COMMISSION OF THE EUROPEAN COMMUNITIES

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Communication from the Commission to the Council
and the European Parliament
on the right of asylum

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I. Introduction

Common interest

1. The political and social importance of the right of asylum in the Community and in Member States has increased steadily, particularly over the last ten years.

In view of the fact that Member States are unable individually to respond in an appropriate manner to the challenge posed by the ever-swelling influx of asylum seekers, and given the deepening of the Community as part of the moves to complete the internal market and to lay the groundwork for political union, this issue has increasingly become a matter of common interest. The removal of controls at internal frontiers on 1 January 1993 makes it particularly important that there should be a common right of asylum. This has been confirmed by the Member States and by the European Parliament, notably in its Resolution of 13 September 1991, in which it adopted the Malangré Report.

Accordingly, the Commission intends, through this communication [and the attached discussion paper] and through the Communication on immigration, to help prepare for the answers which Member States must together find to the questions with which they are all confronted as regards the right of asylum and immigration and, in particular, for the response to be given to the report on the matter that the Ministers for Immigration will present to the Maastricht European Council.

Right of asylum and immigration

2. The issues of the right of asylum and immigration are dealt with in separate Commission communications. Although both matters are linked and interrelated, they are each governed by specific policies and rules which reflect fundamentally different principles and preoccupations.

- "Immigration" from third countries is - both from a historical perspective and in the present context - primarily an economic phenomenon: the economic situation in the country of immigration and/or in the country of origin is normally what triggers migratory movements. An indispensable component of such migration is immigration in connection with family regroupings. The domestic law of each Member State applies to such immigration from third countries and, depending on their socio-economic situation, the Member States are free to decide on their policy in this matter. They decide in a discretionary manner whether or not to admit economic refugees;

- By contrast, the right of asylum is first and foremost a right and a humanitarian challenge.

The starting point for all Member States is a fundamental common legal instrument: the Geneva Convention.

In ratifying this Convention, the Member States entered into basic humanitarian commitments aimed at affording protection to individuals who have good reason to fear persecution in their own country for political, ethnic or religious reasons (referred to below as "political refugees").

Starting from this common legal basis, the Member States have formulated national laws that remove the possibility of refusing in a discretionary manner to admit an asylum seeker to their territory.

At any event, economic considerations are not taken into account in making such an assessment; the only important criterion is whether or not the individual concerned satisfies the definition of refugee laid down in the Geneva Convention. The definition applied in Germany is actually broader than that laid down in the Geneva Convention.

Even where a Member State decides to put a stop to "economic" immigration, protection for asylum seekers and recognized refugees is guaranteed in accordance with the Geneva Convention and with domestic law.

In addition, alongside these two main categories of economic refugee and political refugee, there is a third important category of de facto refugee, that is to say a person who flees his country not in order to escape political persecution - which implies that he or she cannot enjoy the protection guaranteed by the Geneva Convention - but because his or her life is threatened, say, by civil war and who, for this reason, cannot be sent back.

On account of the major differences between immigration and the right of asylum, the challenge facing Member States in both areas calls for differing but coordinated responses.

II. Common measures and the right of asylum

A. Starting point: Full respect for the humanitarian principles embodied in the Geneva Convention

3. The Commission takes the view that no policy or measure in respect of immigration - including in the present situation, where new waves of immigrants are feared - should detract from the humanitarian achievements under the Geneva Convention as regards protection for those suffering political persecution.

This is, of course, also true for any harmonization measure taken by Member States in connection with the formal or substantive right of asylum. Such harmonization could not be used as an excuse for reducing the humanitarian commitments they have entered into under the Geneva Convention.

B. The two aspects of the common interest of the right of asylum

1. Preventing abuse of the right of asylum

4. There can be no denying that a relatively large and growing number of asylum seekers have in the past had recourse to the asylum procedure in an attempt to secure admittance to the territory of the Member States even though they do not satisfy the definition of political refugee as laid down in the Geneva Convention. This constitutes an abuse of the asylum procedure aimed at circumventing the restrictions on immigration for employment purposes which Member States have brought in over a number of years.

Such abuse, which, for the rest, imposes a considerable financial burden, must be effectively stamped out. This can be done within the framework of the actual arrangements for granting the right of asylum. On the one hand, specific procedures could be introduced in the case of manifestly unfounded applications, and asylum seekers whose applications had been rejected could be deported. On the other hand, it would be necessary to examine whether the decision on an application for asylum could not be taken at the external frontier in the case of applicants from "safe" countries, with the result

that the asylum seeker would have to appeal against the decision from outside the country (see also point D).

Such measures to combat abuse dovetail with the joint efforts described in the Communication on immigration to control economic migration and to regularize the situation of immigrants.

2. Harmonization of the formal and substantive right of asylum

5. Moreover, the right of asylum should be set in the context of the moves to deepen the Community by completing the internal market and, in the longer term, by establishing political union.

As regards the formal right of asylum, an important initial step has already been taken.

The ad hoc Group on Immigration has drawn up the Dublin Convention determining the State responsible for examining applications for asylum lodged in one of the Member States. The Convention is designed among other things to prevent asylum seekers from becoming "refugees in orbit" and from lodging multiple applications within the frontier-free area.

However, harmonization confined to this aspect of the matter is not sufficient.

As indicated in the conclusions of the Luxembourg European Council, the Member States have realized that completion of the internal market already necessitiates, and establishment of political union certainly will necessitate, harmonization of the formal (organization, length of procedures and means of redress) and substantive aspects of the right of asylum.

