

DRAFT CONVENTION PARALLEL TO THE DUBLIN CONVENTION OF 15.06.90.

Introduction

Draft Convention parallel to the Dublin Convention of 15 June 1990. (8.5.92, SN 1729 WGI 1008 REV 2). The draft, never signed, was drawn up for the central and eastern European "buffer" or Associated states, and for other "friendly" countries such as Canada and the US, and is in virtually identical terms.

The text is a report of May 1992 in the Ad Hoc Group on Immigration which includes the draft Convention.

Draft Convention parallel to the Dublin Convention of 15 June 1990

Reference:

Ad Hoc Group on Immigration, 08.05.92, SN 1729 WGI 1008 REV 2, CONFIDENTIAL [Statewatch translation]

1. In the course of its meetings of 3rd and 4th February 1992 in Lisbon, the AHGI called on the competent groups within the Commission and the Council to prepare a working paper for a draft convention to run parallel to the Dublin Convention, and a draft protocol to be appended to the latter. Following a detailed study, it appears that there are reasons for moving away from the idea of concluding an additional protocol (to the Dublin Convention, drawn up by the 12 and open for signature to the MS¹ of the EC), with Third Countries, considering in particular the link established by Art 16, para 2 of the Dublin Convention with the realisation of the objective of the free movement of persons within the internal market (Art 8 of the EEC Treaty). On this basis, a draft was produced (doc. WGI 1008 REV 1 + COR 1).

2. The "Asylum" sub-group studied the latter draft and has reached broad agreement on its text, (reproduced as annex 1).

Two problems remain.

- A technical problem with Art 21, para 2: the French delegation proposed replacing the original text with that given in footnote.

1. The delegations reserved judgement on this matter;

- A political problem with Art 22, regarding whether or not to retain the reference to the European Convention on Human Rights.

The "asylum" sub-group, taking account of the serious political issues implicated in this matter, agreed to refer the matter to the AHGI.

In addition, the French delegation suggested including, in the report on the draft convention a declaration to the following effect:

¹ Member States

"In signing up to the present Convention, the MS undertake to incorporate the modes of application applying to the Dublin Convention, as well as the resolutions, conclusions and decisions adopted in the course of moves towards the harmonisation of asylum policy".

3. After having completed the text of the parallel convention, the AHGI will be able to put it forward for approval to the ministerial meeting to be held on 11/12.06.92²

4. The sub-group did not address the matter of procedure relating to future negotiations with Third country states. It was agreed that this matter should be addressed by AHGI.

Annex 1

DRAFT CONVENTION relating to the determination of the state responsible for examining an asylum claim.

PREAMBLE

THE HIGH CONTRACTING PARTIES TO THE PRESENT CONVENTION,

DETERMINED, out of loyalty to their common humanitarian tradition, to guarantee appropriate protection to refugees, in line with the provisions of the 1951 Geneva Convention (as modified by the 1967 New York Protocol) relating to the status of refugees, (hereafter, "the Geneva Convention" and the "New York Protocol");

CONSIDERING the conclusion of the Dublin Convention relating to the determination of the state responsible for examining a claim for asylum, (signed by the EC MS 15.06.90; hereafter "the Dublin Convention");

CONSIDERING the declaration of the MS in the minutes of the meeting at which the Dublin Convention was signed, according to which "the signatory parties declare that, in order that the appropriate guarantees are available to asylum seekers, they will retain the option of extending the cooperation envisaged in the present convention to other states, enabling them, by appropriate means, to undertake measures identical to those set out in the present convention;

AWARE OF the need to avoid leaving asylum seekers in positions of long-term uncertainty in relation to the outcome of their claims and CONCERNED to guarantee to all asylum seekers who arrive on the territory of the High Contracting Parties that their claim will be examined by one of the High Contracting Parties, and to ensure that asylum seekers are not sent from country to country as a result of no High Contracting Party accepting responsibility for the examination of their claims;

² Between the meeting of AHGI and the ministerial meeting in June, the text will be legally and linguistically finalised.

