or where it can be clearly shown, in an objective and verifiable way, that circumstances which might in the past have justified recourse to the 1951 Geneva Convention have ceased to exist.

An application for asylum by a foreigner who comes from a 'safe' country is deemed clearly unjustified out of hand unless sufficiently convincing evidence shows that there might be a justified claim under Article 1 A of the Geneva Convention. It is for the foreigner to prove that he has good grounds for fearing persecution even though he comes from a country regarded as "safe". This means that individual examination of applications for asylum which may, be of varying intensity, should also be the basic approach in cases involving the safe country principle. Application of the safe country principle as outlined

here can speed up the procedure. Applying the principle that certain countries generally do not produce refugees may be a major deterrent to potential applicants for asylum.

The safe country principle also appeared on the agenda for the UNHCR's 42nd EXCOM. It is important to note in this connection that there was also discussion of use of the cessation clause and that in her intervention at the EXCOM meeting the High Commissioner explicitly stated that consideration could be given to whether it was possible to apply the cessation clause to the countries of Eastern Europe. The EXCOM decided that it would continue discussion of the concept of a safe country with a view to reaching a conclusion. The draft conclusion is therefore in abeyance. However, many delegations subscribe to the tenor of a conclusion containing the concept set out here.

The simultaneous application of the aforementioned principle to a number of countries will have to be clarified by the Twelve as soon as possible. If the safe country principle can be applied in co-operation with the UNHCR, it will enhance the authoritativeness of such a policy.

(b) certain grounds adduced are clearly in no way related to the principles set out in Article 1 A of the Geneva Convention. An example could be where the asylum-seeker himself adduces economic reasons;

(c) the asylum-seeker has voluntarily re-availed himself of the protection of the country of his nationality;

(d) having lost his nationality, the asylum-seeker has voluntarily regained it;

(e) the asylum-seeker has acquired a new nationality and enjoys the protection of the country of his new nationality;

(f) the asylum-seeker has voluntarily established himself in the country which he left or outside which he remained owing to fear of persecution;

(g) the asylum-seeker receives protection or assistance from United Nations bodies or agencies other than the UNHCR;

(h) the asylum-seeker is recognized by the competent authorities of the country in which he has taken up residence as having the rights and obligations attaching to the possession of the nationality of that country.

Grounds (c) to (h) have been taken directly from Articles 1C to E of the Geneva Convention. They are cited in it as grounds for cessation and exclusion in respect of recognized refugees. However, the situation referred to is where one of these aspects obtains in the actual course of the procedure concerning persons whose application for asylum has not yet been the subject of a definitive decision.

There are also a number of criteria which may establish clear lack of justification for the application for asylum although not necessarily in each individual case. This occurs where:

(a) the application for asylum is based on false identity, where the foreigner concerned has also submitted an application for asylum under his correct identity.

In this case it will have to be established which identity is the correct one. Applications for asylum submitted under a false identity can therefore be regarded as clearly unjustified. An application submitted under the correct identity recognized as such will be examined, although stricter conditions may be imposed on the foreigner with regard to the acceptability of his application for asylum as his credibility will have been damaged as a result of the submission of false information on his identity.

(b) the applicant has attempted wilfully to deceive the authorities of the country in which he submitted his application for asylum by:

(i) submitting false or forged documents or information which he knowingly presents as authentic;

(ii) knowingly submitting travel or identity papers or information which

bear no relation to him;

(iii) systematically submitting inconsistent and/or inaccurate information on essential parts of the asylum file (as compared with available information), unless the applicant for asylum can make an acceptable case that this cannot reasonably be held against him.

These criteria presuppose that the applicant for asylum has already left the country in which he considers that there is justification for fearing persecution, and that there is no longer any reason for knowingly continuing to maintain the authenticity of false or forged identity papers, documents or information. The possession of false or forged documents of any kind may but need not by definition mean that the applicant for asylum is acting in bad faith, but in such cases it is for the applicant for asylum to provide evidence in support of the credibility of his motives for fleeing the country.