The point is that, for any application for asylum, the treatment afforded and the decision as to substance should be the same throughout the frontier-free area.

The decision by a Member State to vet an application must be recognized in accordance with the Dublin Convention by all the other Member States; the right to submit multiple applications in different Member States ought not to exist. This means that, from now on, no Member State should enter a reservation based on its domestic law.

C. Priorities

6. Priority has to be given to combating abuse of the right of asylum. A proper response to abuse will defuse the "asylum crisis," allowing a more considered approach to be adopted in the longer term to harmonization of the formal and substantive right of asylum and thereby avoiding the danger of unjustified downwards harmonization.

This is perfectly in line with the conclusions of the Luxembourg European Council drawing a distinction between measures for the formal and substantive harmonization of the right of asylum, which are to be taken in the longer term, and the practical preparatory and transitional measures, which are to cover the period between the signing of the amendments to the Treaty and the time when they enter into force.

But it is self-evident that this choice of priorities in no way prevents preparations for the formal and substantive harmonization of the right of asylum from being undertaken straight away.

D. Possible measures

7. In the paper attached to this Communication, the Commission provides a detailed review of the problems arising in connection with the right of asylum and the national and international measures already taken or being taken. It maps out several approaches which would allow general guidelines for the right of asylum to be established in conjunction with the guidelines for immigration policies outlined in the Communication on immigration.

8. Apart from immediate ratification of the Dublin Convention with a view to its entry into force, the measures which could be given joint consideration at this stage in order to respond to the influx of asylum seekers can be summarized as follows:

- administrative and court procedures should be speeded up so that decisions can be taken more rapidly and the number of applications pending reduced; particular attention should be given to abridged procedures for dealing with applications which are manifestly unfounded, but these would have to be subject to safeguards to protect the rights of asylum seekers; there should be a common definition of

what constitutes a "manifestly unfounded" application in all the Member States;

- harmonization of the rules on refusal of admission at external borders, e.g. as regards the definition of the "first host country"; the definition of a "safe" country should also be examined with regard to "first host countries" and countries of origin; an asylum seeker coming from a "safe" country could, as a general rule, be sent back there; harmonization of these rules would ensure that asylum seekers were treated in identical fashion at all the external borders of the single market;

- asylum seekers whose applications are turned down should be deported unless they can be allowed to stay under some other arrangement, and this means that contact must be maintained with the third countries most directly concerned;

- a procedure should be established for consultation and the exchange of information in connection with the right of asylum, particularly as regards the situation in the countries of origin, the relevant legislation, and the practice in applying the Geneva Convention; this would also be a step in preparing for harmonization of the formal and substantive right of asylum.

9. The following measures could be taken for the harmonization of the right of asylum in the context of the single market:

- the Member States already have a common legal basis in the matter, namely the Geneva Convention, so that what is needed is mainly harmonization or coordination of the way in which the Convention is applied in the single market; in an area without internal frontiers the question whether a person should be accepted as a refugee should not depend on which Member State vets his application for asylum; harmonization of the rules and practices in the different Member States can be achieved if the competent authorities are able to exchange information in a thorough and institutionalized manner and if, at the same time, common judicial machinery can be established in order to ensure that the criteria laid down in the Geneva Convention are interpreted in a uniform fashion;

- there should be harmonization of the rules on <u>de facto</u> refugees, who are not covered by the Geneva Convention; the question whether they can be allowed to stay in the Community - temporarily - on

humanitarian grounds other than those set out in the Geneva Convention should not depend crucially on the place where their application is examined;

- the treatment extended to asylum seekers while their application is being examined should be harmonized in order to prevent any diversion of the flow of asylum seekers, within the limits laid down by the Dublin Convention, towards the Member State with the most generous arrangments.

II. Conclusion

10. This Communication and the discussion paper attached are intended as a contribution to the discussion on the right of asylum in the run-up to the European Council meeting to be held in Maastricht.

The measures to be taken jointly in respect of the right of asylum would be aimed primarily at eliminating abuse of that right, while at the same time protecting the rights of asylum seekers. Measures to combat such abuse are linked to the wider problem of the need to control economic migration as described in the Commission Communication on immigration.

In the longer term, harmonization of the formal and substantive right of asylum will form part of the moves towards deepening the Community.

The point of reference for all these joint measures regarding the right of asylum, which should in any event be prepared in close cooperation with the United Nations High Commissioner for Refugees, must be full compliance with the humanitarian principles embodied in the Geneva Convention.

DISCUSSION PAPER ON THE RIGHT OF ASYLUM

INTRODUCTION

1. The number of people seeking asylum has shot up in recent years in almost every Member State of the Community. The phenomenon has become so acute in some Member States that it has sparked off fierce political wrangling, which, more often than not, has turned into an argument about immigration in general.

Growing awareness of the scale of the influx of asylum seekers and of the seriousness of its economic, social and financial consequences, coupled with more detailed analysis of the implications of the internal market, has caused the focus to shift from the question of determining the State responsible for examining applications for asylum, which has already been settled by the Convention signed in Dublin on 15 June 1990, to the asylum question as a whole, viewed not only from the formal, or procedural, angle but also from the substantive angle.

2. Although this paper forms part of a communication dealing specifically with the question of asylum, it is to be viewed against the background of the question of immigration in general, which forms the subject matter of a separate Commission communication to Parliament and the Council.