CONCERNED to pursue the dialogue instigated with the UN High Commissioner for Refugees in order to attain the above objectives;

DETERMINED to establish, for the application of the present convention, close cooperation at various levels, including the exchange of information,

have agreed to conclude the present convention and have designated the following as the plenipotentiaries:

....

WHO, in the appropriate manner and by the appropriate means, have agreed the following measures

ARTICLE 1

1. For the purposes of the present convention the following definitions are adopted:

- a) foreigner: anyone who does not come one of the HCP's states;
- b) asylum claim: a request by a foreigner to one of the High Contracting Parties for the protection of the Geneva Convention guaranteed to refugees as identified in art.1 of the Geneva Convention (modified by the New York Protocol);
- c) asylum seeker: foreigner who has a claim for asylum under consideration
- d) examination of an asylum claim: the ensemble of the examination procedures, decisions or judgements on the part of the competent authorities in relation to an asylum claim, except for the procedures determining the state responsible for examining an asylum claim, as set out in the present convention;
- e) leave to remain: permission granted by the authorities of an High Contracting Party for a foreigner to stay on its territory, but excluding visas and other leave to remain granted during the assessment of a request for leave to remain or for asylum.
- f) entry visa: authorisation or decision from an High Contracting Party allowing a foreigner to enter its territory, if other conditions of entry are fulfilled.
- g) transit visa: authorisation or decision by an High Contracting Party allowing a foreigner to transit through its territory, ports or airports, if other conditions relating to transit are fulfilled.

ARTICLE 2

The High Contracting Parties re-affirm their obligations under the terms of the Geneva Convention (as modified...), without any geographical restriction on the application of the provisions, and their undertaking to cooperate with the offices of the UN High Commissioner for Refugees in the application of these provisions.

ARTICLE 3.

1. The High Contracting Parties undertake that any foreigner who makes a claim to asylum, at their borders or on their territory, will have their claim examined.

2. This claim will be examined by one High Contracting Party only, in accordance with the criteria set out in the present convention. The criteria enumerated in arts.4 and 8 apply in the order in which they appear.

3. Claims will be examined by each state in accordance with its national legislation and with its international obligations.

4. All High Contracting Parties have the right to examine a claim with which they have been presented, even if they would not be required to do so under the terms of the present convention, so long as the asylum seeker agrees to this.

The High Contracting Party which under the terms of the above stated criteria would have been responsible for examining the claim is therefore released from this obligation, which passes to the MS who wishes to examine the claim. This state will inform the state which would normally have been responsible, if it takes over responsibility for examining the claim.

5. All High Contracting Parties retain the right, in applying the provisions of their national laws, to return an asylum seeker to a Third Country, with due regard to the provisions of the Geneva Convention (as modified...).

6. The procedures for determining refugee status in an High Contracting Party held, in line with the present convention, to be responsible for examining an asylum claim, will begin when an asylum claim is lodged for the first time with an MS.

7. The High Contracting Party with which the claim is initially lodged is obliged, under the terms of art.13 and in relation to the determination of the state responsible for examining an asylum claim, to take back any asylum seeker who is found to be claiming asylum in the state of another High Contracting Party, after having withdrawn his/her [initial] claim during the determination of the state responsible for examining it.

This obligation does not apply if the asylum seeker has, in the intervening period, left the territory of the High Contracting Parties for a period of at least three months, or has been given leave to remain in one of the High Contracting Parties for at least three months.

ARTICLE 4

If an asylum seeker has a family member who has been recognised as a refugee under the terms of the Geneva Convention (as modified...) in one of the HCP's states, who is legally resident in that state, that state becomes responsible for examining the asylum claim, on condition that the interested parties so wish it.

The family member in question must be either the spouse of the asylum

seeker, or his/her unmarried child under the age of 18, or his/her mother or father, if the asylum seeker in question is under the age of 18.

ARTICLE 5

1. If the asylum seeker has a valid temporary residence permit, the High Contracting Party which granted the permit becomes responsible for examining the asylum claim.

