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SERIES A

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REPORT

drawn up on behalf of the Committee on Legal Affairs and
Citizens' Rights

on the right of asylum

Rapporteur: Mr H. VETTER

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A. MOTION FOR A RESOLUTION 5

The Committee on Legal Affairs and Citizens' Rights hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

A

MOTION FOR A RESOLUTION

on the right of asylum

The European Parliament,

- having regard to the motions for resolutions tabled
 1. by Mrs Heinrich and others on asylum for Basque refugees in France (Doc. 2-619/84),
 2. by Mrs Heinrich on the forced deportation of Basque refugees by the French Government (Doc. 2-754/84),
 3. by Mr van der Lek on the treatment of Tamil refugees from Sri Lanka by the governments of the Member States (Doc. B 2-371/85),
 4. by Mrs Heinrich on extradition laws in the Community (Doc. B 2-786/85),and
 5. by Mrs Heinrich and others on the right to asylum and the practice relating to asylum in the European Community (Doc. B 2-1064/85),
- having regard to the Universal Declaration of Human Rights of 10 December 1948, in particular Article 14: 'Everyone has the right to seek and to enjoy in other countries asylum from persecution',
- having regard to the Geneva Convention relating to the Status of Refugees of 1951 and the additional Protocol of 1967, which have been ratified by all the Member States,
- having regard to the 'Conclusions on the International Protection of Refugees' of the Executive Committee for the programme of the High Commissioner for Refugees (EXCOM), on which the following Member States of the Community are represented: Belgium, Denmark, France, the Federal Republic of Germany, Greece, Italy and the Netherlands,
- having regard to the particular efforts made by the welfare organizations involved in refugee work, without which it would be impossible to provide housing and care for asylum-seekers in the Member States, and by individual Member States of the Community and local authorities to absorb a disproportionate number of refugees, with considerable administrative, social and financial cost to themselves,
- having regard to the declaration of the General Assembly of the United Nations of 14 December 1967 on territorial asylum¹,

¹GA Res. 2312 (XXII)

- having regard to the United Nations Convention on Torture of 10 December 1984, which was signed by all the Member States of the Community but which only France has so far ratified,
- having regard to the resolutions and recommendations of the Committee of Ministers and the Parliamentary Assembly of the Council of Europe on the legal and social treatment of asylum-seekers¹,
- noting the unanimous view of the experts who gave evidence to its Committee on Legal Affairs and Citizens' Rights that the most appropriate, up-to-date and precise international definition of a refugee is that adopted by Article 1, paragraph 2 of the Convention on Refugees of the Organization of African Unity (OAU) of 10 September 1969,
- having regard to its earlier resolutions on the subject, in particular its requests to the Council and the Commission to put forward proposals for harmonizing visa requirements, laws on aliens, and the right of asylum², the specific appeal to the governments of the Member States not to deport Tamils to Sri Lanka³, and on the drawing up of a common European policy on refugees⁴,
- having regard to the declaration by the representatives of the Member States' governments in the Council of 25 March 1964⁵, to the effect that the wish of refugees who are recognized as such under the terms of the 1951 Convention and are resident in the territory of one Member State to enter a second Member State for the purpose of gainful employment must be given sympathetic consideration by the latter State with a view to ensuring that such refugees are accorded favourable treatment in their territory,
- having regard to the statement on human rights by the representatives of the Member States' governments in the Council of 21 July 1986⁶,
- having regard to Article 2(1) of Council Regulation (EEC) No. 1408/71 of 14 June 1971 on the application of social security systems to workers and their families migrating within the Community⁷, which includes within its scope stateless persons and refugees living in the territory of a Member State and their dependants and descendants,

¹Declaration of the Committee of Ministers of 18.11.1977 on territorial asylum; Recommendation of the Committee of Ministers No. (81)16 of 5.11.1981 on the harmonization of national asylum procedures; Recommendation of the Committee of Ministers No. (84) 1 of 21.1.1984; Recommendation 293(1961) of the Parliamentary Assembly on the inclusion of the right of asylum in the European Convention on Human Rights; Recommendation 773(1976) on the situation of de facto refugees; Recommendations 817(1977), 842(1978), 953(1983) and 1016(1985); the European Agreement on the transfer of responsibility for refugees, with Annex, Strasbourg, 16 October 1980

²OJ No. C 184, 9.6.1983, p.112

³OJ No. C 175, 15.7.1985, p.219 et seq.

⁴OJ No. C 283, 10.11.1986, p.74

⁵OJ No. 1225, 22.5.1964, p.64

⁶Agence Europe, No. 4365, 22-23 July 1986, p.4

⁷OJ No. L 149, 5.7.1971, p.2

- having regard to the White Paper of the Commission to the European Council on completing the internal market of June 1985¹, in which it announces that it will be proposing a directive on the coordination of provisions governing the right of asylum and refugee status not later than 1988,
 - having regard to the Joint Declaration on racism and xenophobia of 11 June 1986²,
 - having regard to the third ACP-EEC Convention (Lomé III) of 8 December 1984, in particular Chapter 1 (Objectives and principles) and Articles 203 to 205 (aid for refugees),
 - having regard to Chapters 92 and 93 of the budget of the European Communities³,
 - having regard to the report by Mrs d'Ancona on behalf of the Committee on Women's Rights (Doc. A 2-44/86)⁴,
 - having regard to the report by Mr Verbeek on behalf of the Committee on Development and Cooperation (Doc. A 2-122/86),
 - having regard to the reports of its Committee on Legal Affairs and Citizens' Rights (Doc. A 2-227/86),
- A. aware of the moral and historical responsibility of the Member States of the European Community towards asylum-seekers and refugees,
 - B. whereas, as a result of the process of decolonization carried out by some Member States, some of the emergent states have artificial frontiers, suffer from structural imbalances, have undemocratic systems of government and are the scene of armed conflicts and civil wars, which create waves of refugees,
 - C. aware of the Community's role today as a leading industrial power in the world economy,
 - D. whereas by means of an effective European development policy and within the framework of European Political Cooperation (EPC) an important contribution can and must be made to economic development and the restoration of peace in the main refugee countries,
 - E. whereas the creation of large groups of refugees can ultimately be prevented by economic progress and political and social stability in the countries of origin,
 - F. whereas the reasons forcing people to flee have changed since the Geneva Convention on Refugees was signed in 1951 and so the definition of the concept of refugee must be changed,

¹COM(85) 310 final

²OJ No. C 158, 25.6.1986, p.1

³OJ No. L 214, 4.8.1986

⁴Resolution of the European Parliament of 11 June 1986, OJ No. C 176, 14.7.1986, p.73, in particular paragraph 48, p.80

- G. believing that the European Community should take the initiative on behalf of the Member States and draw up a proposal for a revised definition of the concept of refugee, with particular references to the Geneva Convention and the Member States' constitutions,
- H. whereas only a small proportion of the 17 to 20 million refugees in the world come to the Community,
- I. convinced that what is an international problem cannot be dealt with by national provisions, because this only means that the problems are passed on to another country,
- J. concerned about the growing practice in the Member States of averting the influx of asylum-seekers, particularly by restrictive visa requirements, and about attempts in certain Member States to restrict the right of asylum by constitutional or procedural changes or restrictive interpretations of the criteria employed in the recognition of refugee status or by violation of the principle of 'non-refoulement',
- K. whereas the inadequate accommodation and care provided for asylum-seekers during the often protracted asylum procedures, in particular the forced assignment to camps, a ban on employment during the asylum procedure, restrictions on freedom of movement, the reduction of social aid and payment of such aid in kind, should be improved,
- L. convinced that all measures adopted in regard to the right of asylum must take as their starting point respect for human dignity, the Convention on Human Rights of the Council of Europe, the UN Declaration of Human Rights and the guidelines adopted by the European Parliament on the drawing up of a European policy on human rights,
- M. convinced that the European Community, as an integrated legal and social area, and with a view to completion of the internal market, must lay down common legal and social standards for asylum-seekers,
- 1. Urges the Member States to adopt a more generous attitude towards asylum-seekers and calls on the Member States to be guided by the following principles in their treatment of those seeking asylum:
 - (a) visa requirements must not make it impossible, or possible only under limited conditions, for people to seek refuge from their own countries;
 - (b) the border, immigration and aliens authorities must respect the principle of not turning away refugees ('non-refoulement') and in particular avoid discriminating against spontaneous asylum-seekers (without visas);
 - (c) applications for asylum should be dealt with thoroughly and rapidly; the decision on the request for asylum should be taken in the Member States by a central authority, including a personal hearing without any preceding examination as to admissibility, during which procedure the applicant can present his case in a language he knows and, if necessary, receive free legal aid;
 - (d) this central authority should be concerned only with consideration of applications for asylum (recognition of status), whereas the police authorities must be responsible for supervision; in other words, there should be an administrative division between recognition of status and supervision;

- (e) the existing international agreements, such as the Geneva Convention on the Status of Refugees, the conventions and resolutions of the Committee of Ministers of the Council of Europe and the texts of the United Nations, must be strictly adhered to;
- (f) the handbook of the Office of the UN High Commissioner for Refugees on procedures and criteria to be applied in order to determine the status of refugees, and in particular the definition of a refugee contained in the Organization of African Unity's Convention on Refugees, should also serve as a basis for the consideration of requests for asylum;
- (g) the provisions of the Geneva Convention ought to apply by analogy to all persons subject to persecution because of their sex¹;
- (h) a distinction must urgently be drawn between the first host country and the country of asylum; applicants for asylum should have a free choice of country of asylum within the Community, and this country should have sole responsibility for granting the right of asylum; national asylum procedures should be harmonized at Community level;
- (i) the reasons for a decision to refuse asylum must be set down adequately in writing;
- (j) the applicant must be notified personally of the decision whether or not to grant refugee status in a text drawn up in a language which he understands and explicitly mentioning the right to appeal in the case of an adverse decision;
- (k) a decision to refuse asylum must ultimately be subject to independent judicial review and appeal, with suspensive effect;
- (l) extraditions may not be carried out while the procedure is in progress;
- (m) the spouse and dependants of an asylum-seeker must be accorded the same position under the law as the asylum-seeker;
- (n) de facto refugees must be treated as recognized refugees during their stay in the country; a time limit can be put on their residence;
- (o) forced assignment to camps, a prolonged ban on employment, protracted residence requirements and restrictions on free movement violate human dignity and should not be permitted, and should in no case be permitted for longer than six months;
- (p) if the procedure exceeds six months, those seeking asylum or refuge and the relatives referred to in paragraph (m) above must be allowed access to the employment market, in accordance with the relevant regulations, and to social security, as well as to education and training in schools and elsewhere;
- (q) the organizations working with refugees must be given financial support and allowed to participate in discussions on policies concerning asylum and refugees;
- (r) recognized refugees in the European Community must have the same rights and obligations as Community citizens from other Member States;

¹See also the resolution of the European Parliament of 13 April 1984, OJ No. C 127, 14.5.1984, p.137, based on the report by Mr Chambeiron, Doc. 1-112/84

2. Expects geographical objections in regard to the Geneva Convention, whereby it is contended that only asylum-seekers from Europe should be recognized as refugees, to be withdrawn without further delay;
3. Calls for the immediate ratification of the United Nations Convention on Torture;
4. Is sure that the Commission will include in the proposal for a directive on the right of asylum announced in its White Paper the principles set out in paragraph 1 of this resolution;
5. Advocates a sharing of the financial burden between the Member States, which are affected in different degrees by the influx of refugees; recommends that the Community budgetary scale be used as a basis therefor;
6. Calls on the Council to take the initiative and ensure better and fuller information for European citizens on the underlying reasons for its refugee policy, with a view to countering doubt about the Member States' responsibility for helping to solve the international refugee problem and to preventing misunderstandings;
7. Requests the Council to ensure that measures are taken in the Member States to provide properly organized education for asylum-seekers and especially their children, so as to improve their chances of understanding our European culture and way of life and to give them, among other things, sufficient command of the host country's languages to enable them to cope effectively with daily life;
8. Asks that the Commission, in cooperation with the European Parliament, appoint a Community spokesman on asylum questions;
9. Calls on the Member States that have not yet done so to ratify the European Agreement on the transfer of responsibility for refugees, with Annex (Strasbourg, 16 October 1980);
10. Instructs its President to forward this resolution and the corresponding explanatory statement to the Council, the Commission, the governments and parliaments of the Member States, the Council of Europe, the UNHCR and the voluntary organizations involved in refugee work.