The link between the right of asylum and immigration is a real one. Since the ending of permanent immigration for employment purposes in the mid-1970s, lodging an application for asylum has become a means of entering a Community into which immigration has become impossible. The right of asylum has thus become gradually bound up with the immigration question as one by one the restrictions on permanent immigration introduced by the

Member States have been circumvented by recourse to the asylum procedure.

However, owing to the inherently different nature of the right of asylum (a humanitarian right for the protection of which countries have entered into international commitments) and immigration (an economic and social phenomenon to which countries may respond individually and over which they have discretion), it is appropriate that the question of the right of asylum as a whole should be dealt with in a separate communication.

3. The Luxembourg European Council of 29 and 30 June of this year gave fresh impetus to the study of the question of immigration and the right of asylum. In its conclusions on the free movement of persons the Council "agreed on the objectives underlying the German delegation's proposals as set forth in point B of Annex I". The German delegation's proposals regarding immigration and asylum, which had been drawn up with an eye to Political Union, were twofold:

- firstly, that the Member States should commit themselves under the Treaty on Political Union to harmonizing, both formally and substantively, their policies on asylum, immigration and aliens (point A);

- secondly, that the Ministers with responsibility for immigration should be asked to submit a report to the European Council in Maastricht in December defining and planning the preparatory work needed for harmonization (as provided for in point A), and containing proposals for concrete preparatory and transitional measures for the period between signature and entry into force of the amendments to the EEC Treaty (point B) (cf. Annex I).

The Commission has been invited to participate in the coordination of the preparatory work on all these questions.

4. Such is the context surrounding this discussion paper. At a time when the deliberations of the Intergovernmental Conference on Political Union are under way, it is right that the Commission should state its views on a subject such as the right of asylum and make, as of now, a positive contribution to the debate.

It must be made clear in this connection that the Commission attaches the utmost importance to respect for the humanitarian principles enshrined in the Geneva Convention. This concern is shared by Parliament, as can be seen from its resolution of 13 September 1991 adopting the Malangré report.

5. The layout of this paper is as follows:

I. Factual aspects and legal framework of the right of asylum.
   - the influx of asylum seekers
   - the Geneva Convention: persons covered, scope and difficulties of implementation.

II. Recent initiatives in the sphere of the right of asylum:
   - at national level;
   - at the level of the Twelve.

III. The outlook:
   - the institutional context;
   - joint measures confined to dealing with the problem of the influx of refugees;
   - more general harmonization measures.

I. FACTUAL ASPECTS AND LEGAL FRAMEWORK OF THE RIGHT OF ASYLUM

A. The influx of asylum seekers

6. More than 40 years after the Second World War and the ensuing disruption, the continued existence across the world of numerous instances of political, religious and ethnic persecution explains why humanitarian law, through the instrument (Geneva Convention) and the institution (Office of the United Nations High Commissioner for Refugees) introduced in 1951, continues to play an essential role in assisting refugees. While this context illustrates the need to preserve the humanitarian law already in place, attention has been turning in recent years in Europe more and more from the refugee drama itself towards means of controlling the influx of asylum seekers. Now that the asylum procedure is being used by a growing number of economic migrants to circumvent the various restrictive measures which the European countries have introduced since the first oil crisis in order to stop permanent immigration for employment purposes, the right of asylum is viewed against the background of the immigration question.

However, it must not be forgotten that this situation is prejudicial to bona fide asylum seekers, whose existence cannot be ignored. The London European Council of 1986 was unambiguous in its determination to counter only "abuse", making clear that there was no intention to call in question

the principle itself. On the contrary, it is by adopting in good time the measures necessary to combat abuse that any backlash - which might result in the very principle of asylum, which is a fundamental human right, being ultimately called in question - can be prevented.

7. Since the mid-1970s the countries of Western Europe and in particular those of the EEC have had to cope with an increasing number of persons seeking to be recognized as refugees within the meaning of the 1951 Geneva Convention. In the mid-1980s the trend gathered momentum.
For example, requests for asylum in France rose from 1 800 in 1975 to 28 800 in 1985 and 60 000 in 1989, while in the United Kingdom they went up from 2 159 in 1988 to 11 647 in 1989 and 25 327 in 1990.
The influx of asylum seekers is spread unevenly from one Member State to another: in 1988, 1989 and 1990, of all the applications lodged in the Community, some 80% were submitted in two countries, Germany (60%) and France (20%) (Annex II contains a table of applications for asylum recorded in the Member States in 1988, 1989 and 1990).

At the same time as there has been an increase in the number of applications for asylum, there has been a noticeable reduction in the rate of recognition of refugee status (falling in Germany from 15.94% in 1986 to 8.61% in 1988 and 4.38% in 1990).

This influx of asylum seekers poses serious social, financial and economic problems. Most European countries still have heavy unemployment and have frozen permanent immigration for employment purposes.
However, one must keep a sense of proportion as, on a world scale, Europe receives only 5% of all refugees. The vast majority of refugees seek shelter in neighbouring States, which places a heavy responsibility on the States concerned, many of which are developing countries. Any discussion should therefore also cover the assistance that might be given towards improving the reception of refugees in the region.

The specificity of asylum seekers should be maintained both for political reasons to do with the principles involved and for legal reasons. Whereas Member States have a free hand when it comes to admitting or excluding economic migrants, their freedom of action vis-à-vis asylum seekers is

limited owing to their obligations under the Geneva Convention. Any confusion as to the extent of Member States' powers might call in question the specificity of asylum seekers.