2. If the asylum seeker has a valid visa, the High Contracting Party which granted it becomes responsible for examining the claim, except in the following instances:

a) If the visa was granted on the written authority of another High Contracting Party, this High Contracting Party becomes responsible for examining the asylum claim. If an High Contracting Party consults the state authorities in another High Contracting Party, particularly for reasons of security, the latter's concurrence with granting a visa does not constitute written authorisation, for the purposes of the present provisions.

b) If an asylum seeker who has a transit visa makes his/her claim in another HCP's state, where visa conditions do not apply, this state becomes responsible for examining the claim.

c) If an asylum seeker who has a transit visa makes his/her claim in the state which granted it and which has received written confirmation from the diplomatic or consular authorities of the High Contracting Party to which the asylum seeker was supposed to be travelling, then the latter High Contracting Party becomes responsible for examining the asylum claim.

3. If an asylum seeker has several residence permits or visas which are all valid and which were granted by different High Contracting Parties, the responsibility for examining the asylum claim falls to that High Contracting Party which:

a) granted the longest residence permit, or, if the duration of the permits is identical, granted the permit which will expire last; [or]

b) granted the visa which will expire last, if all the visas are of the same kind; [or]

c) in the case of different kinds of visas, the High Contracting Party which granted the visa of the longest validity, or, if they are of identical duration, that which will expire last. This provision does not apply if the asylum seeker has one or more transit visas which were granted on the presentation of an entry visa in one of the High Contracting Parties. In this case the High Contracting Party which granted the entry visa is responsible for the examination of the asylum claim.

4. If the asylum seeker has one or more residence permits which have been invalid for more than 2 years, or has one or several visas which expired in the last 6 months, which allowed him/her into the territory of an High Contracting Party, paragraphs 1, 2 and 3 apply

for as long as the foreigner remains on the territory of the High Contracting Parties.

If the asylum seeker has one or more residence permits which have been invalid for more than two years, or if he or she has one or more visas which have been invalid for more than 6 months, which allowed him/her to enter the territory of an hcp, and if the asylum seeker has not left the territory of the High Contracting Parties, the High Contracting Party responsible for examining the claim is the one in which the claim is made.

ARTICLE 6

If an asylum seeker has crossed the border of an High Contracting Party in an irregular manner, by land, air or sea from a Third Country and if the High Contracting Party in question can prove this, then this High Contracting Party becomes responsible for examining the asylum claim.

However, this state ceases to be responsible if it is proven that the asylum seeker stayed in that High Contracting Party for more than 6 months before making his/her claim.

ARTICLE 7

1. Responsibility for the examination of an asylum claim is incumbent on the High Contracting Party through whose borders a foreigner has entered [the HCP's collected territory], excepting the case of a foreigner, having legally entered the territory of an High Contracting Party for which he/she has a valid visa, then makes his/her claim in the state of another High Contracting Party for which he/she also has a visa which permits entry. In this case the latter state becomes responsible for examining the asylum claim.

2. An High Contracting Party which allows transit without a visa, through the transit zones of one of its airports, will not be considered to have allowed a foreigner to enter it's territory without a visa, in the sense of the preceding paragraph, so long as the foreigners do not move outside of the transit zones.

3. If an asylum claim is made during a foreigner's transit through an HCP's airport, then this High Contracting Party is responsible for examining the asylum claim.

ARTICLE 8

If an High Contracting Party cannot be identified to be held responsible for examining an asylum claim on the basis of criteria thus far enumerated, the first High Contracting Party in which an asylum claim is lodged becomes responsible for examining that claim.

ARTICLE 9

Any High Contracting Party is allowed to examine a claim even if, under the terms of the present convention, they would not normally be held responsible for so doing, if there are humanitarian factors to be considered, such as family or cultural ties. The High

Contracting Party which would normally be responsible will request that this transfer of responsibility be undertaken, so long as the asylum seeker agrees.

When another High Contracting Party accepts this transfer of responsibility, examination of the claim will be incumbent upon its authorities.

