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Subject: Compilation of texts on European practice with respect to asylum
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Delegations will find attached the above compilation as finalized following the discussions of the ad hoc Group on Immigration at its meeting on 13 and 14 May 1993.

COMPILATION OF TEXTS ON EUROPEAN PRACTICE

WITH RESPECT TO ASYLUM

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Brussels, 27 January 1993

The compilation comprises the texts (decisions and conclusions) adopted by the Ministers on the harmonization of legislation and procedures with respect to asylum. It also gives details of current progress in the Member States with procedures for the ratification of the instruments adopted.

PART II

**Texts adopted by
the Ministers responsible for Immigration**

REPORT

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

- E X T R A C T S -

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 (see B, p. 11).

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.

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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.

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 II 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 1A 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 II 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.

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.

(b) 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 assume 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.

- (b) certain grounds adduced are clearly in no way related to the principles set out in Article 1A 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.

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 1A 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) 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 pre-supposes, 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 (a)), 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 (see page 17).

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, pp. 8 and 9.

CONCLUSIONS

**on countries in which there is generally
no serious risk of persecution ⁽¹⁾**

(London, 30 November and 1 December 1992)

1. The resolution on manifestly unfounded applications for asylum (WGI 1282) includes at paragraph 1(a) a reference to the concept of countries in which there is in general terms no serious risk of persecution.

- This concept means that it is a country which can be clearly shown, in an objective and verifiable way, normally 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 ⁽²⁾.

Purpose

2. The aim of developing this concept is to assist in establishing a harmonized approach to applications from countries which give rise to a high proportion of clearly unfounded applications and to reduce pressure on asylum determination systems that are at present excessively burdened with such applications. This will help to ensure that refugees in genuine need of protection are not kept waiting unnecessarily long for their status to be recognized and to discourage misuse of asylum procedures. Member States have the goal of reaching common assessment of certain countries that are of particular interest in this context. To this end, Member States will exchange information within an appropriate framework on any

(1) Scrutiny reservations by the Danish and Netherlands delegations.

(2) Report from Immigration Ministers to the European Council meeting in Maastricht (WGI 930, page 38).

national decisions to consider particular countries as ones in which there is generally no serious risk of persecution. In making such assessments, they will use, as a minimum, the elements of assessment laid down in this document.

3. An assessment by an individual Member State of a country as one in which there is generally no serious risk of persecution should not automatically result in the refusal of all asylum applications from its nationals or their exclusion from individualized determination procedures. A Member State may choose to use such an assessment in channelling cases into accelerated procedures as described in paragraph 2 of the resolution on manifestly unfounded applications, agreed by Immigration Ministers at their meeting on 30 November and 1 December 1992. The Member State will nevertheless consider the individual claims of all applicants from such countries and any specific indications presented by the applicant which might outweigh a general presumption.

Elements in the assessment

4. The following elements should be taken together in any assessment of the general risk of persecution in a particular country:
 - (a) previous numbers of refugees and recognition rates. It is necessary to look at the recognition rates for asylum applicants from the country in question who have come to Member States in recent years. Obviously, a situation may change and historically low recognition rates need not continue following (for example) a violent coup. But in the absence of any significant change in the country it is reasonable to assume that low recognition rates will continue and that the country tends not to produce refugees.

- (b) observance of human rights. It is necessary to consider the formal obligations undertaken by a country in adhering to international human rights instruments and in its domestic law and how in practice it meets those obligations. The latter is clearly more important and adherence or non-adherence to a particular instrument cannot in itself result in consideration as a country in which there is generally no serious risk of persecution. It should be recognized that a pattern of breaches of human rights may be exclusively linked to a particular group within a country's population or to a particular area of the country. The readiness of the country concerned to allow monitoring by NGO's of their human rights observance is also relevant in judging how seriously a country takes its human rights obligations.
- (c) democratic institutions. The existence of one or more specific institutions cannot be a sine qua non but consideration should be given to democratic processes, elections, political pluralism and freedom of expression and thought. Particular attention should be paid to the availability and effectiveness of legal avenues of protection and redress.
- (d) stability. Taking into account the abovementioned elements, an assessment must be made of the prospect for dramatic change in the immediate future. Any view formed must be reviewed over time in the light of events.