8. The influx of asylum seekers has first of all an impact on the administrative processing of applications. The departments responsible for considering applications are unable to cope with the increased case-load. As a result, applications are taking longer and longer to process, which is regrettable both from the point of view of the countries concerned (financial burden) and from that of political refugees, who are left for a long time in a state of uncertainty pending recognition of their status. The lengthening of procedures also has the effect of attracting even more asylum seekers who, while their case is being considered, enjoy a legal status which carries with it various social security benefits.
Lastly, the influx of asylum seekers makes it impossible to draw the legal consequences from decisions not to grant refugee status reached after excessively long procedures. It is difficult to expel an applicant who, in the meantime, has become socially and economically integrated.

The political debate in the Member States on the right of asylum has in some instances entered a critical, not to say controversial, phase. At the same time as the authorities have become aware of the need to combat without delay abuse of the right of asylum, opposition groups have been formed and are making themselves increasingly heard. The authorities have to take this into account, particularly because these pressure groups campaign under the banner of the safeguarding of fundamental rights.

B. The Geneva Convention

9. The persons covered are refugees as defined by the Convention.

Article 1 of the Convention stipulates that the status of refugee applies to any person who "... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country".
A striking feature of this definition is the importance of the criterion of persecution. An asylum seeker cannot be recognized as a refugee if his

only reason for fleeing his country is the existence of political disturbances or tensions there.

A study of asylum requests shows that most requests are not based on any of the motives provided for in the Convention. This has led some people to talk about a "crisis of the right of asylum".
Applicants for refugee status are increasingly, on the one hand, refugees who have left their country of origin because of war, civil war or domestic disturbances, and, on the other, economic migrants who are seeking to escape from poverty, famine, chronic under-employment or the lack of prospects in their country. In many countries there is a tendency for factors of the latter type to worsen owing to population pressure. The procedure of requesting asylum is used in these circumstances as a means of circumventing Member States' restrictive laws on permanent immigration.

In view of the legal framework of the Geneva Convention, a clear distinction must be drawn between different categories of person: asylum seekers awaiting a decision, recognized refugees and persons whose application for refugee status has been definitively rejected and who, administratively speaking, may find themselves in a variety of situations (cf. Annex III).

10. The definition of refugee in the Geneva Convention may give rise to different interpretations.

A preliminary examination of the available data indicates that certain elements of the concept of refugee as defined by the Convention give rise to different, not to say divergent interpretations by the national authorities responsible for examining asylum requests and by the courts hearing appeals against negative decisions of those authorities.
These differences or divergences of interpretation relate, for example, to the assessment of the facts subsequent to the flight from the country of origin (refugees on the spot), the effect of a stay in a first host country and the assessment of certain measures taken by the persecuting State.
The Member States' replies to the questionnaire that was sent to them with a view to drawing up the inventory of asylum policies called for by the Strasbourg European Council contain valuable information, which will have to be carefully evaluated, on the differences between Member States' practices.

There is no international judicial body responsible for ensuring uniformity of interpretation of the concept of refugee.

11. The Geneva Convention covers a limited number of fields.

Some fields are entirely outside the ambit of the Convention.
It is silent about the procedure for examining asylum requests. As a result, Member States apply a wide variety of procedures ranging from a non-appealable decision of an independent committee to a highly formalized procedure subject to very strict judicial controls.
There are also marked differences in the material situation of asylum seekers during the investigation of their case (cf. in particular the position regarding access to employment, the right to social assistance and housing conditions).
Lastly, Member States' practices differ when refugee status is definitively withheld: expulsion, grant of a right of residence to de facto refugees.

As regards the position of recognized refugees, the Geneva Convention merely lays down a common minimum standard: Member States' laws may go further and grant refugees more rights than are provided for in the Convention.

12. Determining refugee status is the major practical difficulty in applying the Geneva Convention.

The hardest part is establishing the facts. In many cases, applicants no longer have any identity papers and it is difficult to establish their identity. The authenticity of identity papers or other documents submitted often has to be verified in order to establish the validity of the application. As far as the political and economic situation in the country of origin is concerned, the authorities do have information but it is not coordinated at the level of the Twelve. As it is an individual request that is being examined, the authorities and the courts are faced with the problem of having to verify specific facts adduced by the applicant. To that end, reliance is mostly placed on the information furnished by the diplomatic services.

Moreover, the investigation of cases is hampered considerably by the authorities and the applicant having to communicate as a rule through an interpreter.

Lastly, mention must be made of the practical problem of expelling applicants in the event of their application being rejected (and after any means of appeal have been exhausted). The identity and country of origin of the applicant are not always known and/or he may not have any documents proving his identity and nationality. As a result, in a large number of cases the expulsion order cannot be properly implemented. The Member State which rejected the application is therefore more or less "obliged" to allow the person concerned to stay in its territory.

II. RECENT INITIATIVES IN THE SPHERE OF THE RIGHT OF ASYLUM

A. At national level

13. The initiatives described below form a package of measures already implemented or envisaged by one or more Member States. Inasmuch as the Member States have recourse to these measures in varying degrees, their legislation is more or less "attractive" to asylum seekers.

A number of measures concern the right of asylum directly, either from the point of view of procedure of from that of the status of the asylum seeker.

(a) Acceleration of procedures:

The means used in this connection include an increase in the resources of the competent authorities in terms of staff and equipment and more frequent recourse to abridged procedures.