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B
EXPLANATORY STATEMENT

INTRODUCTION

'L'ignorance, l'oubli ou le mépris des droits de l'homme sont les seules causes des malheurs publics et de la corruption des gouvernements.'

Preamble to the 'Déclaration des
droits de l'homme et du citoyen'
of 26 August 1789

Universal Declaration of Human Rights of 10 December 1948

Article 14(I) :

'Everyone has the right to seek and to enjoy in other countries asylum from persecution.'

General provisions of the Geneva Convention on the Status of Refugees of
28 July 1951

Article 1 : Definition of the term 'Refugee' :

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'For the purposes of the present Convention, the term 'refugee' shall apply to any person who :

1. has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization;

Decisions on non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

2. As a result of events occurring before 1 January 1951, and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country : or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it.'

Article 33, paragraph 1 : Prohibition of expulsion or return (refoulement)

'No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'

Convention of the Organization of African Unity (OAU) on certain aspects of
refugee problems in Africa on 10 September 1969

Article 1(2): Definition of the term 'Refugee'

'The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disrupting public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.'

Constitution of the Italian Republic of 1 January 1948

Article 10 (III) :

'Foreigners, who in their own country are refused the possibility of enjoying the democratic freedom guaranteed in the Italian Constitution, shall enjoy the right of asylum in the territory of the Republic in accordance with the law¹.'

Preamble to the French Constitution of 1958

'Anyone subject to persecution as a consequence of having worked to advance the course of freedom shall have the right to asylum within the territory of the Republic.'

Spanish Constitution of 27 December 1978

Article 13

'... 4. The law shall lay down the conditions under which nationals of other countries and stateless persons may have the right to asylum in Spain.'

Basic Law of the Federal Republic of Germany

Article 16, paragraph II (second sentence) :

'Persons persecuted on political grounds shall enjoy the right of asylum.'

United Nations Convention on Torture of 10 December 1984

Article 3 :

'A Contracting State may not expel, deport or extradite a person to another state, if there are serious grounds for believing that he runs the risk of being tortured there.'

¹implementing laws were not passed

White Paper from the Commission to the European Council

'Measures will be proposed also in 1988 at the latest on the right of asylum and the position of refugees. Decisions will be needed on these matters by 1990 at the latest ...

Directive on the coordination of rules concerning the right of asylum and the status of refugees.'

(Paragraph 55, third indent, 4th sentence and Annex p.12)

The problems

1. The countries of the European Community are increasingly having to contend with problems arising from the influx of refugees from non-Member countries.

The response of the individual Member States in terms of legal and social measures to deal with the influx varies from country to country, although the problems are comparable.

Over the past few years there has been a steady deterioration in the legal and social position of those seeking asylum in the European Community.

2. The Member States are trying to discourage the influx of those applying for asylum by extending the visa requirements for the principal countries of origin.

Visa requirements introduced by certain Member States have had the effect of diverting the applicants for asylum to neighbouring countries in Europe. This in turn leads to a more restrictive approach in these other countries to the legal and social rights of asylum-seekers.

3. The Member States are trying to deal with an international problem by means of national provisions and thereby pass on the burden unilaterally to neighbouring countries. The outcome of these attempts is not a balanced distribution but rather irresponsible asylum policies in Europe.

4. Rules are required to help the Member States to deal with the legal and social aspects of this problem : the European Community, as a single legal and social area and with a view to the completion of the internal market, must lay down binding minimum standards for its Member States, to guarantee those seeking asylum legal security and humane treatment.

Numbers of refugees in the European Community

5. Over the past years there has been a growing influx of refugees from non-member countries, in particular the Third World, into the Member States of the European Community (see Table 2). The first peak occurred in 1980 with 158 500 people seeking asylum. The sharp increase between 1979 (77 600) and 1980 is attributable to a number of factors. The major cause would appear to be the increase in military clashes and internal conflicts bordering on civil war which force people to flee. But the changing national immigration policies of the Member States of the Community are also of significance.

Table 1

Estimated number of asylum-seekers in Europe

(Source : UNHCR, Geneva - latest revision of the figures 19 April 1986)

1972	13 000	1979	77 600
1973	14 000	1980	158 500
1974	19 600	1981	116 500
1975	19 600	1982	80 700
1976	20 600	1983	69 800
1977	29 900	1984	103 750
1978	49 400	1985	167 000/168 000

6. The decline in numbers after 1980 may be due to the coming into effect of the visa requirements introduced by Member States for those countries from which most of the refugees have been coming. The open border between East and West Berlin is of some relevance here and partly explains the new increase since 1984, which has mainly been concentrated in Belgium, France, the Federal Republic of Germany, Denmark and the Netherlands.

The agreement reached between the Federal Republic and the GDR in September 1986 that only refugees with visas should be allowed to go on to the Federal Republic closed this loophole. Since the agreement the number of asylum seekers in West Berlin and the Federal Republic has dropped sharply.

Table 2

Applicants for asylum broken down by country

	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
Belgium	954	1 117	2 427	2 728	2 445	3 056	2 948	3 683	5 357	7 659
Denmark				225	203	298	332	4 312	8 698	6 165 ¹
Federal Republic of Germany	16 410	33 136	51 493	107 818	49 391	37 423	19 737	35 278	73 832	99 860 ²
France				19 863	22 505	22 350	21 714*	28 810*	30 750	
Greece				2 250	1 200	450	750	1 400		
Ireland (no statistics available)									- 50	
Italy				3 600	3 150	3 050	4 550	5 400	5 070 ²	
Luxembourg									59	
Netherlands		993	1 390	754	1 214	2 015	2 603	5 644	1 958 ³	
Portugal						1 500	400	70		
Spain					2 450	1 400	1 100	2 350		
United Kingdom				2 352	2 425	4 223	4 296	3 869	4 859	4
Switzerland				4 226	7 135	7 886	7 435	9 700		
Austria				34 500	6 300	5 898	7 208	6 700		

*Figures supplied by French authorities; according to UNHCR 1984 : 15 900 and 1985 : 23 200

¹until 14 September 1986

²from European countries only

³until 31 June 1986

⁴Home Office figures

7. The actual number of refugees in the different countries is difficult to determine. The United Nations High Commissioner for Refugees (UNHCR) records only those refugees who have been recognized in a country since the Geneva Convention of 1951 came into existence.

Table 3

Refugees recognized as such according to the criteria of
the Geneva Convention in 1985 - 1986

	1 January 1985	1 January 1986	% of total population ¹
Belgium	36 400	36 600	0.37%
Denmark	8 500	8 500	0.17%
Federal Republic of Germany	126 600	134 000	0.21%
France	167 300	174 200	0.31%
Greece	4 100	3 600	
Ireland	500	600	
Italy	15 100	15 200	
Luxembourg	-		
The Netherlands	15 100	15 500	0.10%
Portugal	600	700	
Spain	9 900	9 300	
The United Kingdom	135 000	135 000	0.24%
European Community	519 999	533 200	0.16%
Switzerland	31 200	30 600	0.49%
Sweden	90 600	90 600	1.09%
USA	1 000 000	1 000 000	0.43%
Somalia	700 000	700 000	13.46%
Pakistan	2 500 000	2 702 500	2.80%
Iran	1 900 000	2 300 000	4.73%
Burundi	256 300	267 500	5.80%
Sudan	690 000	1 164 000	3.61%

Source : UNHCR, January 1985 (countries with fewer than 500 recognized refugees are not included)

¹This column refers to the 1985 figures

8. The Office of the UNHCR publishes statistics of refugees every year based as far as possible on official public figures. However, it emphasizes that refugee figures can change within a short time. National statistics do not differ significantly from the UNHCR figures except in the case of the Federal Republic of Germany. The Federal Ministry puts the number of refugees with and without legal status under the Geneva Convention at 605 000 (30.9.85)¹.

These include:

- 59 000 entitled to asylum
- c. 118 000 dependents of those entitled to asylum
- c. 31 000 quota refugees, who have been accepted within the framework of humanitarian relief operations
- c. 52 000 stateless foreigners
- c. 5 000 refugees from abroad recognized as such, with their relatives
- 220 000 de facto refugees.

This assessment has been much criticized in the Federal Republic itself and also by the UNHCR, which gives a figure of 126 000 refugees recognized according to the Geneva Convention.

The UNHCR criticizes the German figures for the following reasons:

- (a) Refugee figures should only include refugees who have refugee status as defined by the Geneva Convention.
- (b) The figure for those entitled to asylum includes 10 000 quota refugees who had applied for asylum before the law on quota refugees came into force. These 10 000 are included again in the figure for quota refugees. Moreover, for each of the 10 000, two relatives have been included.
- (c) The inclusion of relatives in the figures has, furthermore, been erroneously based on the assumption that refugees' relatives are never awarded refugee status in their own right.
- (d) The figure for de facto refugees should only include those whose application for asylum has been rejected but who cannot be deported to their earlier and first country of asylum or who have been granted a residence permit pursuant to Paragraph 14(1) of the Law on Foreigners².
- (e) Stateless foreigners are a special group of refugee which does not exist as such in other European countries. Since a large number of them came to Germany in the first years of the war and many of them were born there, they are not a relevant factor as regards integration and the refugee burden.

The example of the Federal Republic illustrates the difficulty of making a uniform assessment of asylum-seekers or refugees in the Member States of the Community. If the Community wants to have comparable data as a basis for a common refugee policy, it must first endeavour to establish common criteria.

9. The actual extent of the burden represented by the influx of asylum-seekers into the Member States cannot be deduced from the UNHCR figures. Yet these are the only comparable data as yet available, being based on uniform methods of calculation.

¹The figure at 11.9.86 is 670 000

²In accordance with Article 33 of the Geneva Convention

It has become clear to the rapporteur as he travelled about the Member States that an increasing number of refugees in the Community are tolerated without appearing in any statistics. These so-called de facto refugees, who do not apply for asylum or whose application has been rejected, are not officially acknowledged in certain countries or there are no estimates of their numbers there. According to figures from the Federal Ministry of Internal Affairs, there are 270 000 de facto refugees in the Federal Republic of Germany who, for humanitarian or political reasons, are not being deported to their own country; according to estimates by the French Ministry for Foreign Affairs, there are some 30 000 in France; in Italy the number is put at 20 000 by the UNHCR representative, at 100 000 by the Ministry for Internal Affairs and at 400 000 by 'Caritas'; in Spain, welfare organizations estimate the number at 500 000.

10. The Federal Republic of Germany, Denmark, Belgium and the Netherlands are experiencing the steepest rise in the number of people seeking asylum. In Belgium the number of asylum-seekers has more than doubled in the past five years, in Denmark it has grown by a factor of 40 and in the Netherlands it has tripled. In the Federal Republic of Germany about 100 000 asylum-seekers are expected in 1986. The other Member States report relatively constant numbers of applicants. Yet there, too, there was a slight increase in 1985.

It is striking that France and the UK have fewer spontaneous asylum-seekers than the Federal Republic, but that they offer protection to more recognized refugees. This is due in part to the fact that both these countries accepted large quotas of refugees from Indochina and Latin America (Chile) in the 1970s.

11. When estimating the trend in numbers of asylum-seekers in Europe it is necessary to make comparisons with non-member states in order to obtain an objective picture of the actual situation. According to the UNHCR's figures (see Table 3) there were 533 200 recognized refugees in the European Community as at 1.1.1986. If the group of de facto refugees and other asylum-seekers not included in this estimate are added, the total could be 1 million refugees and asylum-seekers in the countries of the European Community.