5. Assessments of the risk of persecution in individual countries should be based upon as wide a range of sources of information as possible, including advice and reports from diplomatic missions, international and non-governmental organizations and press reports.

Information from UNHCR has a specific place in this framework. UNHCR forms views of the relative safety of countries of origin both for their own operational purposes and in responding to request for advice. They have access to sources within the UN system and non-governmental organizations.

6. Member States may take into consideration other elements of assessment than those previously mentioned, which will be reviewed from time to time.

RESOLUTION

on manifestly unfounded applications for asylum ⁽¹⁾

(London, 30 November and 1 December 1992)

MINISTERS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES responsible for Immigration, meeting in London on 30 November and 1 December 1992,

HAVING REGARD to the objective, fixed by the European Council meeting in Strasbourg in December 1989, of the harmonization of their asylum policies and the work programme agreed at the meeting at Maastricht in December 1991;

DETERMINED, in keeping with their common humanitarian tradition, to guarantee adequate protection to refugees in accordance with the terms of the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967, relating to the Status of Refugees;

NOTING that Member States may, in accordance with national legislation, allow the exceptional stay of aliens for other compelling reasons outside the terms of the 1951 Geneva Convention;

REAFFIRMING their commitment to the Dublin Convention of 15 June 1990, which guarantees that all asylum applicants at the border or on the territory of a Member State will have their claim for asylum examined and sets out rules for determining which Member State will be responsible for that examination;

AWARE that a rising number of applicants for asylum in the Member States are not in genuine need of protection within the Member States within the terms of the Geneva Convention, and concerned that such manifestly unfounded applications overload asylum determination procedures, delay the recognition of refugees in genuine need of protection and jeopardize the integrity of the institution of asylum;

(1) Scrutiny reservations by the Danish and Netherlands delegations.
German reservation linked to the constitutional provisions of the FRG.

INSPIRED by Conclusion No. 30 of the Executive Committee of the United Nations High Commissioner for Refugees;

CONVINCED that their asylum policies should give no encouragement to the misuse of asylum procedures;

MAKE THE FOLLOWING RESOLUTION:

Manifestly unfounded applications

1. (a) An application for asylum shall be regarded as manifestly unfounded because it clearly raises no substantive issue under the Geneva Convention and New York Protocol for one of the following reasons:
 - there is clearly no substance to the applicant's claim to fear persecution in his own country (paragraphs 6 to 8); or
 - the claim is based on deliberate deception or is an abuse of asylum procedures (paragraphs 9 and 10).
- (b) Furthermore, without prejudice to the Dublin Convention, an application for asylum may not be subject to determination by a Member State of refugee status under the terms of the Geneva Convention on the Status of Refugees when it falls within the provisions of the Resolution on host third countries adopted by Immigration Ministers meeting in London on 30 November and 1 December 1992.

2. Member States may include within an accelerated procedure (where it exists or is introduced), which need not include full examination at every level of the procedure, those applications which fall within the terms of paragraph 1, although an application need not be included within such procedures if there are national policies providing for its acceptance on other grounds. Member States may also operate admissibility procedures under which applications may be rejected very quickly on objective grounds.
3. Member States will aim to reach initial decisions on applications which fall within the terms of paragraph 1 as soon as possible and at the latest within one month and to complete any appeal or review procedures as soon as possible. Appeal or review procedures may be more simplified than those generally available in the case of other rejected asylum applications.
4. A decision to refuse an asylum application which falls within the terms of paragraph 1 will be taken by a competent authority at the appropriate level fully qualified in asylum or refugee matters. Amongst other procedural guarantees the applicant should be given the opportunity for a personal interview with a qualified official empowered under national law before any final decision is taken.
5. Without prejudice to the provisions of the Dublin Convention, where an application is refused under the terms of paragraph 1 the Member State concerned will ensure that the applicant leaves Community territory, unless he is given permission to enter or remain on other grounds.