In some Member States, a distinction is made in respect of the investigation of cases between the phase of the examination as to admissibility and that of the examination of the substance of the case.

(b) Dissuasive measures vis-à-vis asylum seekers:

- Various measures aimed at making the material situation of asylum seekers less attractive while their case is being considered: withholding of certain social security benefits, restrictions on employment and on freedom of movement.

- More systematic application of expulsion measures against applicants who have not been recognized.

(c) Measures to combat fraud:

Dismantling of smuggling rings, establishment of registers of asylum seekers, with fingerprints, to prevent multiple applications.

Other measures fit into the broader framework of immigration policy but have repercussions on the right of asylum.

(d) Refusal of admission at the frontier:

Entry is made more difficult by a stricter policy regarding the issuing of visas.

(e) Liability of carriers:

Some Member States impose heavy fines on airlines and shipping companies which carry aliens who are not in possession of the necessary entry documents.

B. At the level of the Twelve

14. So far, the Member States and the Commission have looked at the question of the right of asylum solely from the point of view of the completion of the internal market.

15.(a) The abolition of controls at internal frontiers on 1 January 1993 will in practice enable asylum seekers to move freely from one Member State to another and submit simultaneous or successive asylum requests there. This free movement of asylum seekers carries with it the risk of accentuating the phenomenon of "refugees in orbit", whereby each country refuses to consider an asylum request on grounds of the previous movements of the person concerned.

The 1985 White Paper on completing the internal market provided for the presentation of a proposal for a directive on the right of asylum.

Subsequently, without prejudging the question of Community competence, the Commission decided not to oppose the intergovernmental approach towards dealing with the problem. In the Palma document, which was approved by the Madrid European Council of June 1989, it is stated that the laying down of rules determining the State competent to examine an asylum request is a measure essential to completing the internal market, to be taken within the intergovernmental framework.
The work carried out within that framework culminated in the signature on 15 June 1990 of the Dublin Convention by eleven Member States (Denmark signed and at the same time ratified it on 13 June 1991).

Under the terms of that Convention a single Member State is responsible for examining an application for asylum, and this responsibility is determined in accordance with a number of objective criteria (presence of a family member in a Member State, issue by a Member State of a residence permit or visa, etc.).
The application of these objective criteria may result in responsibility being incumbent upon a Member State other than that in which the application was lodged. The Member State responsible is obliged to allow the applicant to stay in its territory while his case is being considered.
The Convention provides for an exchange of information between Member States on asylum seekers (identity, visas or residence permits issued previously to the person concerned), national laws and practices in relation to asylum and the situation in the countries of origin of asylum seekers.
The Dublin Convention, inasmuch as it puts an end to the phenomenon of "refugees in orbit", marks a step forward in the field of humanitarian law and has been given the seal of approval by the UN High Commissioner for Refugees, who was consulted while it was being drawn up.
It should be noted that the Agreement giving effect to the Schengen Agreement contains provisions equivalent to those of the Dublin Convention as regards the criteria for determining the State responsible and exchanges of information.
The Dublin Convention in no way affects the recognition itself of refugee status, the administrative procedures for examining requests (time limits, appeals) or the position of the asylum seeker while his request is being examined (rules on employment, residence, entitlement to social security benefits, etc.).

(b) Recourse to a simplified or priority procedure under national law in the case of manifestly unfounded applications was also described as an essential measure in the Palma report. This matter is not dealt with in the Dublin Convention. It will form part of the discussions on the inventory of national asylum policies requested by the Strasbourg European Council with a view to their possible harmonization.

III. THE OUTLOOK

A. The institutional context

16. Without prejudging the outcome of the Intergovernmental Conference on Political Union, consideration must be given to devising a joint approach to the problem. There are two reasons for this.

Firstly, the influx of asylum seekers and the abuse of asylum procedures are not a temporary phenomenon and Member States, having failed so far to solve the problem individually, must tackle it jointly without delay.

Secondly, against the background of moves towards Political Union, the need for a Community based on the rule of law means there must be a joint response to the general question of the right of asylum and not just to the specific aspect of the influx of asylum seekers and the abuse of procedures.

The points developed below from this dual standpoint will be discussed elsewhere with a view to preparing the report which the Ministers responsible for immigration have to submit to the European Council in Maastricht.

B. Joint measures aimed essentially at dealing with the influx of asylum seekers

17. These measures are either connected with the implementation of an earlier measure which has already been finalized, i.e. the Dublin Convention, or are new measures.

Ratification of the Dublin Convention at the earliest opportunity by all Member States:

18. Entry into force of the Dublin Convention determining the State responsible for examining applications for asylum submitted in a Member State of the Community will close the loophole allowing asylum seekers to extend their stay in the Community by successively lodging applications with the authorities of different countries. Entry into force of the Convention will lead to the establishment of a common computerized system which will inter alia store the particulars of asylum seekers and enable the identity of an asylum seeker to be checked very quickly. It will thus be possible to prevent all but a few multiple applications for asylum.

At their meeting of 13 June 1991, the Ministers responsible for immigration pressed for ratification procedures to be completed as quickly as possible.

Conclusion: it would be useful for Member States to take all necessary steps to set in motion or speed up the procedures for ratifying the Dublin Convention so that it can enter into force as quickly as possible and at all events not later than 1 January 1993.