It is possible to apply one or more of these criteria in order to establish that an application for asylum is clearly unjustified, irrespective of the stage reached in the asylum application procedure at that time (examination as to admissibility, substantive decision, review or appeal). If a simplified or priority procedure already exists in certain Member States, that procedure may be applied on the basis of the above criteria to requests for asylum which can be regarded as clearly unjustified.

5. "First host country"

The Twelve generally apply the "first host country" rule. This rule provides that where a foreigner can obtain adequate protection against expulsion in the State where he had been staying before his arrival in the State where he lodged an application for asylum, the latter State may send him back to the "first host country". The Twelve have already developed the first host country principle in their mutual relations and given it partial substance by adopting the Dublin Convention. The logical consequence would be to work out a common attitude to third countries. This would enable the Twelve to project a uniform image to the outside world, whilst creating possibilities for exerting joint pressure on first host countries reluctant to assume their responsibilities. This presupposes, however, uniform application of the first host country principle.

For practical application of this rule there are three options (which occur in practice within the Twelve):

(a) Application to refugees

Return to a first host country is carried out where the procedure concerning the application for asylum is under way and the justification for the application has been investigated. If the application is refused, it is then in principle possible to remove the applicant either to the first host country or to the country of origin. If the person concerned proves to be a genuine refugee, then he can in principle be removed only to the first host country and in any case not to his country of origin.

The advantage of this practice is that the person concerned is granted refugee status as quickly as possible and as such will be able to enjoy rights under the Geneva Convention. From the point of view of efficiency, however, there are also clear disadvantages. This practice entails higher costs and a longer procedure.

(b) Application to all applicants for asylum, irrespective of whether they can be regarded as refugees

Examination of an application for asylum is excluded in any event where a first host country exists. Under this practice it is assumed that the first host country, if it is a party to the Geneva Convention, assumes responsibility for examining the application for asylum.

In any case, the first host country must protect the applicant for asylum sufficiently against expulsion. The advantage of this practice is that it places as small a burden as possible on the asylum procedure. The disadvantage is that a refugee is not at first recognized as such and is not therefore guaranteed in advance the rights arising from the Geneva Convention.

(c) Mixed practices

In certain Member States there exists between these two extremes a mixed practice whereby a distinction is made between applicants for asylum who are already in the territory of the Member State and those who are still at the border of the State and submit an application for asylum at the border post. In the first case, all applications for asylum are examined and the justification for them investigated (a) before determining whether a first host country exists. In the second case, the justification for the application for asylum is not investigated if a first host country exists (b).

The Twelve generally apply the "first host country" principle as described in (a) and (b), although a number of Member States use both options in parallel as described in (c).

There are, moreover, two opposite tendencies. All Member States of the European Community recognize that from the point of view of expediency option (b) is preferable. At the same time a number of Member States are building up case law which on the contrary favours option (a). As part of harmonization of asylum policy, efforts should be made to achieve a uniform approach in this area. The ad hoc Group on Immigration should be invited to examine this question.

In order to determine whether a first host country exists, it is important to decide on the criteria which a country must fulfil.

It is proposed taking as a general principle that the foreigner must in any case have had the opportunity of contacting the authorities of the third country designated as the first host country in order to inform them that he is applying for acceptance as a refugee.

Certain Member States require other guarantees. The ad hoc Group on Immigration is invited to consider this question.

Another general assumption is that the first host country must in practice comply with the principle of non-expulsion.

In the case of an applicant for asylum not yet demonstrated to be a refugee (option (b)), the Member States consider that the question of his recognition as a refugee is in the first instance a matter for the sovereign responsibility of the third country, with the UNHCR monitoring compliance with the Geneva Convention in accordance with Article 35 thereof. As for foreigners whose applications for asylum have not yet been refused by the State concerned, and foreigners who have been recognized as refugees by that State, it must be ensured that they will not be sent back by the State to the country in which they claim they have justification for fearing persecution (non-expulsion).

In the case of a refugee who has already been recognized as such by a Member State of the European Communities (option W), it must also be ensured that the third country to which the foreigner is being removed complies with the principle of non-expulsion.

In general, the Twelve will require more specific (minimum) guarantees regarding treatment of refugees where the country involved has not ratified the Geneva Convention or has ratified it subject to a reservation, e.g. with reference to the way in which the country in question complies with obligations resulting from international agreements on human rights.