12. Compared with countries such as Somalia, Pakistan and Iran, the numbers of refugees in Europe are relatively small, as is the proportion of the total population in the community which they represent. This does not however permit the conclusion that the influx of asylum-seekers into Europe presents no problems for the Member States.

According to UNHCR estimates there are some 17-20 million refugees worldwide and 980 out of every thousand refugees want to be allowed to stay in their neighbouring countries. This must be taken into account when there is political talk of 'regionalization'¹ of groups of refugees. So only a small part of the 'flood' of asylum-seekers is arriving in the Member States of the Community.

Reaction of the Member States

13. In the many conversations that the rapporteur was able to have during his fact-finding visits with representatives of the UNHCR, welfare organizations, government and party representatives, it became clear that the influx of asylum-seekers and the attendant problems in regard to accommodation and social assistance are being evaluated and dealt with very differently in the different countries.

¹This refers to the tendency for refugees to stay in the regions of the world from which they come

The Member States are affected by these problems in varying degrees. About 80% of refugees in the European Community are concentrated in Belgium, Denmark, the Federal Republic of Germany, France, Italy, the United Kingdom and the Netherlands.

14. A distinction must be drawn between countries with relatively constant figures and those which have had increasing numbers of 'spontaneous' refugees in the last few years. The latter countries are Belgium, Denmark, the Federal Republic of Germany and the Netherlands. Here the increase in numbers is regarded as a real problem.

Thus, for example, Belgium was forced last year to put up asylum-seekers in holiday accommodation on the Belgian coast or in an unoccupied barracks in Brussels. Certain districts in Brussels with a high percentage of foreigners have, in the meantime, introduced a ban on asylum-seekers. In the Federal Republic of Germany and in West Berlin, 'tent towns' have been erected as makeshift accommodation for those seeking refuge. In Denmark the reception camp in Copenhagen - an empty barracks - has been continuously overfull for several months and there have been physical clashes between residents and refugees there as in the Federal Republic of Germany. Hostile remarks about foreigners are heard from many quarters, not only from hard-right minorities.

15. In the United Kingdom, France, Spain and Italy the 'refugee problem' is compounded by the 'immigrant problem'. A typical remark was: 'We have no refugee problem'. One factor here might be that about 80% of those seeking asylum choose the capital cities London, Paris, Madrid and Rome as the place of refuge. In these cities, regarded as the melting-pot of many nationalities, asylum-seekers are often provided with basic essentials by their fellow-countrymen and quickly absorbed into the community. They then share the same fate as the many other immigrants.

Italy, which has always regarded itself as a country of emigrants, is increasingly becoming an immigration country for refugees, because most of the Eastern Europeans who come to Italy have difficulty obtaining entry visas for the USA, Canada or Australia. Refugees who had thought of Italy as a transit country are now being forced to stay there.

16. The reactions of Member States to the problem may be summarized as follows, although not applicable to all of them in the same degree:

- In all the countries visited by the rapporteur the influx of asylum-seekers is seen as a short-term phenomenon. There is no forward-looking consideration of how the refugee problem in Europe and elsewhere can be solved in a properly humane manner. Nor have there been any attempts within the framework of the European Community to take positive action to deal with the refugee problem. Even after the entry of larger groups of refugees at the end of the seventies, no preventative measures were taken to provide arrangements for their reception and integration.

- Instead, attempts to check the influx of asylum-seekers were made by extending the visa requirements for the countries from which most of the refugees were coming (Iran, Sri Lanka, India, Afghanistan, Turkey, Pakistan, the Lebanon, Ghana, Zaire, Ethiopia and Poland).

- The failure of such a move is evident from the increase in numbers of refugees which occurred at the beginning of the eighties. The introduction of national visa requirements merely meant that asylum-seekers were diverted to neighbouring countries in Europe. The governments, partly with a view to the dismantling of internal frontiers, encouraged cross-frontier cooperation between national police and border authorities, as provided for in the

Saarbrück agreement between France, the Federal Republic of Germany and the BENELUX countries. Even such cooperation between the police authorities has done basically nothing to prevent refugees barred from entering one country from simply turning to neighbouring countries.

- Attempts to restrict the right of asylum and change asylum procedures are being made in the Federal Republic of Germany, Denmark and Belgium. In France, changes to the immigration regulations were introduced in July 1986 (conditions on entry, residence permits), but it is too early to estimate the effects which these will have on those seeking asylum. In Italy, too, changes in the laws governing foreigners are being considered. Moreover, the criteria are being interpreted in differing and, in some cases, restrictive ways in the Member States.

- The accommodation and care provided for the asylum-seekers while awaiting the outcome of their application - a procedure which often takes years - must be described as deficient and partly even non-humanitarian in almost all countries. Here again, practices differ from Member State to Member State.

Some of the treatment meted out to refugees in the Federal Republic of Germany can only be described as inhumane. The Federal Government admits that the intention is to turn asylum-seekers away from the Federal Republic by measures to 'reduce its attractiveness', such as a compulsory stay in camps, a prohibition on working, restrictions on freedom of movement, a ban on cooking, reductions in welfare benefits or payment of such in the form of vouchers to obtain goods.

- An important role is played by the numerous welfare organizations, which provide considerable help for the asylum-seekers by way of legal aid and social care with the help of public and private means, thereby lightening the lot of the new arrivals. Without the work of these organizations it would be impossible to provide accommodation and care for those seeking asylum in the Member States. Their importance can hardly be regarded highly enough.

- Since the Member States of the Community and the other countries of Western Europe are attempting - in accordance with the St Florian principle - to deal with an international problem by national measures, they are neither coping with the problems nor finding a European solution.

Access for asylum-seekers to the Member States of the Community

17. Since the beginning of the eighties the Member States of the Community - and other Western European countries - have increasingly tended to close their borders to refugees from non-member countries, in particular from the Third World. The rapporteur has still not been able to obtain exact information from government representatives regarding visa requirements and instructions to consulates and airlines on how to deal with those seeking entry. The following synopsis of visa requirements is therefore incomplete.

18. Belgium brought in compulsory visas in respect of entrants from the principal countries of origin in 1983 and this was extended to other countries in January 1986. Airlines can now be made responsible and liable to recourse if they transport refugees without visas.

19. Denmark has a general visa requirement applicable to most refugee countries. Under a special agreement reached at the end of 1985 between the German Democratic Republic, Denmark and Sweden, people from the Near East, Middle East and South-East Asia can only receive a transit visa from the GDR if they have a valid entry visa for Denmark or Sweden. The main purpose was

to check the influx of Tamils which had recently increased. Since September 1986 a monitoring procedure has been carried out at the frontier to enable 'obviously unfounded' applications from spontaneous asylum-seekers to be rejected within 48 hours. Changes in the aliens' law allow asylum-seekers without a valid passport and an entry visa to be refused entry at the border if they have already found accommodation in another country or their lives are not in danger in their home country.

Heavy fines can be imposed on airlines carrying asylum-seekers without valid papers.

20. In 1980 the Federal Republic of Germany made entry visas compulsory for people from the major 'refugee countries'. The situation at the border between East and West Berlin, however, was somewhat anomalous. Asylum-seekers arriving at Schönefeld Airport - in the GDR - or overland through the GDR were able to cross the open border between East and West Berlin into the Federal Republic without a visa. Under Berlin's four-power status traffic between East and West Berlin is regarded as being between the two parts of Germany and is not subject to border checks. In 1985 the government of the Federal Republic took steps to ensure that Tamils from Sri Lanka would not be issued with transit visas for onward travel to the Federal Republic unless they held valid visas for the Federal Republic. In the autumn of 1986 this was extended to include all refugee countries of origin. According to an Amnesty International report, the Federal Republic's embassies in non-member countries often refuse to issue visas to asylum-seekers on the grounds that their lives are not in immediate danger. Since 1986 airlines carrying refugees without visas are liable to heavy fines and can be made responsible for flying the refugees back to their country of origin.

21. In France nearly everybody from Third World countries has had to have an entry visa since 1981. Asylum-seekers without a valid visa are said to have often been refused entry in the past. However, there is an agreement whereby persons who are refused entry to the country can inform Amnesty International or CIMADE (Ecumenical Inter-Aid Service). Since 15 September 1986 all foreigners - except EEC nationals and the Swiss - are required to have a visa.

22. Italy signed the Geneva Convention of 1951 and the additional protocol of 1967, but has nevertheless made use of the clause in Article 1,B(1) of the Geneva Convention relating to geographical limitation. According to this, only persons who have left their own homeland because of events which have occurred in Europe may be recognized as refugees. In practical terms this means that officially only those seeking asylum from Eastern European states - in addition to quota refugees - have a chance of entering Italy and obtaining recognition as refugees. People seeking asylum from Africa are receiving generous treatment in Italy.

23. Most of those seeking asylum in Spain come from Latin American countries with special links with Spain and therefore generally require no visa (Cuba is an exception). For nearly all other countries there is no visa requirement.

24. In the United Kingdom foreigners must in principle have a visa to enter the country. Exceptions are nationals from Commonwealth countries, who merely need an entry clearance. Although in principle there is no visa requirement for Commonwealth countries, in 1985 - after the Netherlands and the Federal Republic of Germany had tried to restrict access for Tamils so that more and more Tamils were turning to the United Kingdom - a visa requirement was imposed for Sri Lanka. Because of the public controversy aroused by this measure, it was described as temporary. An asylum-seeker on the way to the United Kingdom needs a transit visa to pass through other countries. This

creates problems in cases of countries in which there is no visa requirement for the United Kingdom itself. Requests for transit visas or other information regarding destination made known at intermediate stops before arrival in the United Kingdom are recorded by the police and passed on to the United Kingdom, so that the immigration officers are often notified in advance. Airlines may not transport persons without visas.

The visa requirement, which was originally limited to Sri Lanka among Commonwealth states, has recently been extended to nationals of India, Bangladesh, Ghana and Nigeria. Nationals of Pakistan, which left the Commonwealth in 1972, now need a visa.

25. The result of this 'closed border' policy is for refugees to look for loopholes by which to bypass the visa requirements or to enter the desired country illegally. 'Helpers' are also hired for the purpose. Transport organizations cash in on the plight of the refugees.

However, it cannot automatically be assumed that spontaneous asylum-seekers who make use of such organizations are not suffering from political persecution and are abusing the right of asylum. On the contrary, indeed, most refugees, even those that are not recognized as such, are given the right to stay or to reside on humanitarian or political grounds. An eloquent example of this was provided in July 1986 in the Federal Republic of Germany, which received most of the spontaneous asylum-seekers from Iran and the Lebanon. There can be no doubt in anybody's mind that the majority of these refugees have fled from military conflict, systematic persecution and torture and the fear of persecution.

Asylum procedures and access thereto

26. The principle of non-return ('non-refoulement') of a person seeking asylum at the state border is now a generally recognized principle of international law. In other words, if such a person requests asylum at the border, his request must be received. The rapporteur cannot confirm public allegations that some Member States have turned back refugees at the border and thus violated this principle¹.

27. It is impossible to estimate exactly how far the principle of non-refoulement has been eroded by restrictive visa policies and a requirement in some cases that airlines vet passengers' visas before departure.

28. Obviously there have been and are moves to repeal the principle of non-refoulement, above all in those countries which are faced with a sharp increase in the number of those seeking asylum there. Denmark withdrew a bill which would have had such an effect in 1985, but has now introduced a procedure which undermines the principle of non-refoulement. In the Spring of 1986 the French Government introduced a bill which was withdrawn after strong criticism by refugees welfare organizations. Since July 1986 new entry rules for foreigners have been introduced the effects of which it is too early to estimate. In the Federal Republic of Germany, leading representatives of the governing coalition expressed the view that legal measures were needed to make it possible for asylum-seekers to be turned away at the border.