Advance implementation, before ratification, of the provisions of the Dublin Convention relating to exchange of information on asylum policies and the situation in the countries of origin of asylum seekers:

19. Advance implementation of Article 14 of the Dublin Convention would be confined to exchanges of general information in the asylum field and would not cover individual applications for asylum. It would therefore not be open to criticism on the grounds of the constitutional law of Member States, public international law or the protection of fundamental human rights.

The benefits of advance implementation would be reaped above all when it comes to examining applications for asylum. As pointed out earlier, a sound knowledge of the situation in the countries of origin of asylum seekers is essential in order to assess not only the merits of an asylum request (are people persecuted on account of their political views in the country concerned?), but also the truthfulness of statements made by an asylum seeker (did a demonstration against the authorities take place on a particular date, and were the demonstrators arrested?). Not only is it, however, extremely difficult for each Member State to collect such information in (all) the countries of origin of asylum seekers, a time-consuming process which lengthens procedures, but it is also usually the case that each Member State is well informed about a fairly limited number of countries with which it has traditionally enjoyed close links or from which it has received a large number of asylum seekers.

Better exchange of this kind of information would thus in itself already contribute to the swifter, more reliable and more uniform processing of asylum requests and make it possible to assess the information jointly. Such joint assessment is envisaged by the Dutch Presidency.

Conclusion: advance implementation of the provisions of the Dublin Convention relating to the exchange of general information would contribute to the swifter, more reliable and more uniform processing of asylum requests and would enable the information to be assessed jointly.

Extension of the Dublin Convention arrangements to other countries

20. When the Convention was adopted, a declaration was made explicitly providing for the conclusion of specific legal instruments to extend the arrangements to other countries (Sweden has already expressed interest in joining).
The advantage of such extension would be in particular to include a number of countries which border on the Community and are in a similar situation as far as refugees are concerned.
Nevertheless, a number of questions are still outstanding as to the legal details of the implementing arrangements. There is also the risk that if the idea of extending the Convention were broadcast too hastily, it could interfere with and disrupt the smooth course of ratification procedures, which should take priority. Completion of those procedures is an overriding objective given the 1 January 1993 deadline.

Conclusion: close examination of the legal issues raised by extension of the Dublin Convention should continue.

21. Acceleration of procedures for examining asylum applications:

The acceleration of procedures is essential if the influx of asylum seekers is to be brought under control. The length of the procedures for examining applications has a snowball effect: it helps attract an even greater number of asylum seekers as they have a right to stay while the procedure is pending.
There are various possible ways of achieving such an acceleration.
Generally speaking there is scope for increasing the resources in staff and equipment of the competent services, accelerating the procedures themselves and reorganizing the means of appeal. Given that a large number of asylum requests are fraudulent or manifestly unfounded, it is also possible, to a lesser degree, to introduce abridged procedures which have the beneficial effect of "unburdening" the competent services of such manifestly unfounded applications.

The majority of the Member States most affected by the influx of asylum seekers have introduced, alongside the normal procedure, an abridged procedure designed to weed out as quickly as possible manifestly unfounded or fraudulent applications.
Without it being necessary to harmonize procedures completely, there is a need - as provided for in the Dutch Presidency's work programme - for all the Member States to introduce in principle a summary and abridged procedure which complies with the basic principles established by conclusion No 30 of the UNHCR and the recommendation of the CAHAR (ad hoc Committee on the legal aspects of territorial asylum, refugees and stateless persons) of the Council of Europe of 1983. According to these recommendations the abridged procedure must

(i) include the hearing of the applicant in person by a qualified official;
(ii) provide that the manifestly unfounded or fraudulent nature of the application should be established by the authority duly competent to grant refugee status;
(iii) provide for the possibility of an appeal before refusing to admit the applicant at the frontier or sending him to a third country.

The advantage of an abridged procedure is that it reduces as far as possible the time-lag between the entry of the asylum seeker into the territory of a Member State and the final decision on his asylum request. This will enable the competent authorities to reject as quickly as possible those asylum seekers who do not satisfy the requirements of the Geneva Convention or who do not have to be admitted as de facto refugees. In addition, an approximation or a reduction of the length of the investigation procedure at the level of the Twelve might remove one of the factors responsible for the uneven influx of asylum seekers.
The disadvantage of the application of an accelerated procedure lies in a theoretical increase in the risk of not recognizing a genuine political refugee. Experience shows, however, that this risk is non-existent owing to the fact that, if there is the slightest doubt, the normal procedure can always be reverted to.

Conclusion: since a large number of asylum requests are unfounded or fraudulent, it would be desirable for Member States to speed up procedures by taking the most appropriate measures in the light of their individual situation. To that end, the introduction of an effective and rapid filter at the initial vetting stage, e.g. through an abridged procedure, would contribute to tighter control of the influx of asylum seekers.

Information exchange measures:

22. Seminars might be organized by Member States so that the experience acquired in specific areas by certain Member States can be passed on to others. For example, those Member States which have detailed information on certain countries of origin could give the benefit of their knowledge to other Member States whose links with those countries are more tenuous. These seminars could be organized in cooperation with the interior or justice ministers and the ministers for foreign affairs; they could cover legal and technical questions.
Regular meetings of the authorities responsible for examining applications for asylum could enable views and information to be exchanged on procedures for recognizing the status of refugee, decisions taken and the grounds on which they are based. In view of the aims that such informal meetings would pursue, thought should be given to whether a specific structure should be created or whether it would not be preferable to make use of the "informal consultations" framework initially set up by the UNHCR and in which the Community could ask to take part (it does not at present).