1. The High Contracting Party which is established as being responsible for examining an asylum claim on the basis of the criteria set out in the present convention is obliged to:

- a) take into its charge, under the conditions set out in Art.11, any asylum seeker who has made a claim in another High Contracting Party's territory;
- b) conclude the examination of this claim;
- c) re-admit or take back, under the conditions set out in Art.13, any asylum seeker who is illegally in the territory of any other High Contracting Party than the one which is examining his or her claim;
- d) take back, under the conditions enumerated in Art.13, an asylum seeker who has withdrawn his or her claim and who has subsequently made another claim for asylum in another High Contracting Party's territory;
- e) take back, under the conditions enumerated in Art.13, any foreigner whose asylum claim it has rejected, and who has subsequently illegally entered the territory of another High Contracting Party.

2. If an High Contracting Party grants an asylum seeker a residence permit which is valid for more than three months, the obligations enumerated in para.1 under a) to e) are transferred to this High Contracting Party.

3. The obligations enumerated under para.1, items a) and d) cease to apply if the foreigner in question leaves the territories of the High Contracting Party's for a period of three months or more.

4. The obligations enumerated under para.1 items d) and e) cease to apply if the state responsible for examining the claim has taken, following the withdrawal or rejection of the claim, to enable the foreigner to return to his or her country of origin or to another country where he or she may legally remain.

ARTICLE 11

1. An High Contracting Party which is presented with a claim for asylum for which it believes another High Contracting Party ought to be responsible has the right to ask the latter party to take over the case as expeditiously as possible, or in any case to do so not more than six months after the initial lodge of the claim. If a request by an High Contracting Party that another take over a case is not made within six months, responsibility for examining the claim will be incumbent on the state in which the claim was

initially lodged.

2. Requests for the transfer of a case should be formulated in terms which are recognisably based on the criteria set out in the present convention.

3. The determination of the state responsible in terms of these criteria will be made on the basis of circumstances prevailing at the time when an asylum seeker makes his or her initial claim in one of the High Contracting Parties.

4. An High Contracting Party must rule on a request [from another High Contracting Party] to take over a case within three months from the submission of the request. If no response is given within this period, the High Contracting Party concerned will be deemed to have accepted the case.

5. The transfer of an asylum seeker from the High Contracting Party where he or she lodged a claim to the High Contracting Party which is finally established as responsible for examining the claim should take place at the latest after the transfer request, or one month after the issue of legal proceedings against the transfer decision by the asylum seeker, if these proceedings are suspensive.

6. The provisions enumerated under Art.18 may subsequently be invoked to determine the particular way in which an High Contracting Party will take an asylum seeker into its charge.

ARTICLE 12

If an asylum seeker lodges a claim with the authorities of one High Contracting Party whilst actually on the territory of another High Contracting Party, the determination of the state responsible for examining the claim is incumbent on the High Contracting Party on whose territory the asylum seeker actually is. The High Contracting Party with whose authorities the claim has been lodged will immediately inform the High Contracting Party wherein the asylum seeker actually is. The latter High Contracting Party is then, for the purposes of the present convention, held to be the state in which the claim has actually been lodged.

ARTICLE 13

1. The taking back of an asylum seeker in the instances set out in Art.3 para.7 and in Art.10 will be carried out according to the following guidelines:

a) The request that an asylum seeker be taken back by a state should be formulated in terms which allow this state to be identified as responsible for the asylum seeker, in respect of Art.3 para.7 and Art.10.

b) A state which has been requested to take back an asylum seeker is obliged to respond to the request within eight days following its submission. It is obliged to take the asylum seeker back into its charge as quickly as possible, and in any case no longer than one month after accepting responsibility for the asylum seeker.

2. The provisions set out under Art.18 may subsequently be invoked to determine the particular way in which an High Contracting Party will take an asylum seeker back into its charge.

ARTICLE 14

1. The High Contracting Parties will work towards cooperation/exchange of information on:

- legal provisions, rules or national practices in the field of asylum.