¹ There have, however, been reports in the press of deportations which the rapporteur has not been able to examine, such as the return of 60 Lebanese to Beirut in July 1986 from the border of the Federal Republic and a number of cases at Zaventem Airport in Belgium

29. Even though the rapporteur cannot as yet adduce the exact implications of existing practice and the measures being proposed, he must nevertheless draw attention to international and regional conventions on human rights, which include the principle of non-refoulement among the principles to be defended by the contracting states.

30. In its declaration on territorial asylum of 14 December 1967, the United Nations General Assembly confirmed the principle of non-refoulement (Article 33 of the Geneva Convention): no-one who can invoke Article 14 of the Universal Declaration of Human Rights ('everyone has the right to seek and to enjoy in other countries asylum from persecution') can be turned back at the border or deported from the territory.

In 1977 the UN convened a conference with a view to the adoption of an agreement enshrining an internationally underwritten right to asylum. It failed to achieve its objective because no decisions were reached and it has not yet been reconvened as planned.

31. The Member States of the European Community, Belgium, Denmark, France, the Federal Republic of Germany, Greece and the Netherlands have repeatedly emphasized their recognition without reservation of the principle of non-refoulement, even in cases where a non-member state is demanding the extradition of a refugee or asylum-seeker. All these states are members of the Executive Committee of the Programme of the High Commissioner for Refugees (EXCOM).

32. The Council of Ministers of the Council of Europe, in its Recommendation of 5.11.1985 on the harmonization of national asylum procedures, laid down that the principle of non-refoulement applies to all those who have a justified fear of persecution. The attention of the border authorities and all other authorities concerned was to be drawn to the need to respect the principle.

33. When an asylum-seeker makes his request at a state border, the procedure for granting refugee status follows the same course in principle in all the Member States:

- After the request has been registered in a police records department, the immigration board or other authority responsible for foreigners receives the application and decides on its admissibility.

- A central office decides on the question of refugee status.

34. The first stage is of crucial importance to the subsequent course of the procedure. The immigration officials carry out the preliminary interviews which form the basis for the central procedure. The rapporteur was therefore very surprised to find that at this important stage in most of the countries there was insufficient provision for translation by trained interpreters and insufficient legal advice. The legal advice is generally given by representatives of the UNHCR or refugee welfare organizations. There is no regular provision of translation. In the Federal Republic of Germany an applicant for asylum can, if he decides to take legal action, claim public assistance to pay the costs of the case.

35. Some countries have authorized the border authorities or those responsible for immigrants or aliens to decide whether an application is admissible. So even at this early stage the application is examined to see whether it warrants consideration. The rapporteur does not know which criteria are used for this decision except in the case of Germany and Belgium. In both these countries they are at least defined unambiguously.

Example: In Belgium the aliens department decides on the admissibility of requests for asylum by means of the following criteria, whether or not the applicant arrived by regular or irregular means:

- whether the application was submitted within the prescribed time-limits;
- whether the applicant, after fleeing or leaving his own country, has remained no longer than three months in another country and left it of his own free will before entering Belgium;
- whether an application for asylum had already been made in a non-member country.

36. If the applicant satisfies these criteria, his request is passed on to the central office. If he fails to satisfy them and the authorities concerned reject him, he has the right to appeal and most applicants avail themselves of this right. In Belgium, for example, some 10% of applications for asylum are declared inadmissible by the aliens department.

37. In this connection two problems arise: the criteria for the admissibility or non-admissibility of the application for asylum are applied differently in the Member States insofar as they exist at all. When an asylum-seeker has already submitted an application in a non-member country, that is not normally taken account of in the asylum procedure. Therefore, there are no clear rules on which country is responsible for examining the application - and this has already been pointed out by the Parliamentary Assembly of the Council of Europe and EXCOM.

Example: In France, a Decree of 27 May 1982 defines the criteria for the admissibility of an application for asylum from a spontaneous asylum-seeker. It does not, however, spell out possible grounds for rejection.

Example: In Denmark amendments to the aliens law of 19 December 1985 have made it possible to use a simplified procedure for the rejection of an applicant. If his application 'is obviously unfounded', he can be expelled with the cooperation of the Danish refugee aid organization after a shortened procedure (48 hours at the border post!). There is no possibility of appeal. Nor is there any clear guidance on when an application is obviously unjustified.

38. EXCOM, at its 30th meeting in 1979, drew up principles regarding the question of which country should be responsible for examining an application for asylum: as far as possible the applicant's own wishes should be respected. Asylum should not be refused simply because another state can be applied to. Agreements which allow people who have entered countries illegally from another contracting state to be sent back there may be applied in the case of asylum-seekers only when their particular situation has been taken into account.

At its 33rd meeting in 1982, EXCOM also proposed that the decision as to whether an application for asylum is obviously unfounded or abusive may only be taken by the authority which is responsible for deciding on the question of refugee status, at least not without reference to that authority.

39. Undoubtedly, given the different monitoring procedures, there is a need for provisions to be laid down between the Member States of the European Community and also within the framework of the Council of Europe to define which country is the first country of asylum and when an application for asylum is obviously unfounded.

40. The Parliamentary Assembly of the Council of Europe, in its Recommendation 1.016/1985, calls on the member countries to jointly define the concept 'first country of asylum' in order to improve the position of refugees 'in orbit'. These are refugees who have been driven from one country to another because they have already submitted an application for asylum in their home region or another country.

Example: A refugee from Ethiopia flees to the Sudan. Therefore, the Sudan is his first country of asylum. If he is forced to remain there more than three months, he will not normally be accepted in the Federal Republic of Germany or Belgium. Often refugees are forced to go from one country to another, because they are not allowed in after a three-month stay in the neighbouring country or are the victims of repressive measures. This often means that refugees who have already been on the move for several months and finally reach Europe will destroy their papers to prevent anyone establishing how long they have stayed in another country.

41. The second stage in the asylum procedure before the central authority is much the same in most of the Member States of the Community.

In nearly all these countries there are joint boards composed of representatives from the ministries responsible, the UNHCR, independent judges and even representatives of refugee welfare organizations.

The Federal Republic of Germany appears to be an exception here: the central authority is composed of high-level officials who decide on the question of refugee status. On the grounds that uniform legislation is required in all the Federal Laender for questions of recognition, the Federal Republic has appointed a Federal Commissioner for asylum matters, who is subject to the authority of the Federal Ministry for Internal Affairs. He can raise objections to any decision by the central authority. In many cases his intervention means that the procedure drags out for much longer. For example in 1985 an administrative court recognized more than 3 000 Tamils as victims of political persecution. When the Federal Commissioner raised an objection the procedure was passed on to the next highest court. In the end the Federal Administrative Court refused to grant the Tamils recognition as political refugees.

42. It is noticeable that in almost all the Member States the asylum procedure, that is from the moment of the applicant's arrival at the state border until the decision to grant or deny him refugee status, is increasingly tending to take longer.

Thus, for example, in Belgium the average period is one year. In individual cases it can take several years, in particular when the refugee receives a rejection from the second authority and takes legal action. In 1986 alone some 1 500 cases have not yet been dealt with because of the increased numbers.

In Denmark, too, the responsible authorities are hardly managing to keep up with the demand. With 1 400 cases still not dealt with in 1986 the recognition procedure is lasting for between 8 and 12 months, and longer if an appeal is lost. 35% of applicants initially refused recognition succeed in getting the refusal overturned on appeal.

In the Federal Republic of Germany it takes on average 12 months before a decision is reached by the central authority. The elaborate legal process on which the rejected applicant can embark may make the procedure last as long as seven years.

In France, the United Kingdom and the Netherlands, applicants for asylum generally have to wait for up to two years or longer before a decision is reached, and in Spain and Italy at least one year.

43. In almost all countries, therefore, suggestions are being made for speeding up the procedure either by increasing staffing levels in the central authority or by changing the procedure itself.

44. Until now, Belgium has been the only country in the Community to allow the representative of the High Commissioner for Refugees to decide whether refugee status should be granted. In the opinion of the UNHCR and the Belgian Government, however, government representatives should be directly involved in the decision-making in future.

45. A special problem for Germany is the political decision on whether or not to recognize citizens from Eastern European countries. Every national of an Eastern European country who wants to stay in the Federal Republic must undergo the recognition procedure, though it is unimportant whether refugee status is recognized or not. In the case of Poles this goes so far that they are forced to submit a request for recognition as victims of political persecution even when they do not claim to be such themselves. This is the only way that they can obtain the status of de facto refugees. Both politicians and representatives of the welfare organizations have already on several occasions called for these groups of refugees to be left out of the recognition procedure, since they are placing an extra unnecessary burden on the authorities concerned.

46. The rules governing appeals or objections vary considerably from Member State to Member State:

In the United Kingdom, when the Home Office rejects an application the possibilities of appeal depend on whether the applicant is in possession of a valid visa: if he is, he can - with the help of the Refugee Unit of the UK Immigrants' Advisory Service (UKIAS), which in principle is informed whenever an application is refused - lodge an appeal first with an arbitration tribunal and then with an ordinary court.

If he is not in possession of a valid visa, he can only appeal again to the Home Office with appropriate help from the voluntary welfare organizations referred to above. The same authority which has rejected his application can review its decision. A judicial appeals procedure does not exist.

It should be mentioned that Members of Parliament have the right to intervene and therefore occasionally succeed at the last minute in preventing an immigrant from being deported.

In France there is a two-stage appeals procedure. Criticism is heard of the manner in which the written justification of a refusal is drawn up.

In Italy and Belgium no formal legal procedure is laid down. However, the asylum procedure can be resumed if new facts become available. Moreover, Belgium intends to introduce the right to appeal when the asylum procedure is amended.

The Federal Republic of Germany provides a multi-stage process for appeals within the framework of administrative jurisdiction. If this is fully exploited it is another reason why the procedure can take so long.

Denmark provides an appeal authority. With 'simple cases' a three-man commission makes a decision on the issue, otherwise the large, seven-man appeals chamber sits. Approximately one-third of the appeals lodged are successful.

47. The rapporteur draws attention to Recommendation No. 81 of the Committee of Ministers of the Council of Europe of 5.11.1981 on the harmonization of national asylum procedures. The Committee of Ministers recommends that common procedural safeguards for those seeking asylum be laid down, and proposes the following principles:

- (a) The decision on whether to grant asylum should be taken by a central authority.
- (b) The border authorities and all other departments concerned should be given clear instructions on how to deal with a request for asylum and, in particular, they must be informed of the need to take account of the principle of non-refoulement.
- (c) While the procedure is continuing, the applicant must be permitted to remain in the country of refuge unless his request is fraudulent and bears no relation to the criteria of the Geneva Convention.
- (d) The asylum procedure should include the appeal. Even at this stage the applicant should be allowed to remain in the country of refuge.
- (e) He shall be provided with all the assistance he requires in regard to the procedure and his rights must be explained to him. He should be enabled to make contact with lawyers, representatives of the High Commissioner for Refugees and welfare organizations.

If these recommendations are taken as a yardstick for evaluating the asylum procedures in the Member States, it can be said that up to now, although there have been grounds for criticism on many points, there have been no serious violations of these principles.

Protection from extradition

48. As may be seen from the recommendations of the Committee of Ministers on the harmonization of national asylum procedures, applicants for asylum may remain in the country of refuge throughout the procedure, unless their application is fraudulent and bears no relation to the criteria of the Geneva Convention.

The rapporteur has learned of a number of cases in which deportation or extradition was carried out, although the procedure for recognition of refugee status was not yet completed (France). In view of the special significance of extradition, it is necessary to insist that, in accordance with the recommendation of the Committee of Ministers, no extradition should take place before completion of the recognition procedure.

In 1977 the Parliamentary Assembly of the Council of Europe took up this question in its Recommendation 817. It went beyond the recommendation of the Committee of Ministers and proposed that the organs of the European Commission on Human Rights be given power of decision in disputes over extradition. This has not yet happened.

De facto refugees

49. It became clear to the rapporteur during his visits to the Member States that there is an increasing number of refugees who have not been given refugee status but are tolerated in these countries for humanitarian and political reasons (de facto refugees).