In certain Member States additional guarantees are required regarding the processing of asylum applications and the existence of minimum living conditions. This matter must be studied in greater depth by the ad hoc Group on Immigration.

The principle of first host country as described above is in any case not applied where the foreigner has been able to prove that he rightly feared persecution by the State in question or that he would face inhuman or humiliating treatment in that country.

The principle of first host country may also not be applied where the foreigner has been able to prove that he has clear ties with the Member State of the European Communities to which he has submitted his

application for asylum and where that Member State takes account of such ties for humanitarian reasons.

B. Implementation of the Dublin Convention

The Dublin Convention may be regarded as a first major step in co-operation on asylum policy between the Twelve.

The Convention provides that every application for asylum lodged in the territory of the Twelve is in every case to be examined by one of them. Moreover, the Convention regulates the allocation of responsibilities amongst Member States. Each Member State remains free, however, to consider an application even if it is not bound to do so by the criteria of the Convention.

For the Dublin Convention to be effectively implemented following ratification by the Twelve, a number of implementing measures will still have to be adopted.

As a general rule for implementation of the Convention, Member States have agreed that action should be pragmatic and taken on the basis of the principle of good will. For the purpose of determining responsibility, information will be provided by all Member States which are assumed in the best position to do so. Any Member State which requests another Member State to take back or take charge of a refugee must attach to its request the information on which it is based. A standard document is planned for this purpose, the content of which will largely be based on the standardized application form already approved by the Member States (WGI 262), with the difference that it will now gather data authorized by the Member State involved. The Member State to which the request is addressed will co-operate to the best of its ability in order to assume responsibility as quickly as possible. In general, a Member State which claims an exception will make known the facts and circumstances justifying derogation from the principal rule regarding the attribution of responsibility.

In addition, a network of contacts needs to be built up. These can speed up the allocation of responsibility. Once responsibility for examining an application has been established, such contacts will make it possible to continue practical co-operation, should the Member State responsible ask for data on the asylum dossier of the foreigner concerned, and the latter agrees to such data being given. The asylum-seeker himself will have to be handed over to the competent authorities of the State responsible. Questions arising in this connection are: for example, is the asylum-seeker allowed to travel to that State by himself or is he literally handed over? Does such hand-over take place at the border and do any special arrangements have to be made, given that border controls at internal borders are to be abolished?

Finally, it will have to be determined how the whole system could be implemented as effectively as possible. A practice already very common among asylum-seekers is to lodge several applications in a single State under different names. Once it is known that the Dublin Convention provides for a single responsible State and the system works, asylum-seekers will be very tempted to submit another application for asylum in another State under a (slightly) different name. Account should be taken here of the fact that, in the case of certain nationalities, the names of asylum-seekers are very similar and sometimes do not constitute a criterion for identification. As such, finger-printing should prove an effective means of combating such a practice.

The Twelve have now agreed to examine this matter in greater detail and to consider in particular the advisability of carrying out a feasibility study on a common system for exchanging and comparing the fingerprints of applicants for asylum.

The Dublin Convention incorporates a system of responsibility criteria. It is necessary to ensure that the determination of the State responsible, the furnishing of evidence and the actual transfer of the examination do not take longer than, for instance, the rejection of an application for asylum as clearly unjustified. Consultations could be held on the drawing-up of clear and uniform instructions concerning this point.

C. External contacts and presentation of the asylum policy

General points on the presentation of immigration and asylum policies have already been made in the general introduction to this memorandum.

As regards asylum policy proper, the importance of contacts with the United Nations High Commissioner for Refugees should be underlined.

UNHCR representatives have already signalled their organization's desire to express its views in one way or another in the course of the Twelve's harmonization process. Contacts with the UNHCR have in the meantime been cemented by regular discussions between the Troika of the ad hoc Group on Immigration and representatives of the UNHCR.

D. Work programme concerning asylum policy

See A IV (see page 4)

2

Report on the completion of the Maastricht programme on asylum adopted in 1991

Introduction

Detailed report on progress, or lack of it, on the 1991 report.