Conclusion: to speed up and rationalize the work of the authorities responsible for asylum matters and in particular do away with certain duplications that exist at present due to the compartmentalization of the national authorities, Member States should set up information exchange schemes in cooperation with the Commission.

C. More general harmonization measures

23. All Member States are parties to the Geneva Convention, but there are differences between them regarding the right of asylum. These differences stem from the fact that certain topics are not covered by the Geneva Convention, allowing national laws to develop independently, and that the actual provisions of the Convention have been interpreted differently by the competent national administrations and courts.

Possible common measures in areas covered by the Geneva Convention must have due regard to the Member States' obligations regarding cooperation with the UNHCR under Article 35 of the Convention.

Harmonization of the conditions in which asylum seekers are refused admission at external frontiers

24. When an asylum seeker has already been sheltered by a non-member country before lodging his asylum request, he may be sent back to that country provided that his physical integrity is not thereby endangered given the situation prevailing there.
An initial examination of national practices reveals differences of approach in two areas:

- there is no list common to the twelve Member States of first host countries to which asylum seekers could be returned without endangering their physical integrity;
- Member States do not apply the same criteria regarding previous residence: some consider that residence has been taken up in a first host country after a minimum stay of three months, while others are satisfied with a much shorter period.

As a result of these differences, the chances of being refused admission vary between Member States, one factor which can attract asylum seekers to certain Member States rather than others.

Conclusion: harmonization of the conditions in which asylum seekers are refused admission, which should have due regard to their legitimate interests, would contribute to the equal treatment of the individuals concerned at all the external frontiers. Harmonization of the requirements concerning the duration of previous residence in a first host country would seem to raise technical problems, while the establishment of a common list of countries to which asylum seekers can be returned without risk is a political matter.

Harmonization of rules and practices regarding de facto refugees

25. Where a person is refused the status of refugee under the Geneva Convention, he is not necessarily sent back to his country of origin if his physical integrity would be thereby endangered. Each Member State assesses whether such a threat exists and, if so, allows the individual concerned, who is then referred to as a "de facto" refugee, to remain on its

territory. Excessive discrepancies between Member States' practices regarding the recognition of de facto refugees is one factor which could attract asylum seekers unevenly to certain Member States.

Conclusion: a list should be drawn up of the criteria applied by Member States for allowing de facto refugees to stay on their territory, with a view to subsequent harmonization.

Approximation of the treatment accorded to asylum seekers

26. The treatment accorded to asylum seekers while their application is pending varies widely between Member States as regards residence, access to the labour market and social security benefits, as can be seen from the following extreme policy stances taken by different Member States in those three areas:

- the asylum seeker is assigned to residence in a particular district/can live in the place of his choice;
- the asylum seeker is barred from the labour market/is free to take up any occupation;
- the asylum seeker is entitled to social security benefits/does not in principle qualify for any such benefits.

Because they make certain Member States unevenly attractive, these differences in legislation can have an impact on the destination of asylum seekers flowing into the Community.

Conclusion: a very detailed list should be drawn up of Member States' rules on the treatment accorded to asylum seekers;at a later stage, there should be limited harmonization to avoid excessive differences that could distort the distribution of asylum seekers entering the Community.

Establishment of machinery for the exchange of information on and coordination of Member States' asylum policies

27. Since the Geneva Convention gives rise to differences between Member States' asylum practices, consideration should be given to the possibility of setting up machinery which would build on exchanges

of information and views between Member States and move towards a process of coordination. Such machinery would make it possible, for example, to examine and assess information on the countries of origin of asylum seekers and promote discussions among the Member States of legal and technical questions (e.g. the removal of persons whose application for asylum has been refused or the admission of de facto refugees). Discussions along these lines would be likely to induce common practices.
Consideration should be given to the conditions in which such information exchange machinery could work and to whether a specific body needs to be set up for the purpose.

Conclusion: creation of machinery for exchanging information would be useful in helping to induce common practice in asylum matters. The UNHCR should be associated with such initiatives.

28. Creation of common judicial machinery

If the above-mentioned information exchange machinery did not lead to common practice in asylum matters, the creation of common judicial machinery could be considered.

In the current state of discussions, it would be extremely difficult to form a precise idea of how such machinery could be structured and how it could operate. It is appropriate, however, to define the essential objectives to be pursued:

- reducing disparities between Member States in the interpretation of the law on asylum;
- as an indirect effect, harmonizing administrative practice.

It would have to be decided whether the machinery would deal with appeals, further appeals and/or requests for preliminary rulings. If machinery of this nature were set up, the effect should under no circumstances be for it to take longer to reach final decisions on applications for asylum: it has already been shown that the length of procedures is precisely one of the factors contributing to the continuing abuse of the right of asylum.

Lastly, thought should be given to the way in which the new machinery could be incorporated into the existing judicial system.

Conclusion: studies should begin on the role, structure and operation of possible common judicial machinery.

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Luxembourg, 29 June 1991

dey/SMS/ep

EUROPEAN COUNCIL

LUXEMBOURG, 28 AND 29 JUNE 1991

PRESIDENCY CONCLUSIONS

FREE MOVEMENT OF PERSONS

The European Council welcomes the fact that all the Member States have signed the Convention on Asylum.