In the Federal Republic of Germany this is the case, for example, with refugees from Iran, Afghanistan, the Lebanon and the Eastern European countries. According to the Federal Ministry of Internal Affairs there were approximately 270 000 de facto refugees in 1985.

In Italy, too, these de facto refugees present a serious problem. As already mentioned, estimates of their numbers vary considerably. The UNHCR representative gives an estimate of 20 000, the Italian Ministry for Internal Affairs 100 000 and 'Caritas' 400 000.

In France, Spain, Belgium and the United Kingdom there are officially no de facto refugees. The only distinction made is between refugees and other foreigners. In the United Kingdom, those asked were unable to give any statistics. According to an estimate by an official in the French Ministry for Foreign Affairs, about 30 000 de facto refugees are living in France. In Spain the welfare groups estimate the number there at 500 000.

For the local communities in the Federal Republic of Germany and Belgium, the existence of these groups of refugees is creating considerable financial problems. According to the present systems in these two countries the local authorities have to provide the financial support for these de facto refugees and asylum-seekers during the asylum procedure. In the case of asylum-seekers the expenditure is refunded from federal or 'Land' resources. In the Federal Republic the local authorities receive no compensation for de facto refugees.

50. The Parliamentary Assembly of the Council of Europe considers that there is a clear need for the member countries to adopt a uniform approach to this problem. In a recommendation from 1976 on the situation of de facto refugees, the Parliamentary Assembly observes that people who are unable or unwilling to return to their country of origin for political, racist, religious or other important reasons, need to be treated more favourably than foreigners generally. The Parliamentary Assembly calls on the Committee of Ministers to draw up an agreement which would give de facto refugees a residence permit, a work permit and travel documents. Furthermore, the Parliament Assembly urges that de facto refugees should be treated according to the principle of non-refoulement and as many articles of the Geneva Convention as possible should be applied to these people (Articles 17, 23, 24, 32, and 33).

The Committee of Ministers has taken up this recommendation and decided (Recommendation No. 84 of 25.1.1984) that the application of the principle of non-refoulement within the meaning of Article 3 of the Geneva Convention must also be ensured for non-recognized de facto refugees.

Criteria for determining refugee status

51. The principal legal instruments governing the right of asylum are
- (a) the Convention on the Status of Refugees of 28 July 1951, known as the Geneva Convention,
 - (b) the Protocol on the Status of Refugees of 21 January 1967,
 - (c) the Statute of the Office of the High Commissioner for Refugees of 14 December 1950.

For the granting of asylum or the determination of refugee status, all the member countries of the European Community make direct or indirect use of Article 1, A of the Geneva Convention with the exception of the Federal Republic of Germany, where the right to be granted asylum is based on Article 16, paragraph 2, p.2 of the Basic Law.

52. The Geneva Convention defines a refugee as a person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it.

53. The concept of persecution as accepted by the Contracting States to the Geneva Convention of 1951 had in view mainly policies of a discriminatory nature pursued by the State apparatus of a country.

54. If the Geneva Convention is compared to the constitution of its forerunner in the field, the International Refugee Organization (IRO) of 1946, it will be seen that the latter contained provisions not only on the protection of refugees but also on the protection of displaced persons. The IRO extended protection to a much wider circle and, in addition to the persecution of individuals, also included refugee movements directly resulting from the Second World War.

55. The Geneva Convention seemed at the time an adequate legal instrument for the protection of refugees in Europe. The vast majority of refugees came from the East bloc countries, where persecution was mainly perpetrated directly or indirectly by State departments. The Geneva Convention, drawn up in the aftermath of the Second World War, answered the needs of the new international situation.

As with the provisions of the Geneva Convention so, too, today the criteria governing the recognition of refugees reflect a new view of the problems. Thirty-five years on, the concept of State persecution as a decisive criterion for the recognition of refugees is being interpreted in a new way. The Western countries of Europe are increasingly becoming a place of refuge for people from the Third World escaping from politically unstable situations, armed internal conflict or an economically hopeless situation.

56. The High Commissioner for Refugees has continually issued new guidelines for recognizing refugee status, which the rapporteur is presenting in another section.

57. From statistics on the numbers granted refugee status and a breakdown according to country of origin, it is possible to draw conclusions about the way in which refugee status is defined in the individual countries. Below is a table of the relevant figures, insofar as they were made available to the rapporteur.

Table 4

Numbers granted refugee status, by country

	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
<u>Belgium</u>	<u>88.6%</u>	<u>81.5%</u>	<u>83.6%</u>	<u>67.3%</u>	<u>43.6%</u>	<u>46.8%</u>	<u>38%</u>	<u>47.2%</u>
<u>Denmark</u>		<u>55.5%</u>	<u>42.8%</u>	<u>48.0%</u>	<u>44.9%</u>	<u>25.5%</u>	<u>72.6%</u>	
<u>Federal Republic of Germany</u>	<u>14.0%</u>	<u>12.0%</u>	<u>7.7%</u>	<u>6.8%</u>	<u>13.7%</u>	<u>26.6%</u>	<u>29.2%</u>	<u>16.2%</u> (8/86)
<u>France</u>				<u>56.0%</u>	<u>51.0%</u>	<u>45.0%</u>	<u>31.0%</u>	<u>39.4%</u>
<u>Greece</u>								
<u>Ireland</u>								
<u>Italy Geneva Convtn</u>	<u>8.0%</u>	<u>82.8%</u>	<u>24.0%</u>	<u>21.7%</u>	<u>20.2%</u>	<u>15.0%</u>	<u>5.5%</u>	<u>4.0%</u>
<u>UN Mandate</u>		<u>54.0%</u>	<u>71.5%</u>	<u>59.6%</u>	<u>69.4%</u>	<u>59.8%</u>	<u>45.2%</u>	
<u>Luxembourg</u>								
<u>Netherlands</u>								
<u>Portugal</u>								
<u>Spain *</u>								
<u>United Kingdom</u>		<u>45.6%</u>	<u>51.5%</u>	<u>32.5%</u>	<u>20.3%</u>	<u>16.8%</u>	<u>17%</u>	

* The 1985 law is too recent for conclusions to be drawn

Principal countries of origin, according to frequency

<u>Belgium</u>	: Ghana, Turkey, India, Iran (1985)
<u>Denmark</u>	: Sri Lanka (1986)
<u>Federal Republic of Germany</u>	: Sri Lanka, Poland, Turkey, Ghana, Pakistan, Afghanistan, India (1984); Iran, Lebanon, Palestine, Poland, Turkey, India, Ghana, Sri Lanka, Bangladesh, Pakistan (1986)
<u>France</u>	: Vietnam, Kampuchea, Sri Lanka, Ghana, Zaire, Turkey, Poland (1985), Zaire, Turkey, Vietnam, Kampuchea, Ghana, Sri Lanka (1986)
<u>Italy</u>	: Eastern Europe (Poland)
<u>Spain</u>	: Iran, Cuba, Poland, Chile, Iraq, Uruguay (1986)
<u>United Kingdom</u>	: Ethiopia, Ghana, Iran, Iraq, Pakistan, Somalia, Sri Lanka, Uganda (1985)

58. As can be seen from Table 4 the numbers of those granted recognition as refugees vary greatly from country to country in the European Community. This is an indication that different criteria are being applied, since the countries of origin of the refugees are similar. Tamils from Sri Lanka, Lebanese, Iranians, Turks, Ghanaians, Pakistanis, Afghans and Poles are entering all the Member States.

If the percentages of applicants recognized as refugees e.g. in 1982 in Denmark, the Federal Republic of Germany and France are compared, the difference can be as much as 50%. The Federal Republic recognized only 6.8% of refugees in that year, Denmark 48% and France 56%.

59. The figures in regard to Tamils from Sri Lanka and Turks also illustrate clearly the wide variation in the recognition of refugee status: In Denmark some 90% of Tamils are granted recognition in accordance with the Geneva Convention. In the United Kingdom and the Federal Republic only a small percentage are recognized; refugees from Turkey are virtually all granted recognition, in the Federal Republic approximately 10%.

60. The rapporteur is unable to produce evidence to support allegations by representatives of welfare organizations that the authorities concerned are interpreting the Geneva Convention in a restrictive manner. For this he would need to have internal statistics which were made available only in the case of the Federal Republic of Germany. The percentages for France, Belgium, Denmark, Italy and the United Kingdom indicate however that there has been a steady decline in the numbers granted recognition since 1982. Undoubtedly, the way in which the criteria are interpreted depends to some extent on the particular relationship between the European country and the country of origin. The way in which diplomatic representations evaluate political developments in the European country is also an important factor. All these considerations are taken into account during the recognition procedure.

61. Even though the proportions granted recognition in the different countries vary considerably and in some cases are very small, this does not mean to say that the refugees are not given a temporary residence permit or permission to remain in the Member States for other humanitarian or political reasons. In the Federal Republic about two-thirds of those seeking asylum are not granted recognition. Those from certain countries such as Iran, Ethiopia, the Lebanon and above all the Eastern European countries are thereafter tolerated and not deported to their home countries. From what the rapporteur has learned, most of the Member States of the Community do not carry out large-scale deportations.

62. In practice this means an indirect extension of the concept of refugee, which takes account of the changed situation in regard to refugees throughout the world. The Member States recognize that the traditional concept of political persecution by the State as the main cause of the refugee problem can no longer be regarded as a valid explanation for the refugee phenomenon of today's world (between 17 and 20 million refugees).

However, the German Bundestag decided when it amended the law on the asylum procedure in November 1986 that applications for asylum should not be granted if the applicant's sole motive was to escape from a war.

63. Widespread violence, serious social and economic development problems, hunger and disease, and natural disasters often lie behind the decision to flee from the home country. A study carried out by Prince Sadruddin Aga Khan, former High Commissioner for Refugees, into the causes of mass movements of refugees, lists the following: wars and revolts, the breakdown of law and justice, repression and anarchy, persecution and the denial of social equality of opportunity and general fears about the future. Religious and ethnic minorities are often not recognized as full members of society and are deliberately driven from their country.

64. Armed clashes and internal conflicts are a worldwide phenomenon. The London Sunday Times has shown in a study that one-quarter of all nations in the world are currently involved in armed conflict. Most of the world's refugees are homeless because of such conflicts. They flee from the senseless brutality and serious deterioration in social, economic and physical conditions brought about by military and other forms of violence: armed conflicts are nothing other than a form of human rights violation.

65. While it is true that the states often set national sovereignty above the protection of human rights, they have nevertheless, by signing the legally binding United Nations Charter (Article 1, No. 3 of the Charter), recognized that they have a responsibility for promoting human rights. State sovereignty should serve precisely this function.

66. The present guidelines of the High Commissioner for refugees for determining the right to refugee status recommend the following interpretation of the concept of persecution: if certain social groups in the population suffer at the hands of another section of the population, e.g. through acts of serious discrimination, such treatment can be viewed as persecution if it happens with the authorities' knowledge or if the authorities refuse or show that they are unable to afford those concerned effective protection. Internal conflicts, serious unrest or a state of war may mean that a person cannot avail himself of the protection of his country or such protection is ineffective.

67. If a person leaves his country for economic reasons the underlying factors must be examined carefully. If his financial situation is desperate, this may also be the result of persecution by the State. If economic measures adopted in the home country are directed again a particular section of the population and destroy their chances of economic survival, the object and intention behind the measures may be of a racist, religious or political nature.

68. In consequence, the interpretation of the Geneva Convention by the High Commissioner for Refugees recognizes that persecution may include persecution by third parties, provided that such persecution answers the above description as set out in the Convention, namely persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.

69. In practice the provisions governing refugees and the definition of the concept 'refugee' in the resolutions of the UN General Assembly and the Executive Committee have acquired a new dimension. They now include among refugees people who flee from catastrophes caused by human action. The High Commissioner for Refugees is required to take action on behalf of people who must be given assistance according to the fundamental principles of protection under international law.