No substance to claim to fear persecution

6. Member States may consider under the provisions of paragraph 2 above all applications the terms of which raise no question of refugee status within the terms of the Geneva Convention. This may be because:
- (a) the grounds of the application are outside the scope of the Geneva Convention: the applicant does not invoke fear of persecution based on his belonging to a race, a religion, a nationality, a social group, or on his political opinions, but reasons such as the search for a job or better living conditions;
 - (b) the application is totally lacking in substance: the applicant provides no indications that he would be exposed to fear of persecution or his story contains no circumstantial or personal details;
 - (c) the application is manifestly lacking in any credibility: his story is inconsistent, contradictory or fundamentally improbable.
7. Member States may consider under the provisions of paragraph 2 above an application for asylum from claimed persecution which is clearly limited to a specific geographical area where effective protection is readily available for that individual in another part of his own country to which it would be reasonable to expect him to go, in accordance with Article 33.1 of the Geneva Convention. When necessary, the Member States will consult each other in the appropriate framework, taking account of information received from UNHCR, on situations which might allow, subject to an individual examination, the application of this paragraph.

8. It is open to an individual Member State to decide in accordance with the conclusions of Immigration Ministers of 1 December 1992 that a country is one in which there is in general terms no serious risk of persecution. In deciding whether a country is one in which there is no serious risk of persecution, the Member State will take into account the elements which are set out in the aforementioned conclusions of Ministers. Member States have the goal to reach common assessment of certain countries that are of particular interest in this context. The Member State will nevertheless consider the individual claims of all applicants from such countries and any specific indications presented by the applicant which might outweigh a general presumption. In the absence of such indications, the application may be considered under the provisions of paragraph 2 above.

Deliberate deception or abuse of asylum procedures

9. Member States may consider under the provisions of paragraph 2 above all applications which are clearly based on deliberate deceit or are an abuse of asylum procedures. Member States may consider under accelerated procedures all cases in which the applicant has, without reasonable explanation:
- (a) based his application on a false identity or on forged or counterfeit documents which he has maintained are genuine when questioned about them;
 - (b) deliberately made false representations about his claim, either orally or in writing, after applying for asylum;
 - (c) in bad faith destroyed, damaged or disposed of any passport, other document or ticket relevant to his claim, either in order to establish a false identity for the purpose of his asylum application or to make the consideration of his application more difficult;

- (d) deliberately failed to reveal that he has previously lodged an application in one or more countries, particularly when false identities are used;
- (e) having had ample earlier opportunity to submit an asylum application, submitted the application in order to forestall an impending expulsion measure;
- (f) flagrantly failed to comply with substantive obligations imposed by national rules relating to asylum procedures;
- (g) submitted an application in one of the Member States, having had his application previously rejected in another country following an examination comprising adequate procedural guarantees and in accordance with the Geneva Convention on the Status of Refugees. To this effect, contacts between Member States and third countries would, when necessary, be made through UNHCR.

Member States will consult in the appropriate framework when it seems that new situations occur which may justify the implementation of accelerated procedures to them.

10. The factors listed in paragraph 9 are clear indications of bad faith and justify consideration of a case under the procedures described in paragraph 2 above in the absence of a satisfactory explanation for the applicant's behaviour. But they cannot in themselves outweigh a well-founded fear of persecution under Article 1 of the Geneva Convention and none of them carries any greater weight than any other.

Other cases to which accelerated procedures may apply

11. This Resolution does not affect national provisions of Member States for considering under accelerated procedures, where they exist, other cases where an urgent resolution of the claim is necessary, in which it is established that the applicant has committed a serious offence in the territory of the Member States, if a case manifestly falls within the situations mentioned in Article 1.F of the 1951 Geneva Convention, or for serious reasons of public security, even where the cases are not manifestly unfounded in accordance with paragraph 1.

Further action

12. 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, at the latest by 1 January 1995. Member States will from time to time, in co-operation with the Commission and in consultation with UNHCR, review the operation of these procedures and consider whether any additional measures are necessary.
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RESOLUTION

on a harmonized approach to questions

concerning host third countries ⁽¹⁾

(London, 30 November and 1 December 1992)

The Ministers of the Member States of the European Communities responsible for Immigration, meeting in London on 30 November to 1 December 1992;

DETERMINED to achieve the objective of harmonizing asylum policies as it was defined by the Luxembourg European Council in June 1991 and clarified by the Maastricht European Council in December 1991;

TRUE to the principles of the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967, relating to the Status of Refugees and in particular Articles 31 and 33 thereof;