Report on the completion of the Maastricht programme on asylum adopted in 1991

Reference:

AD HOC GROUP IMMIGRATION
Brussels, 19 October 1993 (03.11)
SN 4512/1/93 (WGI 1654) REV 1
CONFIDENTIAL

I. INTRODUCTION

When it met in Maastricht on 9 and 10 December 1991, the European Council recorded its agreement on the report on immigration and asylum policy (WGI 930) submitted by the Ministers with responsibility for immigration.

The programme provides for action to be taken to harmonize asylum policy.

It was agreed that before the Treaty on European Union came into force it would be necessary to examine certain subjects concerning inter alia:

- application and implementation of the Dublin Convention;
- harmonization of the substantive legal rules on asylum;
- harmonization of expulsion policy;

- creation of a clearing house for information, discussion and exchange on asylum (CIREA);
- examination of judicial aspects;
- reception arrangements for asylum-seekers.

It was agreed that where necessary these questions, which do not constitute an exhaustive list, would continue to be examined after the Treaty on European Union came into force.

The Declaration on asylum annexed to the Treaty reads as follows:

1. The Conference agrees that, in the context of the proceedings provided for in Articles K.1 and K.3 of the provisions on co-operation in the fields of justice and home affairs, the Council will consider as a matter of priority questions concerning Member States' asylum policies, with the aim of adopting, by the beginning of 1993, common action to harmonize aspects of them, in the light of the work programme and timetable contained in the report on asylum drawn up at the request of the European Council meeting in Luxembourg on 28 and 29 June 1991.
2. *In this connection, the Council will also consider, by the end of 1993, on the basis of a report, the possibility of applying Article K.9 to such matters. (1)*

It should also be noted that, with a view to harmonization of certain aspects of asylum policy, Ministers, in two Resolutions adopted in London (manifestly unfounded applications for asylum and host third countries), expressed the wish that consideration should be given to putting the principles agreed in those Resolutions into effect in a binding convention (WGI 1284 REV 2, page 3).

In the work programme for the second half of 1993, which was the subject of exchange of views within the ad hoc Group on Immigration on 12 and 13 July 1993, the Presidency proposed to draw up a report on progress achieved on asylum in the light of the guidelines laid down in the Maastricht report of 1991.

The purpose of this document is to attain that objective. It is aligned to the structure of the work programme adopted in Maastricht. It gives an account of implementation of each of the chapters and sections to date and describes anticipated future work.

II. DESCRIPTION OF WORK COMPLETED

A. Application and implementation of the Dublin Convention

The Dublin Convention was signed by Member States of the Community in June 1990 and 1991.

At present (six) Member States have ratified the Convention. When they met in Copenhagen on 1 and 2 June 1993, those states which were in the process of ratifying said that they would do all they could to ensure that the Convention came into force as soon as possible.

1. Definition of common interpretation of the concepts used in the Convention

(a) Implementation

Article 1 of the Dublin Convention defines the meaning to be attached to certain concepts. An interpretation of certain other concepts provided for in the Convention was arrived at in the light of the guidelines laid down in Maastricht.

In this context the following work has been completed:

- conclusions on the interpretation of certain Articles of the Convention (WGI 1028);
- calculation of periods of time (WGI 1039 REV 1);

- transfer of applicants for asylum (WGI 1269).

Regarding the transfer of applicants for asylum, most of the necessary conclusions have been adopted (WGI 1269) and additional decisions are being studied (WGI 1470).

(b) Future work

This item of the programme has practically reached completion. [The aspects relating to transfer of asylum applicants could be completed by the end of 1993.]

The possibility cannot be ruled out that certain concepts might be amenable to more precise definition. But that would have to be done in the light of a specific need once the Dublin Convention has come into force. In this respect, it would be for the Article 18 Committee to examine any general question on the Convention's application and interpretation.