70. Other significant differences have developed between the definition of refugee according to the Geneva Convention and the Basic Law of the Federal Republic as a result of the extensive case-law concerning applications for asylum. In its decision (BVerwGE 62.123) of 1981, the Federal Administrative Court set out the so-called objectivity doctrine. According to this, the most important and determining factor in an application for asylum is not the subjective element of well-founded fear of persecution, as provided in the Geneva Convention, but the question of whether the persecutor has been politically motivated in his treatment of the person concerned. This doctrine has had an impact in particular in cases of requests for asylum on grounds of torture and political and general prosecution. Only when the torture is

politically motivated is asylum granted. For the determination of refugee status in other cases, the proportionality theory is applied: this is based on the concept of the individual applicant's well-founded fear, combined with the decisive objective factors creating the fear. Here, the motivation of the persecutor or the prosecuting State is only of secondary importance. The important factor is the concept of fear combined with the applicant's political opinion, race or religion, membership of a particular social group or nationality and the justified reasons for that fear.

71. The Anti-torture Convention¹, which has not yet been ratified in the European Community except by France, casts a new light on the question of who is a refugee and who is entitled to stay in the country under international law. According to Article 3(1) of the Convention, no Contracting State will extradite, return or deport someone to another country if there are valid reasons for believing that he is in danger of being subjected to torture there. The basic principle of non-refoulement has precedence over any other commitment entered into, for example in an extradition treaty. The Anti-torture Convention closes gaps resulting from the Geneva Convention or e.g. Federal German case-law. If an applicant is refused refugee status, he still has the possibility of claiming the right to stay in the country of refuge under Article 3(1) of the Anti-torture Convention.

72. Developments in regard to the right to asylum in the case-law of the European Court of Human Rights and the decisions of the European Commission on Human Rights show that the European Convention for the Protection of Human Rights can also play an important role in cases concerning the right to asylum. For an asylum-seeker it might be more effective to evoke this convention than the international agreements on refugees if the latter are not recognized in his country of refuge as independent sources of law, as for example in the United Kingdom, Denmark and Ireland.

The case-law in regard to the right of asylum established by the above Court and Commission is based mainly on the following articles of the said European Convention for the Protection of Human Rights and Fundamental Freedoms: Article 3 prohibiting torture, Article 4 prohibiting slavery and forced labour, Article 8 on respect of privacy and Article 13 on means of appeal against the violation of the rights or freedoms enshrined in the Convention.

73. One particular problem arising from the Geneva Convention and the case-law in general is that persons who are not persecuted because of some particular characteristic or membership of a particular group but are living in the crossfire of political conflict and civil war do not come under the Geneva Convention. In particular, sexual persecution - as for example in Iran - is not covered by the Geneva Convention and the related jurisprudence. The provisions of the Convention ought to apply to all those who are persecuted because of their sex or sexual difference².

74. The African countries, which are the most affected by movements of refugees, are aware of this, and in 1969 they drew up their own convention on refugees, which came into force on 20 June 1974 (United Nations Treaties Series No. 14691).

¹of the United Nations of 10.12.1984

²See the report by Mrs d'Ancona on violence against women, Doc. A 2-44/86, and the corresponding resolution adopted by Parliament on 11 June 1986, OJ No. C 176, 14.7.1986, p.73

This was made necessary by the limitations of the Geneva Convention, because the specific nature of the refugee problem in Africa is not comparable to that on which the Geneva Convention was based.

The OAU Convention is designed as a regional supplement to the Geneva Convention, and Article 1 echoes the Geneva Convention's definition of a refugee. However, the OAU document classifies as refugees other groups of asylum-seekers not covered by the Geneva Convention, such as people fleeing from war, occupation, civil war or similar situations.

Article 1(2) of the OAU Convention reads:

'The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disrupting public order in either part or the whole of this country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.'

The OAU definition does not cover all displaced persons in Africa without exception. It excludes, for example, people fleeing from natural disasters.

The OAU Convention is a step forward because it is based exclusively on objective criteria and not on the subjective fear of persecution.

The Member States of the Community should move with the political times and attach paramount importance to the individual seeking protection. The term refugee should therefore be used of anyone forced to flee from outside aggression, occupation, foreign rule or civil war.

In the absence of specific provisions, asylum-seekers are often only able to claim the general protection afforded by regional and international human rights agreements. The objective of international law must, however, be to lay down principles regarding the rights of a persecuted individual which are generally recognized in all countries.

Social provision for asylum-seekers during the asylum procedure

75. Following the influx of large groups of refugees at the end of the seventies into the Member States of the European Community, no special arrangements were made for receiving or integrating them. In many countries it is assumed that the influx of people seeking asylum is only a temporary phenomenon and that no special arrangements need setting up. The tendency has been to deny the problem until it became obvious that the number of spontaneous refugees was steadily increasing.

76. So it not surprising that most of the reception centres for refugees consist of former barracks, schools, hospitals and - as in the Federal Republic now because of the large influx - 'tent towns', building sites or sports halls. During his visits to the Member States, the rapporteur saw a great many different kinds of reception centres: some equipped with poor sanitary arrangements, buildings whose condition ranged from good to seriously defective, dormitories containing from two to 50 or even 80 beds, in which people were looked after by a large number of helpers or by only a single warden, centres where medical care is provided and others, the majority, where it is not. He could go on indefinitely describing his impressions. Instead, he refers readers to the reports on the different countries.

Public expenditure on refugee work

77. The rapporteur endeavoured as far as possible to obtain figures on the expenditure on refugee work by the individual states, since this is of importance when it comes to considering burden-sharing. It was learned from the responsible Ministry in Belgium that in 1985, Bfrs 329 million (c. 7 563 218 ECU), and for the second half of 1986 an additional Bfrs 20 million (c. 459 770 ECU), were made available. In Denmark, the Danish refugee organization confirmed that it receives between Dkr 800 and 900 million (100 - 113 million ECU) each year from the Danish State for integration programmes for recognized refugees. It was impossible to discover how much is spent on asylum-seekers.

According to data from the French Ministry for Foreign Affairs, France spends about FF 1000 million (145 million ECU). This includes the expenditure of all the ministries concerned with refugee welfare. The United Kingdom gives about £600 000 each year to the refugee welfare organizations (875 712 ECU) from which they claim personnel and administrative costs.

Italy spends about Lit 28 000 million (19.3 million ECU) and Spain about Ptas 1000 million (7.3 million ECU) for asylum-seekers.

The Federal Republic of Germany spent DM 2000 million (952 million ECU) in 1985.

Access to the employment market

78. Since those seeking asylum are often housed during the asylum procedure in communal accommodation with hardly any facilities for passing the time or special integration measures, access to the employment market is a matter of great importance. For those seeking asylum it is generally extremely difficult to get a job. The British Refugee Council and the French 'Terre d'Asile' - both refugee welfare organizations - have found that, although asylum-seekers are given a work permit, only 20% find jobs. But at least the fact that they are allowed to work in these countries produces a different attitude which gives them courage and confidence. In France, asylum-seekers may take up employment one month after submitting their applications and in the United Kingdom after six months, although it should be mentioned that applicants who were questioned knew nothing about this rule.

In Belgium an asylum-seeker can get a job if his application has been judged admissible and the employer applies for a temporary work permit.

In Denmark, Italy, Spain and the Federal Republic of Germany, asylum-seekers are not allowed to work during the whole of the asylum procedure, although in Italy illegal employment is tolerated by the authorities. Changes to the law on the asylum procedure in the Federal Republic in November extended the ban on employment from three years to five (four in the case of wives and 2 for children). Eastern bloc refugees are not allowed to work for at least one year.

Access to social security systems

79. As a general rule, asylum-seekers do not enjoy the same rights as nationals as regards access to the system of social security (health insurance, unemployment benefits, accident insurance and pensions).

In Belgium, France and the United Kingdom, access is allowed if the asylum-seeker can prove that he has a job.

In the other countries it is not allowed or only to a limited extent.

Education and training

80. During the asylum procedure, applicants have virtually no chance of taking part in vocational training schemes. In some countries the children of asylum-seekers are allowed to go to primary school (Belgium and Spain) and young people are allowed to attend colleges of further education or university (France). Language courses are provided by nearly all countries (Denmark since this autumn - 1986). Where these are not provided by State departments, the welfare organizations and the UNHCR offer courses. In the United Kingdom, vocational training measures are financed by the European Social Fund. The programme 'for combating poverty in the European Community' also includes various measures in favour of refugees.

Restriction of movement

81. Under the law governing the asylum procedure in the Federal Republic of Germany there are restrictions on asylum-seekers wishing temporarily to leave the place where they are staying. They are required to remain within the district controlled by the aliens authorities. Exceptions can be made. This rule exists only in the Federal Republic of Germany.

Yardsticks for social treatment

82. The Parliamentary Assembly of the Council of Europe deals comprehensively in its Recommendation 1.016 (1985) with the living and working conditions of refugees and asylum-seekers, focusing in particular on unhumanitarian methods of transport, the length of the procedure, accommodation and questions of burden-sharing. The Parliamentary Assembly deplores in particular the protracted procedure, the fact that refugees are forced to live in communal accommodation and in most countries have no right to social benefits and cannot take up employment. It calls on the governments of the member countries to reach an agreement as soon as possible on shortening the procedure. The view of the Assembly was that the procedure should not exceed one year.

83. The World Council of Churches, a non-government body, in its declaration of May 1984 speaks against the use of camps to deter those seeking refuge and against the publication and dissemination of reports about a ban on jobs, the existence of camps and the denial of social protection to discourage people from seeking asylum.

84. The European Consultation of Refugees in Exile, a non-government umbrella organization of refugee welfare organizations in Western Europe, in a recommendation of January 1985 proposes that asylum-seekers should be immediately granted an indefinite residence permit, the right to freedom of movement, respect for their private life and human dignity, the right to employment and social welfare, including practical language courses, vocational training and legal and social counselling.

Recognized refugees

85. If an asylum-seeker is recognized according to the criteria of the Geneva Convention, his rights follow from the Convention relating to the Status of Refugees of 28 July 1951, the Protocol relating to the Status of Refugees of 31 January 1967 and the Statute of the Office of the High Commissioner for Refugees of 14 December 1950.

The Geneva Convention contains provisions on the legal and social position of the refugee, e.g. the right to work, access to training, right to travel documents.

The rapporteur was only able to obtain a limited picture of the social and legal position of recognized refugees in the countries visited. It was clear that the position of recognized refugees varied from Member State to Member State - for example as regards practical access to the employment market, the period of residence required before citizenship is recognized, etc. A point worth special mention is that in Denmark recognized refugees enjoy the same rights as Danish citizens apart from the right to vote in elections to the Folketing. However, they may - like all foreigners - take part in local elections after residing in the country for an unbroken period of three years.

86. Recognized refugees criticized the fact that they enjoy only limited freedom of movement within the Community. A recognized refugee in France for example receives a three-month visa for the Federal Republic of Germany, after which he must return to France. The European agreement on the abolition of visas of 1959 provides that recognized refugees in the Contracting States at least should no longer require a visa. In view of the completion of the European internal market and in particular the dismantling of controls at internal borders a desirable objective would be to enable recognized refugees to enjoy unlimited freedom of movement within the Community.

Concept of burden-sharing

87. The size of the refugee problem, in particular the number of spontaneous asylum seekers, is different in each of the Member States. In some countries, especially the Federal Republic of Germany, the governments consider that the resources for accommodating and caring for asylum-seekers are already fully stretched.

For a Community of states such as the European Community it seems only natural that these burdens should be shared with understanding between all countries.

88. The Member States of the European Community, which are also members of the United Nations, have indicated that they accept this approach. In the Declaration on Territorial Asylum of 14.12.1967 the United Nations declares: 'where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State'. At the sitting of the 11.12.1980 the UN Member States called for international cooperation to avert new flows of refugees and for an equitable sharing of the burden. The Parliamentary Assembly of the Council of Europe also calls in its recommendation 1.016/1985 for a sharing of the burden among the member countries. The idea of such cooperation needs to be examined in greater depth and must be linked with practical proposals.