The European Council notes with satisfaction that a very important step towards the creation of an area without internal frontiers where persons may move freely under the terms of the Treaty will be accomplished very shortly when full agreement is reached on the Convention between the Member States on the crossing of their external borders.

The European Council requests the Ministers with responsibility in this area to finalize agreement at their meeting on 1 July, taking as their model solutions adopted in the past with a view to overcoming the outstanding difficulty.

The European Council asks the ad hoc Group on Immigration to put in hand without delay the measures necessary for this Convention to be effectively applied, with a view to adoption of those measures as soon as possible after the Convention enters into force. The European Council also instructs the ad hoc Group on Immigration to embark on discussions for a Convention on the protection of individuals in relation to the processing of personal data. Work on that Convention must be completed by 30 June 1992 at the latest.

The European Council also records its agreement to the recommendations submitted by the Co-ordinators' Group and requests that action should be taken on them as soon as possible.

Regarding immigration and the right of asylum, the European Council has agreed on the objectives underlying the German delegation's proposals as set forth in point B of Annex I and requests the Ministers with responsibility for immigration to submit proposals before the European Council's next meeting in Maastricht.

ANNEX I
ard/JF/pk

FUTURE COMMON ACTION ON HOME AFFAIRS AND JUDICIAL POLICY

A. ***Aims of the Inter-Governmental Conference***

1. Policy on asylum, immigration and aliens

Treaty commitment to formal and actual harmonization by 31.12.1993 at the latest. Details to be laid down by unanimous decision of the Council, or if necessary, implementing measures to be decided by qualified majority. Right of initiative for the Commission and also for individual Member States.

2. Fight against international drug trafficking and organized crime

Treaty commitment to full establishment of a Central European Criminal Investigation Office ("Europol") for these areas by 31.12.1993 at the latest. Details to be laid down by unanimous decision of the Council. Gradual development of Europol functions: first of all relay station for exchange of information and experience (up to 31.12.1992), then in the second phase powers to act also within the Member States would be granted. Right of initiative for the Commission and also for individual Member States.

B. ***Immediate and preparatory measures***

1. Policy on asylum, immigration and aliens

Report from Ministers with responsibility for immigration to the European Council in Maastricht in December 1991:

- *definition and planning of the preparatory work needed for harmonization*

- *proposals for concrete preparatory and transitional measures for the period between signature and entry into force of the amendments to the EC Treaty.*

2. Fight against international drug trafficking and organized crime

Report from the relevant Ministers to the European Council in Maastricht in December 1991 with concrete proposals for setting up "Europol" and adopting appropriate preparatory and transitional measures.

3. Co-ordination of preparatory work on these questions by the Secretary-General of the Council, in conjunction with the Commission.

ANNEX II

Asylum seekers recorded in 1988

Member State	Asylum seekers	Other family members	Total	% of Community total
B	4458	0	4458	2,63
D	103252	0	103252	60,86
DK	10844	0	10844	6,39
ES	4207	960	5167	3,05
F	34152	0	34152	20,13
GR	809	151	960	0,57
IRL	48	0	48	0,03
I	94	8	102	0,06
L				
NL	7191	0	7191	4,24
P	338	48	386	0,23
UK	2159	944	3103	1,83
Grand total	167552	2111	169663	100

Asylum seekers recorded in 1989

Member State	Asylum seekers	Other family members	Total	% of Community
B	8102	0	8102	3,89
D	112958	0	112958	54,27
DK	5284	0	5284	2,54
ES	2844	471	3315	1,59
F	59434	0	59434	28,56
GR	1641	294	1935	0,93
IRL	9	0	9	0,00
I	53	63	136	0,07
L				
NL	5054	0	5054	2,43
P	196	66	262	0,13
UK	11647	0	116647	5,60
Grand total	207222	914	208136	100

Asylum seekers recorded in 1990

Member State	Asylum seekers	Other family members	Total	% of Community total
B	12967	0	12967	3,95
D	201952	0	201952	61,59
DK	18175	0	18175	5,50
ES	7668	845	8513	2,60
F	54369	239	54608	16,65
GR	4872	1401	6273	1,91
IRL				
I				
L				
NL				
P	61	27	88	0,03
UK	25327	0	25327	7,72
Grand total	325391	2512	327903	100

ANNEX III

THE DIFFERENT CATEGORIES OF PERSON UNDER THE GENEVA CONVENTION

1. Persons who have asked to be granted the status of refugee within the meaning of the Geneva Convention and are awaiting a decision on their request (asylum seekers);

2. Persons who have been granted the status of refugee within the meaning of the Geneva Convention (refugees in the narrow sense);

3. Persons whose request for asylum has been definitively refused, among whom a distinction should be drawn between:

   (a) those for whom an expulsion order has been or will be issued;

   (b) those for whom an expulsion order is not issued.

   Where the grounds for not taking an expulsion decision are:
   - legal (e.g. the person concerned has in the meantime married a national of the host country and can thus no longer be expelled); or
   - humanitarian: the person concerned cannot be sent back to his country of origin, since his life would be in danger there (he has become a "de facto" refugee),

   the persons concerned are subsequently issued a residence permit.

   Where the reason is:

   - practical: the person has no identity papers, there is uncertainty as to his country of origin, or the individual has simply "disappeared"; or
   - political: even where there are no such difficulties, the authorities do not systematically expel the individuals concerned, in particular for reasons of political expendiency; or
   - administrative: the authorities do not have enough funds to carry out expulsions,

   the individuals concerned are not issued a residence permit and become illegal immigrants.