2. Exchange of Information

(a) Implementation

The objective is:

- to work out a standardized form for exchanging information on the initial indications concerning the Member State responsible for examining the application. With this in mind, the Member States have drafted a standard form (WGI 1011) [which is currently being tested and may have to be adjusted in the light of experience and comments of the Netherlands delegation (WGI 1220)];

- to establish rules on the forwarding of information in the context of the Dublin Convention. For this purpose, Ministers approved the drafting of a joint handbook, the aim of which would be to provide Member States with details of the authorities in the other Member States to which specific questions and requests are to be addressed (WGI 1495);

- to draw up a non-restrictive list of means of proof and recognized indications to help establish the Member State responsible for examining an application. There have been a number of preparatory discussions on the subject. Member States were sent a questionnaire which was used as a basis for drawing up an inventory (WGI 1415 REV 1) and a compilation (WGI 1441 REV 2). [At present discussions are under way on proposal concerning the implementation of means of proof in the framework of the Convention (WGI 1490).]

(b) Future Work

Work on the following subjects should be finalized by the end of 1993.

- the actual drafting of the Dublin Convention joint handbook;
- the standard form for determining the Member State responsible for examining an asylum application;
- the aspects relating to means of proof.

3. Implementation mechanisms

(a) Implementation

The objective is:

- to indicate the central contacts in each Member State. Ministers decided to draft a joint handbook for the application of the Dublin Convention (WGI 1495). All that remains to be done is to put together the names and addresses of the authority in each Member State designated to deal with specific questions and requests in the framework of the Dublin Convention;
- to draft a list of documents on implementation mechanisms. That document is included in the compilation of practice with respect to

asylum (WGI 1505) and is regularly updated;

- to make an inventory of residence permits. An inventory (WGI 1415 REV 3) and a summary (WGI 1441 REV 2) have been drawn up on the subject. Those same documents also cover existing and future national registration systems for visas, central registers of persons authorized to enter Member States' territory and any other registers on asylum or immigration questions which might exist.

(b) Future work

By the end of 1993, Member States envisage finalizing the actual drafting of the joint handbook on the Dublin Convention.

4. Drafting of a practical handbook for the implementation of the criteria in the Convention

(a) Implementation

The aim is to produce a flow chart for determining the State responsible for examining asylum applications. Such a chart appears in WGI 1193 REV 1.

To make the flow chart easier to consult a computer program on the application of the Dublin Convention has been disseminated on disk. The program has been produced on an experimental basis.

Other aspects relating to the drafting of a practical handbook are already covered in section 3 above.

(b) Future work

The computer program on the application of the Dublin Convention is due to be finalized by the end of 1993.

5. Measures to combat asylum applications lodged under an assumed identity and multiple applications

(a) Implementation

The aim is to:

- exchange fingerprints. An inventory (WGI 1315) and survey (WGI 1317) have been made in order to give a clear idea of fingerprinting practise in each Member State;

- study the feasibility of a system for exchanging and comparing fingerprints (Eurodac). A number of measures have been taken in this regard: the call for tenders procedure, the remit of this study and its financing. Rules have been established on the choice of consultants eligible to carry out the study of users' requirements. The call for tenders was made on 15 July 1993. Several discussions have already been held on the legal problems raised by the creation of Eurodac. (2)

(b) Future work

Work on Eurodac will continue along the following lines:

- after the study of users' requirements (expected to be completed in the first half of 1994), it will be necessary to study the technical specifications aspects. This will take six months' study. The best that can be expected is that the second study might be completed by the end of 1994.

- Subject to a Decision to be taken by Ministers, it will not be possible for the Eurodac system to be up and running until the beginning of 1995;

- progress on questions relating to the technical aspects of Eurodac will take account of the other work referred to above;

- consideration will have to be given to the appropriate legal framework for Eurodac; in the view of several delegations it should take the form of a convention to be concluded between Member States.

B. Harmonization of the substantive rules of asylum law

Progress has been made on harmonizing some of the substantive rules of asylum law. The following points were provided for in the Maastricht programme.

1. Obvious conditions making it possible to establish that asylum applications are manifestly unfounded (3)(4)

(a) Implementation

Ministers adopted a Resolution on manifestly unfounded applications for asylum in London on 30 November and 1 December 1992 (WGI 1282 REV 1).

Ministers agreed to seek to ensure that their national laws are adapted, if need be, to incorporate the principles of this Resolution as soon as possible and at the latest by 1 January 1995.