89. In some Member States of the European Community access to the country of refuge is already governed by a quota system¹. France, the Federal Republic of Germany, the United Kingdom, Denmark, Italy and Spain - to name just a few - have accepted group after group of quota refugees from Vietnam, Afghanistan or Chile over the past few years. This quota system has proved its value in the past and should be introduced into those countries which have not yet considered it.

¹Everyone who arrives in a Member State under this system is automatically granted refugee status

90. But a fixed quota should not exclude the possibility of allowing in additional numbers of spontaneous refugees. The advantages of a quota system is that the countries concerned are better able to plan and prepare for the awaited influx of refugees. When they arrive in the country of refuge they do not need to go through a selection or recognition process. The integration of the new arrivals can be carried out more effectively. By such a quota system many of those who have been tolerated in Europe as so-called de facto refugees simply for humanitarian reasons are granted refugee status immediately. To a 'quota refugee' such a system, which can be administered more effectively and quickly, will undoubtedly seem more humane than one which entails the uncertainty and rigidity of a long recognition procedure. The registration of the refugees settling in Europe could be organized through cooperation with the UNHCR, as is done, for example, within the framework of special programmes for quota refugees.

There are also cost benefits from a quota system. The cost involved in receiving a given number of people under the quota system would probably be less than if they were dealt with as spontaneous asylum-seekers. The costs of the recognition procedure and above all maintenance do not arise under this system, because the recognized refugees earn their own livelihood, provided that they can find work. This also means that more people can be helped for the same amount of money.

91. The quota rates could be fixed according to the per capita gross national product and the population of a country. The effect of the quota system would be greater if all the Western European countries were to take part, not only those of the European Community.

92. The concept of burden-sharing takes as its starting point the individual asylum-seeker who requests asylum at our borders and who must be allowed in by the particular country of refuge in accordance with the principle of non-refoulement. Every country must be initially responsible for those who seek asylum in its territory. Since some countries are receiving a larger influx of refugees than others, some way of redistributing the costs must be found.

93. The attempt to find the means for such redistribution entails recognizing that the states have difficulty in agreeing to accept new burdens. For this reason - and also for the sake of achieving comparability in the treatment of asylum-seekers and refugees in the Member States - there is a strong case for using the only device which is functioning more or less effectively: the Community budget.

If this concept of burden-sharing were to be accepted by the Community, it would be necessary to provide a common basis for decisions by bringing the preconditions applicable for the granting of asylum in the different countries into alignment with one another and approximating the procedures.

The virtue of this approach is that it places the individual person, who should be protected by the international agreements on human rights, in the centre, leaving him to decide where and how he will seek protection from the international community.

The protection of human rights under international law, which applies to all mankind, cannot be confined to a limited number of people. Combined with an international policy to avert movements of refugees, burden-sharing is the best way of achieving the aims of the international agreements on human rights.

The European Community's role in regard to the world refugee problems

94. The European Community, which regards itself as an economic, legal and social community, has two-fold responsibility in regard to refugees:

- responsibility in regard to asylum-seekers and refugees seeking protection in Europe,
- responsibility in regard to refugees outside Europe, living in their 'developing countries'.

The Community's responsibility stems from:

- a general humanitarian and moral obligation towards people in need;
- the special historical role of Europe as a former colonial power;
- the Community's present role as a leading industrial power;
- the commitment made in international and European treaties, agreements and conventions to respect human dignity and human rights and actively promote them.

The European Community's role vis-à-vis refugees outside Europe

95. The present situation in the Third World countries needs to be seen in its historical context. The countries of the European Community are bound up to a greater or lesser extent with the history of these countries by their colonial past.

96. The example of Africa will serve to show how the colonial past is still affecting these countries today.

In Africa there are several millions of refugees. Of the present Member States of the Community, Germany, France, Portugal, the United Kingdom, Belgium, the Netherlands, Spain and Denmark were represented at the Berlin conference on Africa of 1884. This conference resulted in the colonial division of Africa, a division which took no account of the geographical, economic, social or political facts of African life. It left a legacy of artificial frontiers and structural imbalances. These artificial frontiers are a heavy burden for countries which have now been released from colonial power, and a source of destructive conflict. Because of the frontiers established in colonial days tribes and groups with differing social structures, customs, traditions and languages are forced together into single national states, in which one group of the population often claims power and authority over others.

The new independent states were also left with a heavy economic legacy. Of the 31 poorest countries in the world, 21 are in Africa. Exploitation and the destruction of traditional ways of life have undermined century-old structures for survival. Together with the problems of hunger, over-population, unemployment and natural disasters, this offers fertile ground for social conflict. Between 1945 and 1979 there were 1 967 armed conflicts in the world. More than a quarter of these occurred in Africa and claimed some 4 million lives.

97. The Community must in the long term effect a change of direction in development aid to help promote the resolution of conflicts in all Third World countries and to prevent the creation of large groups of refugees. The Community's special relations with the ACP countries offer a starting point. Since its foundation the Community has had a particular relationship with some of the Third World countries based on the EEC Treaty. Article 131 provides that all non-European countries and territories which have special relations with Belgium, France, Italy, the Netherlands and the United Kingdom should be associated with the Community. In this way the economic development of these countries and that of the Community were unavoidably bound up with one another. Yaoundé I and II and Lomé I, II and III together form a body of agreements geared to specifically defined forms of cooperation.

98. In the Lomé Convention the Community has extensive machinery with which to help to satisfy the basic needs of the people of the ACP states and to enable the right to development of individuals and nations to become a reality. The declared aim of Lomé to overcome the difference in development between industrial and developing countries means that the Community has declared its readiness to adjust traditional international law, in particular economic law, to the development needs of the developing countries¹.

99. Against the background of such a European development policy conceived in these terms, the idea of 'regionalization' of the refugee problem, of which so much is heard in the debate on asylum, acquires a new significance. This is the concept whereby refugees should remain in their own region, near their home country, and be helped there. If regionalization and development programme are integrated, the influx of refugees to Europe will eventually diminish.

The Community's role in regard to refugees in Europe

100. There are between 500 000 and 1 million asylum-seekers in the European Community. The legal and social situation of these people leaves a great deal to be desired. The Member States must therefore be urged to ensure that they are treated humanely during their stay.

101. Over the past five years the European Parliament has adopted numerous resolutions directly or indirectly concerned with the position of asylum-seekers. Relevant also are the Parliament's request to the governments of the Member States not to deport any Tamils to Sri Lanka² and its requests to the Council and the Commission to submit proposals for harmonizing visa requirements, the laws on aliens and the right of asylum³.

102. The European Commission took account of this request in its White Paper⁴ relating to the further development of the Community and the completion of the European internal market.

¹cf. The Verbeek report, Doc. A 2-122/86

²OJ NO. C 175, 15.7.1985, p. 219 et seq.

³OJ No. C 184, 9.6.1983, p. 112

⁴COM(85) 310 final

The Commission's intention to respond positively has been demonstrated by the fact that the President of the Commission appointed an official from his Institution to accompany the rapporteur on his fact-finding visits.

103. In the preamble to the EEC Treaty the Contracting Parties agree to promote the economic and social development of their countries by concerted policies. In Article 117 they agree to promote improved living and working conditions for workers and to make possible their harmonization while the improvement proceeds.

The concept of social progress enshrined in Article 117 also embraces the social situation of those seeking asylum. Social progress must extend to all those who live in the territory of the European Community. Basic social rights cannot be tied to a particular nationality. The term 'workers' in Article 117 must also be interpreted as meaning every person who is available to the Community's employment market. A special programme for improving the social situation of the asylum-seekers and refugees living in the European Community is therefore justified on the basis of Article 117¹.

104. All the Member States have endorsed the UN Convention on Refugees and some of them the UN Anti-torture Convention. Therefore, the basic preconditions for coordinating legislation and practice relating to asylum in the legal area of the European Community already exist.

If the Community wishes, as a Community of states, to afford refugees in Europe a humane existence, the same laws and the same practices must apply for these people in all the Member States. Redistribution of resources between the Member States, which are affected in different degrees by influxes of refugees, must be carried out by means of the Community budget.

It is essential that Europe, this major industrial community, should play an effective part in promoting political peace and economic development in the crisis-torn areas of an indivisible world.

¹Also see Article 2(1) of the Council Regulation (EEC) No. 1408/71 of 14 June 1971, OJ No. L 149 of 5.7.1971, p. 2, according to which this Regulation, which is regarded as a basic social law, also applies to refugees and their dependents.

EUROPEAN PARLIAMENT

COMMITTEE ON LEGAL AFFAIRS AND CITIZEN'S RIGHTS

Notice to Members

No. 51/86

The following experts have accepted invitations to attend the hearing on the right of asylum organized by the Committee on Legal Affairs and Citizens' Rights to be held in Brussels from 3 p.m. to 7 p.m. on 25 September 1986:

- Mrs Henrietta TAVIANI, President of France Terre d'Asile
- Dr Peter LEUPRECHT, Director, Human Rights, Council of Europe
- A representative of Amnesty International
- Mr Philip RUDGE, Project Secretary, European Consultation on Refugees & Exiles
- Dr Manfred ZULEEG, Professor of Public Law, University of Frankfurt
- Mr Gilbert JAEGER, Chairman of the Comité Belge d'Aide aux Réfugiés
- Mr P.M. MOUSALLI, UNHCR representative in Belgium

In preparation for the hearing, Members will find attached copies of the motions for resolutions tabled pursuant to Rule 47 of the Rules of Procedure which have been referred to Mr Vetter for consideration in drawing up his own-initiative report. Members will also find the first working document (PE 95.895) and the summary reports drawn up by the rapporteur on his visits to the Office of the UN High Commissioner for Refugees in Geneva, the Federal Republic of Germany, Belgium, the United Kingdom, Italy and Denmark. The summary reports on the visits to France and Spain will be forwarded at a later date.

DIRECTORATE-GENERAL FOR COMMITTEES
AND DELEGATIONS

Annexes

4 August 1986/hm

122/85

EUROPEAN PARLIAMENT

Working Documents

1984-1985

3 October 1984

DOCUMENT 2-619/84

MOTION FOR RESOLUTION

tabled by Mrs HEINRICH, Mr GRAEFE ZU
BARINGDORF, Mrs CASTELLINA and Mr SCHWALBA-HÖTH

pursuant to Rule 47 of the Rules of Procedure

on asylum for Basque refugees in France

The European Parliament,

A. Whereas,

under Article 14 of the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10.12.1948, everyone has the right to seek and to enjoy in other countries asylum from political persecution,

under the recognized principles of international law, bi-lateral extradition agreements do not permit extradition for trial or punishment in cases where extradition is requested for political or politically motivated offences or for political purposes,

political asylum in France has a long tradition and constitutional status,

no-one may be extradited to a country which ignores the ban on torture and inhuman treatment as set out in Article 5 of the UN Universal Declaration of Human Rights, Article 3 of the European Convention on Human Rights and Article 7 of the International Covenant on Civil and Political Rights,

B. whereas,

the Court of Appeal (Cour d'Appel) in Pau in two decisions of 8.8.1984 approved the extradition of eight Basque refugees to Spain suspected of being members of the Basque independence movement ETA and having taken part in armed attacks against the Guardia Civil,

the Basques imprisoned awaiting extradition began a hunger strike on 9.8.1984, when the decisions on extradition were known, to avoid the torture and inhuman treatment which they must expect if they are extradited to Spain,

the prisoners threatened by extradition are currently in an extremely critical condition in the Fresnes prison near Paris and are being fed forcibly,

torture and inhuman treatment against Basque members of ETA, or suspected members of ETA, persist despite the end of the Franco dictatorship according to reports by Amnesty International, the Association of Euskadi priests, the bishops of the Basque dioceses, the Bilbao and San Sebastian Committee of Lawyers, the Basque members of the Spanish parliament, the Madrid Group of Young Lawyers, the Pro-Human Rights Association and many local authorities throughout the Basque region, and between 1.1.1981 and 30.6.1984 more than 3500 cases of torture and ill treatment have been recorded in police stations,