- statistical information on the monthly arrivals of asylum seekers and on their countries of origin. The transmission of information will take place on a termly basis. It will be undertaken by the intermediary of the Committee designated under Art.18. He or she will ensure the transmission of information to all the High Contracting Parties, to the EC Commission and to the UN High Commissioner for Refugees.

2. The High Contracting Parties may work towards cooperation/exchange of information on:

- General information about new tendencies in asylum claims.

- General information about the situation in the countries of origin of asylum seekers, or about the countries from where they are coming.

3. If an High Contracting Party passes on such information as envisaged in para.2, but wishes the information to remain confidential, then this wish must be respected by the other High Contracting Parties.

ARTICLE 15

1. All High Contracting Parties will provide such information as is requested by other High Contracting Parties which may be necessary in order to:

- determine the High Contracting Party responsible for examining an asylum claim.

- examine an asylum claim.

- undertake all obligations which flow from the present convention.

2. This information should concern only:

- Personal details about an asylum seeker, and, where necessary, about his or her family (surname and first name - if necessary, previous name - false name or pseudonym, nationality - current and previous - date and place of birth).

- Identity and travel documentation (reference, expiry dates, dates on which the documents were issued, place where the documents were issued).

- Other details necessary to establish the identity of the claimant.

- Places in which the claimant has stayed and their travel itineraries.

- Residence permits or visas issued by an High Contracting Party.

- The place where a claim was made.

- The date on which any previous claim was lodged, the date on which the current claim was lodged, the stage which has been reached in the determination procedures and the decision which is eventually reached.

3. Apart from this, an High Contracting Party may ask another High Contracting Party about the grounds upon which a claim is based and, if necessary, about the grounds upon which the eventual decision is based. An High Contracting Party which is asked for information will decide whether it is in a position to respond to the request. In any case, the passing on of such information must be consented to by the asylum seeker in question.

4. Exchanges of information will take place at the request of an High Contracting Party and may only be carried out by the competent authorities in each High Contracting Party. Each High Contracting Party will inform the committee of the authorities it designates as competent, in accordance with Art.18.

5. The information exchanged between two or more High Contracting Parties can only be used for the ends set out in para.1. In each High Contracting Party, this information may only be made available to authorities charged with:

- determining the High Contracting Party responsible for examining an asylum claim

- examining the asylum claim

- undertaking all the obligations which flow from the present convention.

6. An High Contracting Party which passes on information is responsible for ensuring that it is accurate and up to date.

If an High Contracting Party passes on information which subsequently appears to be inaccurate, or which should not have been passed on, the High Contracting Parties to which the information has been passed will immediately be informed. They are then obliged either to amend or to destroy the information.

7. An asylum seeker has the right to be informed of information concerning him or her, which has been passed on, so long as the information is still available. If the asylum seeker claims that the information is inaccurate, or that it should not have been passed on, then he or she has the right to have the information corrected or destroyed. This right will be exercised under the conditions enumerated in para.6.

8. In each High Contracting Party, the passing on and receipt of

information will be recorded.

9. The information will be retained only for so long as it is necessary to serve the purpose for which it was passed on. The need for information to be retained must be reviewed at an appropriate time by the High Contracting Party concerned.

10. In any case, information which is passed on will be protected in the same way as the state to which is passed on protects other information of a similar nature.

11. Each High Contracting Party will take steps to guarantee accordance with the present article, if such measures are not already in place. If an High Contracting Party has services such as those referred to in para.12, these services can be made responsible for the control of such information as referred to above.

12. If one or more of the High Contracting Parties wish to computerize the handling of all or some of the information referred to in Paras. 2 and 3, they may only do so if they have all enacted legislation enforcing the principles of the 1981 Strasbourg Convention (concerning the protection of individuals in relation to the computerised handling of information about them) and if they have designated an appropriate national authority responsible for independently maintaining and using information exchanged in line with the present convention.

ARTICLE 16

1. All High Contracting Parties are entitled to submit proposals to the committee, described in Art.18, regarding the modification of the present convention, which attempt to address difficulties regarding its implementation.

2. If a revision or change to the Dublin Convention is made, (in line with Art.16 of that convention), the High Contracting Party holding the presidency of the committee described in Art.18 of the present convention will call a meeting of this committee.