CONCERNED especially at the problem of refugees and asylum seekers unlawfully leaving countries where they have already been granted protection or have had a genuine opportunity to seek such protection and CONVINCED that a concerted response should be made to it, as suggested in Conclusion No. 58 on Protection adopted by the UNHCR Executive Committee at its 40th session (1989);

CONSIDERING the Dublin Convention of 15 June 1990 determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities, and in particular Article 3(5) thereof, and WISHING to harmonize the principles under which they will act under this provision;

ANXIOUS to ensure effective protection for asylum seekers and refugees who require it;

MAKE THE FOLLOWING RESOLUTION:

(1) Scrutiny reservations by the Danish and Netherlands delegations.
German reservation linked to the constitutional provisions of the FRG.

Procedure for application of the concept of host third country

1. The Resolution on manifestly unfounded applications for asylum, adopted by Ministers meeting in London of 30 November-1 December 1992, refers in paragraph 1(b) to the concept of host third country. The following principles should form the procedural basis for applying the concept of host third country:
 - (a) The formal identification of a host third country in principle precedes the substantive examination of the application for asylum and its justification.
 - (b) The principle of the host third country is to be applied to all applicants for asylum, irrespective of whether or not they may be regarded as refugees.
 - (c) Thus, if there is a host third country, the application for refugee status may not be examined and the asylum applicant may be sent to that country.
 - (d) If the asylum applicant cannot in practice be sent to a host third country, the provisions of the Dublin Convention will apply.
 - (e) Any Member State retains the right, for humanitarian reasons, not to remove the asylum applicant to a host third country.

Cases falling within this concept may be considered under the accelerated procedures provided for in the aforementioned Resolution.

Substantive application: requirements and criteria for establishing whether a country is a host third country

2. Fulfilment of all the following fundamental requirements determines a host third country and should be assessed by the Member State in each individual case:
- (a) In those third countries, the life or freedom of the asylum applicant must not be threatened, within the meaning of Article 33 of the Geneva Convention.
 - (b) The asylum applicant must not be exposed to torture or inhuman or degrading treatment in the third country.
 - (c) It must either be the case that the asylum applicant has already been granted protection in the third country or has had an opportunity, at the border or within the territory of the third country, to make contact with that country's authorities in order to seek their protection, before approaching the Member State in which he is applying for asylum, or that there is clear evidence of his admissibility to a third country.
 - (d) The asylum applicant must be afforded effective protection in the host third country against refoulement, within the meaning of the Geneva Convention.

If two or more countries fulfil the above conditions, the Member States may expel the asylum applicant to one of those third countries. Member States will take into account, on the basis in particular of the information available from the UNHCR, known practice in the third countries, especially with regard to the principle of non-refoulement before considering sending asylum applicants to them.

Dublin Convention

3. The following principles set out the relationship between the application of the concept of the third host country, in accordance with Article 3(5) of the Dublin Convention, and the procedures under the Convention for determining the Member State responsible for examining an asylum application:
- (a) The Member State in which the application for asylum has been lodged will examine whether or not the principle of the host third country can be applied. If that State decides to apply the principle, it will set in train the procedures necessary for sending the asylum applicant to the host third country before considering whether or not to transfer responsibility for examining the application for asylum to another Member State pursuant to the Dublin Convention.
 - (b) A Member State may not decline responsibility for examining an application for asylum, pursuant to the Dublin Convention, by claiming that the requesting Member State should have returned the applicant to a host third country.
 - (c) Notwithstanding the above, the Member State responsible for examining the application will retain the right, pursuant to its national laws, to send an applicant for asylum to the host third country.
 - (d) The above provisions do not prejudice the application of Article 3(4) and Article 9 of the Dublin Convention by the Member State in which the application for asylum has been lodged.