(b) Future work

Completed, subject to adoption of the necessary measures by Member States.

2. Definition of harmonized implementation of the principle of the first host country (5)(6)

(a) Implementation

Ministers adopted a Resolution on the first host third country in London on 30 November and 1 December 1992 (WGI 1282 REV 1). Based on the spirit of the Maastricht report, this measure goes beyond the provisions of that report in that it takes account of the situation in the first non-Community host country and in the other non-Community countries.

Ministers agreed to ensure that their national laws are adapted, if need be, and to incorporate the principles of this Resolution as soon as possible, at the latest at the time of entry into force of the Dublin Convention,

(b) Future work

Completed, subject to adoption of the necessary measures by Member States.

3. Joint assessment in the situation in countries of origin with a view to both admission and expulsion

(a) Implementation

The objective is:

- to facilitate joint assessment of the situation in third countries by drawing up joint reports. At present, three joint reports have already been drawn up by embassies on the spot (Sri Lanka, Romania and Ethiopia/Eritrea).

- Two reports are expected shortly (Albania, Angola). Political Co-operation have already been asked for a second list of reports (Bulgaria, China, Iraq, Vietnam and Zaire). Two further reports will be requested subsequently (Turkey and Nigeria). Ministers recorded their agreement on the factors to be considered in selecting third countries on which joint reports might be requested (WGI 1500). Certain ad-hoc rules were established with a view to defining the structure of joint reports as well as with regard to the procedures for forwarding them;

- to use a clearing house for information, discussion and exchange for the collection, analysis and dissemination of information of countries of origin (see below under D), thus developing more

informal consultations, themselves intended to facilitate co-ordination and harmonization of asylum practices and policies.

(b) Future work

The implementing rules in this area are largely completed. Details of certain aspects, such as the dissemination [and confidentiality] (7) of the joint reports, have yet to be spelled out.

4. Harmonized application of the definition of a refugee, as contained in Article 1A of the Geneva Convention

(a) Implementation

An initial inventory was drawn up on the subject (WGI 833) along with several summary documents (WGI 845 and WGI 872 REV 2). Other contributions have been produced in order to make progress with discussions.

In response to the need for more detailed examination of various aspects of the question, a second inventory was drawn up (WGI 1577).

It was agreed that the discussions should be held in parallel within the Subgroup on Asylum and CIREA.

(b) Future work

This is a very important subject, requiring long and complex work, since it involves one of the fundamental aspects of asylum policy. Member States have reaffirmed their will to continue discussions on the matter as a priority. Although, given the scope of the subject and its sensitive nature, it is difficult to specify any precise time-frame. It should be possible to achieve substantive results by January 1995.

C. Harmonization of expulsion policy

1. Joint assessment of the situation in the countries of origin

(a) Implementation

See B.3(a)

(b) Future work

This point has been implemented in principle. As the discussions go into greater detail, new joint reports will be drawn up.

2. Finalization of various aspects of an expulsion policy

(a) Implementation

A questionnaire has been drawn up on the subject. Inventory and summary documents will be drafted in the light of Member States' replies. It will then be necessary to put in place the various points which have a bearing on the harmonization of asylum policy.

(b) Future work

Discussions must continue in this area. It is possible that some work will be completed early in 1994.

D. Setting up of clearing house for information, discussion and exchange on asylum (CIREA);

Ministers established the clearing house at their meeting in Lisbon on 11 and 12 of June 1992 (WGI 1107).

It is a place where the authorities of Member States can exchange information and operates within the framework of the General Secretariat of the Council. Member States are represented by the authorities responsible for examining asylum applications or by those

dealing with asylum matters in the relevant Working Party of the twelve.

Subsequently, the clearing house will operate within the framework of the provisions of the act to be adopted as soon as possible after entry into force of the Treaty on European Union, on the basis of that Treaty.

1. Exchange of statistics and of written information on legislation, policy, case-law and information on countries of origin

(a) Implementation

Member States have already submitted the legislative, regulatory or other changes relating to asylum in 1991, 1992 and 1993. In addition information will be exchanged regarding:

- general aspects relating to asylum policy in the Member States;
- important case-law;
- statistics. In this respect the clearing house is preparing a revised statistical system in order to respond effectively to the provisions of the Dublin Convention.