3. Possible revisions of or changes to the present convention will be considered and adopted by this committee. They will come into force in line with the provisions made under Art.23.

ARTICLE 17

1. If an High Contracting Party encounters major difficulties as a result of a significant change in circumstances prevailing at the time of the signing of the present convention, this High Contracting Party may refer to the committee referred to in Art.18, so that the committee may formulate proposals for confronting the situation or make necessary revisions of or changes to the present convention, which will come into force in line with the conditions enumerated in Art.16 par.3.

2. If, after 6 months, the difficulties referred to in para.1 are persisting, the committee may authorise the High Contracting Party in question provisionally to suspend the application of measures ordered by the present convention, so long as this suspension would

not allow the High Contracting Party's other obligations under international law to be abrogated.

3. During the suspension alluded to in para.2, the committee will work towards the revision of the measures set out in the present convention, if agreement on such revision has not already been reached.

ARTICLE 18

1. In order to serve the aims of the present convention, a committee, composed of a governmental representative of each High Contracting Party, will be established.

Its first meeting will be held within three months following the entry into force of the present convention, at the instruction of the MS which holds the presidency of the European Council.

Members of the Commission of the EC may attend the work of the committee and of its working groups referred to in para.4.

2. The committee will examine, at the request of one or more High Contracting Parties, all matters of procedure pertaining to the application and interpretation of the present convention.

The committee will establish such measures as referred to in Art.11 para.6 and in Art.13 para.2 and will give such authorisation as referred to in Art.17 para.2.

The committee will adopt, in line with Arts. 16 and 17, revisions of or changes to the present convention.

3. Committee decisions will be taken unanimously, except when it is ruling on the application of Art.17 para.2, in which case decisions will require a 2/3 majority vote; such as may be taken to represent the voting intentions of 2/3 of the MS of the EC.

4. The committee will establish its own procedural rules, which will set out, most importantly, the order in which the committee's presidential terms will be held. The committee may create working groups.

The secretariat for the committee and the working groups will be provided by the general secretariat of the Council of the EC.

ARTICLE 19

Regarding the Kingdom of Denmark; the provisions of the present convention do not apply to the Faroe Isles or to Greenland, unless and until the Kingdom of Denmark makes any declaration to the contrary. Such a declaration may be made at any time by communication to the government [] which will inform the governments of all other High Contracting Parties about it.

Regarding the French Republic; the provisions of the present convention apply only to French European territory.

Regarding the Kingdom of the Netherlands; the provisions of the

present convention apply only to Dutch European territory.

Regarding the UK; the provisions of the present convention apply only to the United Kingdom of Great Britain and Northern Ireland. They do not apply to those European territories for whose external affairs the UK takes responsibility, unless and until the UK makes any declaration to the contrary. Such a declaration may be made at any time by communication to the government [], which will inform the governments of all other High Contracting Parties about it.

[Other territorial exceptions requested by the High Contracting Parties].

ARTICLE 20

No reservations may be made in respect of the present convention.

ARTICLE 21

1. In any case in which the determination of the MS responsible for examining an asylum claim concerns only the MS of the EC, the determination will be based exclusively on the rules set out in the Dublin Convention of 15.06.90.

2. If, in line with the first paragraph, the examination of an asylum claim is undertaken on the basis of the rules set out in the Dublin Convention, the EC MS will understand, for the application of Art.3 para.5 and of Art.10 para.4 of this convention that the expressions "Third State" and "other country" do not apply to the High Contracting Parties. For the purposes of Art.3 para.7 and Art.10 para.5 of this convention, they will understand the expression "territory of the member states" as denoting the territory of the High Contracting Parties.

Footnote 1: The French delegation has suggested replacing para. 2 with the following text:

"2. If a MS of the EC applies Art.3 para.5 of the Dublin Convention, by sending an asylum seeker to a third country, it may only send the person in question to one of the states party to the present convention in line with the provisions of the present convention."

The delegations are examining this proposal.