Future action

4. Ministers agreed to seek 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 by the time of the entry into force of the Dublin Convention. Member States will from time to time, in co-operation with the Commission and in consultation with UNHCR, review the operation of these procedures and consider whether any additional measures are necessary.
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DECISION

establishing the clearing house

THE MINISTERS RESPONSIBLE FOR IMMIGRATION, HEREINAFTER REFERRED TO AS "THE MINISTERS",

Whereas Article 14 of the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed in Dublin on 15 June 1990 and in Luxembourg on 13 June 1991, provides for an exchange of information;

Whereas, in their report on immigration and asylum policy to the European Council meeting in Maastricht, they decided to establish a clearing house for information, discussion and exchange on asylum;

Wishing to fulfil the task entrusted to them by the European Council meeting in Maastricht, which invited them to implement, within the proposed time-scale, the programme of work contained in that report;

Considering the Declaration on asylum annexed to the Treaty on European Union;

- HAVE DECIDED TO:

- = agree to the provisions set out in the Annex for the establishment of the Centre for Information, Discussion and Exchange on Asylum (clearing house);
- = ask the ad hoc Group on Immigration to draw up in proper form the act which, after ratification of the Treaty on European Union, will be submitted to the Council for approval under the procedures laid down for that purpose;
- = ask the ad hoc Group on Immigration to
 - . supervise the provisional operation of the clearing house, until the abovementioned act is adopted;
 - . carry out further studies on the definitive structures and financing of the clearing house.

ANNEX to the Decision

A Centre for Information, Discussion and Exchange on Asylum, hereinafter referred to as the "clearing house", to operate within the framework of the General Secretariat of the Council of the European Communities, is hereby established.

The Member States shall designate to participate in the clearing house:

- their delegates, who shall in principle be the persons dealing with asylum matters in the relevant Council body;
- officials responsible in the Member States for implementing laws and regulations on asylum and more specifically experts responsible for processing asylum applications.

The Commission shall be fully associated with the work of the clearing house.

The tasks and operating methods of the clearing house shall be as follows:

I.

Powers

The clearing house shall:

- for the time being operate provisionally within the framework of this Decision;
- act within the framework of the provisions of the act to be adopted on the basis of the Treaty on European Union as soon as possible after the latter comes into force;
- be an informal forum for exchanges of information and consultations, without any decision-making power.

II.

Objectives

The clearing house shall gather, exchange and disseminate information and compile documentation on all matters relating to asylum.

The aim of this exchange of information shall be the development within the clearing house of greater informal consultation, itself designed to facilitate, through competent bodies, co-ordination and harmonization of asylum practice and policies.

The clearing house may draw the attention of national bodies and/or the Council to certain problems. Those bodies via the Ministers and/or the Ministers themselves may ask the clearing house to conduct studies, which may be accompanied by proposals.

III.

Gathering of information

The following information shall be exchanged within the clearing house:

- Member States' legislation and rules on the right of asylum;
- important policy documents (in their final form);
- important case-law and legal principles;
- statistics.

The Ministers recognize the usefulness to the clearing house of exchanges of information concerning in particular:

- the situation in the countries of origin of applicants for asylum;
- indications available as on early warning;
- routes taken by asylum seekers and the involvement of intermediaries and/or transport operators;
- reception and accommodation conditions;
- matters already harmonized.

Data stored by the Office of the United Nations High Commissioner for Refugees or by other bodies may be taken into account.

This information is to serve as a basis for documentation and discussion and is to be disseminated under the conditions described below.

IV.

Dissemination of information

The Ministers, national authorities participating in the work of the clearing house and the Commission shall have access to the information held by the clearing house.

The Ministers shall determine the framework and conditions for the clearing house to disseminate information to international organizations, non-governmental organizations, universities and the media in particular.

When supplying information, Member States shall state how they wish it to be classified. A Member State may oppose the dissemination of information which it has supplied.

V.

Reports

The clearing house shall draw up a report for the Council, in principle twice a year.

The Ministers may ask the clearing house to draw up a report on Member States' application of the 1951 Geneva Convention.

VI.

Meetings

For particular topics, the clearing house may invite other persons to contribute to its proceedings.

VII.

The clearing house may, within its terms of reference, suggest to the Ministers the establishment of all co-operation which it deems necessary, in particular with the Office of the United Nations High Commissioner for Refugees.

**STATEMENT FOR THE MINUTES
OF THE MEETING OF MINISTERS
RESPONSIBLE FOR IMMIGRATION**

The Ministers invite the clearing house to concentrate its initial discussions on the obligatory exchange of information provided for in the Dublin Convention.