Within the clearing house information is exchanged on the country of origin on the basis of the factors referred to in the joint reports and of information available in Member States. There have been several exchanges of information between national experts.

(b) Future work

The Maastricht programme has been adhered to on this point. Other discussions will be held in the light of the work already completed.

2. Oral exchange of information at informal meetings of officials responsible for implementing asylum policy

(a) Implementation

Oral information is exchanged informally at each clearing house meeting. The agenda always includes an item for this purpose. A chart has been drawn up to enhance these exchanges of information. The clearing house makes a synthesis of the information.

(b) Future work

The Maastricht programme has been completed as far as this point is concerned.

3. Co-operation with the UNHCR's Centre for Documentation on Refugees

At their meeting in Copenhagen on 1 and 2 June 1993, Ministers recorded their agreement on establishing co-operation between the clearing house and the UNHCR's Centre for Documentation on Refugees according to the detailed conditions laid down under 2 in WGI 1501. That co-operation is currently being put into practise.

Such co-operation will give the clearing house fast access to a large quantity of asylum data.

This measure was not provided for in the Maastricht programme.

E. Judicial examination

(a) Implementation

An exchange of views was held on the examination of the guarantee on the harmonized application of asylum policy when drafting the Maastricht report.

(b) Future work

It would seem more appropriate to continue working in the other areas relating to asylum policy before dealing with the aspects relating to judicial examination, except inasmuch as this proves necessary for the purpose of the Council's examination of the report mentioned in the second paragraph of the Declaration on Asylum contained in the Final Act of the Treaty on European Union (8).

F. Reception arrangements for asylum-seekers

1. Gathering of data on current reception arrangements (subsistence benefit, accommodation, access to educational facilities, possible access to employment, possible restrictions on movement, etc.)

(a) Implementation

Member States have been sent a questionnaire on reception arrangements for asylum-seekers. The information received will be embodied in an inventory and summary documents in the near future.

(b) Future work

This point could be finalized by the end of 1993

2. Study of conditions for the possible approximation of these factors on the basis of this data-gathering exercise

(a) Implementation

This measure will be implemented only once the data referred to under 1 have been collected. Analysis of the summary made on the subject should make it possible to study the possibility of approximating the rules applied in the Member States.

(b) Future work

Work on this point will begin only once collection of the data referred to under 1 has been completed.

G. Work not provided for in the Maastricht programme (9)

1. Convention parallel to the Dublin Convention

The Dublin Convention is not open to accession by countries which are not members of the European Communities.

Given the interest which certain third countries have expressed in taking part in the rules and mechanisms laid down in the Dublin Convention, a preliminary draft Convention parallel to the Dublin Convention has been prepared (WGI 1105).

It was agreed that the negotiations on the Convention could begin, once the Dublin Convention had been ratified by the Twelve Member States of the European Communities, with third states having entered into identical international commitments as regards the protection of refugees and human rights.

The Presidencies have already pursued contacts with certain European third countries which has been sent the draft Convention (Norway, Sweden, Finland, Switzerland, Austria, Poland, the Czech Republic and Slovakia). As regards non-European states, Canada has said that it is interested in the parallel Convention.

It should be pointed out that at their meeting in Copenhagen on 1 and 2 June 1993 Ministers noted that the Dublin Convention formed part of the "acquis" resulting from intergovernmental co-operation between the Twelve Member States in the field of Justice and Home Affairs which acceding states were required to accept. The accession of these states to the Convention parallel to the Dublin Convention thus no longer seems relevant in view of the deadlines set for the entry into force of the Dublin Convention and the planned timetable for the accession of these

states to the European Union.

Although not provided for in the Maastricht programme, the Convention parallel to the Dublin Convention constitutes an important step in terms of establishing an asylum policy in a European Context.

2. Displaced from former Yugoslavia (10)

Ministers recorded their agreement on the conclusions concerning people displaced from the former Yugoslavia at their meeting in London on 30 November and 1 December 1992 (WGI 1280), noting in particular that:

- in most Member States special arrangements had now been put in place to meet the special circumstances of those displaced by the conflict in former Yugoslavia;

- Member States were in principle willing to admit certain groups of persons temporarily on the basis of the proposal made by the HCR and the ICRC and in accordance with national possibilities and in the context of a co-ordinated action by all Member States.

The following action was taken in the context of the Subgroup set up by the Ministers:

- gathering of information on statistics and other aspects relating to admission policy towards persons from former Yugoslavia (inventory, WGI 1514; summary WGI 1475 REV 1);

- drafting of the list of important documents (WGI 1508);

- table of visa requirements (WGI 1333 REV 2);

- definition of possibilities for co-operation within the Member States (WGI 1401 REV 1);

- drafting by Member States of a supplementary questionnaire on the reunification of families of nationals of former Yugoslavia and their movement from one Member State to another (WGI 1476 REV 1).

In addition, at the meeting in Copenhagen on 1 and 2 June 1993, Ministers approved a resolution on certain common guidelines as regards the admission of particularly vulnerable groups of distressed persons from former Yugoslavia (WGI 1499).

This section, which has been developed in an effort to address the situation existing in former Yugoslavia, was not provided for in the Maastricht programme.

3. Countries in which there is generally no serious risk of persecution (11)

(a) Implementation

When they met in London on 30 November and 1 December 1992, Ministers adopted conclusions on countries in which there is generally no serious risk of persecution (WGI 1281).

(b) Future work

Ministers asked the ad hoc Group on Immigration to study the advisability of drawing up a joint list of those countries (WGI 1284 REV 2).

III. CONCLUSIONS

This report is an interim evaluation of the work programme laid down in Maastricht. In the light of the description in point II, the outcome of the work on asylum may be summarized as follows:

- ratification of the Dublin Convention and all acts necessary for its implementation will be finalized in the near future and will very

probably come into force during the first half of 1994 (point A). Work on Eurodac, which must proceed in phases, is well under way;

- all the measures drawn up so far for the harmonization of substantive rules of asylum law have been approved (point B), with the exception of the harmonization of the definition of a refugee within the meaning of Article 1A of the Geneva Convention (see comments below);

- the clearing house is fully operational (point C).

Discussions have also begun on the reception of asylum-seekers (point F) and on expulsion (point C) and progress is expected between now and when the Maastricht Treaty comes into force or very shortly afterwards.

As regards the judicial question (point E), it would appear more appropriate to undertake further work in other areas relating to asylum policy before addressing aspects relating to judicial examination.

The work involved in harmonizing the application of the definition of a refugee as contained in Article 1A of the Geneva Convention will take time because of the very nature of the problems which the issue raises. When the Maastricht programme was drawn up, Ministers realized the magnitude of the task since they specified that where necessary work on some issues would continue even after the Treaty had come into force.

Also, it should be emphasized that some of the work undertaken by the Twelve Member States is on a scale which was not foreseen in the Maastricht programme. This is true of the discussions on displaced persons from former Yugoslavia, the Convention parallel to the Dublin Convention and the conclusion concerning countries in which there is generally no serious risk of persecution, to mention only the most striking examples.

Finally, Chapter VI of the Palma Report (CIRC 3624/89) concerning action in connection with grant of asylum and refugee status has been substantially implemented, or will be shortly.

FOOTNOTES

1. The German delegation considered that the report referred to in this paragraph should be examined in the deadline set.

2. The Council's Legal Service has drafted an opinion on this subject (5546/93 JUR 25).

3. Scrutiny reservation by the Netherlands delegation.

4. Reservation by the German delegation.

5. Scrutiny reservation by the Netherlands delegation.

6. German reservation.

7. The Group thought it best to await the outcome of the work to be done by CIREA on this matter.

8. The Netherlands delegation entered a scrutiny reservation on the last part of the sentence (from "inasmuch as").

9. Parliamentary scrutiny reservation by the Netherlands delegation.

10. Parliamentary scrutiny reservation by the Netherlands delegation.

11. Scrutiny reservation by the Netherlands delegation.