1. Calls on the Council of State of the French government, in particular the Prime Minister and Minister of Justice, and the President of the French Republic, to remember the undertaking given at the beginning of their period of Government in May 1981 to respect the right of political asylum even between western European states and not to permit persons to be extradited who, like the Basques with Spanish nationality, have to remain in France to avoid political persecution in Spain;
2. Requests the President of the French Republic to refuse extradition to Spain;
3. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

EUROPEAN PARLIAMENT

Working Documents

1984-1985

16 October 1984

DOCUMENT 2-754/84

MOTION FOR A RESOLUTION

tabled by Mrs HEINRICH

pursuant to Rule 47 of the Rules of Procedure

on the forced deportation of Basque refugees
by the French Government

The European Parliament,

A. whereas

1. under Article 9 of the Universal Declaration on Human Rights, proclaimed by the United Nations General Assembly on 10 December 1948, no one may be subjected to arbitrary exile,
2. the principles and practices of international law demand that, prior to the enforcement of a deportation order concerning him, a foreign national be given the option of emigrating or being deported to a country of his choice which is willing to accept him,
3. this principle is also recognized in French law,
4. the fundamental right of respect for human dignity, and both Article 13 of the Universal Declaration on Human Rights and Article 12 of the International Covenant on Civil and Political Rights, forbid that anyone be deported by force to a country which he wishes neither to enter nor make his place of residence,

B. having regard to the fact that

1. the French Government has since 11 January 1984 been resorting to the practice of expelling Basque refugees and deporting them to countries outside Europe, without allowing them the option of emigrating or being deported to a European country or other country of their choice,
2. 27 cases of forced deportation of Basque refugees to countries outside Europe have occurred to date, viz. deportations to
 - (a) the Dominican Republic (Eugenio Echeveste),
 - (b) Cuba (José Antonio Múgica Arregui, José Antonio Lárretxea, Jesús Abrisketa Corta, Carlos Ibarguren, Pello Ansela and Juan Miguel Arrugaeta San Emeteri),
 - (c) Panama (José Antonio Zurutuza Sarasola, Juan Luis Zuzuarregui Redondo, Juan Carlos Arriarán, José Ignacio Otaegui Múgica, José Angel Urtiaga Martínez, Ascensión María Arrate, Julian Tena Balsera and Juan José Aristizabal),
 - (d) Venezuela (Jesús Urteaga, Enrique Barrutiabengoa, José Arruti, Juan Sáenz Trecu, María Arzola, José Antonio Gastón, José Luis Ayestarán and Venancio Sebastián),
 - (e) Togo (Izaquirre Mariseal, Galdos Oronos, Castrillos Allende and Alberti Beristain),
1. Calls on the President of the French Republic and the French Government to grant political asylum to Basques who have fled to France and cease all forms of expulsion and deportation of Basque refugees, and especially their forced deportation;
2. Instructs its President to forward this resolution to the Council, the Commission and the Governments and Parliaments of the Member States.



European Communities

EUROPEAN PARLIAMENT

WORKING DOCUMENTS

English Edition

1985-86

23 May 1985

SERIES B

DOCUMENT B 2-371/85

MOTION FOR A RESOLUTION

tabled by Mr van der LEK

pursuant to Rule 47 of the Rules of Procedure

on the treatment of Tamil refugees from Sri Lanka by
the governments of the Member States of the European Community

The European Parliament,

- A. whereas in the present situation in Sri Lanka members of the Tamil minority are exposed to the danger of arbitrary arrest, torture and execution by the security forces,
 - B. whereas, in view of these circumstances, Amnesty International has urged the various governments not to return any members of the Tamil minority to Sri Lanka against their will,
 - C. whereas the High Commissioner for Refugees takes the same view and has made an official request to the same effect to the Western European governments,
 - D. whereas the governments of many Member States have failed to reply to this request and that as a result the Tamils who have fled to these countries are in a particularly insecure situation,
 - E. whereas the recent meetings of the CAHAR committee and the Council of Europe's Parliamentary Assembly on the Tamil question produced no results,
 - F. whereas an agreement has been reached at government level to close the 'open border' in Berlin,
 - G. whereas, in accordance with the statement by the High Commissioner, it must be made absolutely clear that members of the Tamil minority are to be seen as political refugees and are to be received as such ,
 - H. whereas the influx of Tamil refugees is creating serious problems for various countries in Western Europe and elsewhere,
 - I. whereas, however, these problems can and must be solved in a humanitarian manner by means of a compassionate policy towards refugees,
1. Calls on the governments of all the Member States to follow the recommendations made by the High Commissioner for Refugees with regard to members of the Tamil minority;
 2. Requests the governments of all the Member States to draw up as a matter of urgency guidelines for a Community policy, based on these recommendations, on the reception, treatment and protection of Tamils seeking political asylum;
 3. Requests the governments of the Member States to abandon plans for closing the 'open border' in Berlin;
 4. Instructs its President to forward this resolution to the governments and parliaments of the Member States, the Council, the Commission and the Sri Lankan authorities.



European Communities

EUROPEAN PARLIAMENT

WORKING DOCUMENTS

English Edition

1985-86

4 September 1985

SERIES B

DOCUMENT B 2-786/85

MOTION FOR A RESOLUTION

tabled by Mrs HEINRICH

pursuant to Rule 47 of the Rules of Procedure

on extradition laws in the Community

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De.-sps.td

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PE 107.655/Ann.I/fin.

The European Parliament,

- A. having regard to the efforts to approximate the laws of the Member States of the European Community,
- B. dismayed at the fact that these efforts have made most progress not in the field of democratic participation in and control over national, social and economic institutions or undertakings, but in the field of state repression,
- C. whereas an approximation of law and practice is taking place, in particular where state powers are used to control, monitor and punish personal and political conduct, for example through international police cooperation, the compilation and exchange of data on Community citizens, their criminal prosecution, their extradition for prosecution or punishment, or through the practice frequently adopted between Member States of illegal deportation, to avoid formal extradition proceedings.
- D. having regard to the practice followed by most Member States and their organs of justice of suspending or limiting the ban on extradition for political crimes, especially in dealings between Member States, as called for in the Council of Europe Convention on the combating of terrorism (ratified by three Member States) and highlighted by the extradition of Basque refugees from France to Spain (motion for a resolution of 5 October 1984, Doc. 2-651/84),
- E. given the present legal situation, whereby Community citizens who have found refuge from extradition in one Member State are limited in their freedom of movement even within the Community, because they run the risk, when visiting another Member State, of being extradited to the Member State or third country that is seeking their extradition, owing to the bilaterally limited application of international extradition treaties and procedures,
- F. convinced that the creation of a European legal area of repression must be countered by strengthening the legal position of Community citizens with regard to repressive state measures,
 1. Recommends most strongly that Community citizens who have found refuge from extradition in one Member State should be able to move freely within the Community, without having to fear deportation or extradition to another Member State or to a third country;
 2. Calls on the governments of the Member States:
 - (a) not to grant any further extraditions of Community citizens who have already found refuge from extradition in one Member State, regardless of whether the extradition is being sought by another Member State or by a third country;
 - (b) not to pursue further the extradition of Community citizens who have already found refuge from extradition in a Member State;
 3. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.



European Communities

EUROPEAN PARLIAMENT

WORKING DOCUMENTS

English Edition

1985-86

17 October 1985

SERIES B

DOCUMENT B 2-1064/85

MOTION FOR A RESOLUTION

tabled by Miss HEINRICH, Mr GRAFF ZU BARINGDORF,
Mr STALS, Mr HERMAN and Mr VERBEEK

pursuant to Rule 47 of the Rules of Procedure

on the right to asylum and the practice relating
to asylum in the European Community

The European Parliament,

- A. having regard to the obligation on the Member States under international law to grant asylum to political refugees,
- B. having regard to the 1951 Geneva Convention on refugees and the additional protocol of 1967,
- C. whereas only a fraction of the approximately 12-15 million refugees in the world are entitled to asylum in accordance with the Geneva Convention on refugees which requires the applicant for asylum to harbour a justified fear of persecution on grounds of race, religion, nationality, membership of a certain social group or their political conviction,
- D. whereas millions of other refugees who do not enjoy the protection of the Convention have left or are leaving their country because the economic and social situation there appears hopeless or because they are seeking safety from internal unrest, armed conflict or hunger,
- E. concerned at the growing deterioration in the legal and de facto situation on entry and during their stay of those seeking asylum in the countries of the European Community,
- F. having regard to the practice in certain Member States of restricting the opportunities for refugees to leave their country by requiring an entry visa which must be checked by airlines,
- G. whereas the Federal Republic of Germany was criticized by the UN High Commissioner for refugees (UNHCR) in 1983 and subsequent years for its 'unique deterrent measures' against those seeking asylum but nevertheless continues its practices in violation of the Geneva Convention on refugees,
- H. whereas these practices in violation of international law consist mainly in directing those seeking asylum to camps in which there are often totally unacceptable hygienic conditions, forbidding them from taking up work and providing social aid largely in the form of so-called vouchers to obtain goods so that they appear to their social environment as second class citizens,
- I. whereas the consequence of the degrading treatment of those seeking asylum in the Federal Republic of Germany is that refugees are increasingly seeking asylum in other Member States which in turn are attempting to stem the increased flood of people seeking asylum by similar deterrent measures,
- J. seeking to counter the trend under which the situation of refugees in the European Community as a European judicial area is determined by the Member State which exerts the most repressive measures against people seeking asylum

- K. concerned that certain Member States, in particular the Federal Republic of Germany, expel or extradite people seeking asylum to countries in which they are threatened by torture and political persecution as is the case with the extradition of Turkish or Kurdish seekers of asylum to Turkey or Basque refugees to Spain,
 - L. deeply disturbed at the fact that the Courts in the Federal Republic of Germany, notwithstanding the less than glorious history of German jurisprudence under national socialism, justifies this extradition practice by arguing that the danger of having to anticipate torture in the country of origin does not represent grounds for asylum,
 - M. having regard to the constant attempts by certain Member States to restrict the right of asylum, especially in relations between western European states, by removing the ban on extradition for political offences under the pretext of combating terrorism,
 - N. seeking within the European Community to establish basic positions on the right of asylum and asylum policy which place the protection of refugees for reasons of international law and on humanitarian grounds above the wishes of the Member States to avoid additional social costs,
 - O. whereas the quota of refugees accepted varies greatly in relation to the population figures of the Member States and that the western European states as a whole only grant asylum to a relatively small number of the world's refugees,
 - P. convinced that the Community should use its economic and political influence to a greater extent in international efforts to avoid creating large flows of refugees through a policy to safeguard peace and appropriate economic measures to help the regions concerned,
1. wishes to see a special committee on the rights of asylum set up in the European Parliament;
 2. Favours an approximation of the laws and practices relating to asylum within the Community according to the principle of the greatest social and legal advantage in the sense that refugees would benefit from the laws and practice of asylum most favourable to them;
 3. Believes that recognition of a refugee's entitlement to asylum in one Member State should automatically be legally binding for all Member States of the Community (unlike the rejection of a request for asylum);
 4. wishes to see recognized cases of asylum enjoy the same freedom of movement within the Community as citizens of the Community;
 5. favours a just distribution between the countries of the Community of the social costs involved in the reception of refugees, allowance being made for the population size and the gross national product of each country;

6. Calls on the Member States to ensure by means of appropriate measures,
- a) that those seeking asylum are not turned back at the borders,
 - b) that regulations concerning entry visas do not make it more difficult or impossible for those seeking asylum to flee and obtain entry elsewhere,
 - c) that every request for asylum and that all cases in which asylum could be involved are submitted to the appropriate authority for scrutiny without delay,
 - d) that those seeking asylum should be offered an opportunity to contact a lawyer, a representative of the UNHCR or an organization offering assistance,
 - e) that the UNHCR and the representatives of non-governmental aid organizations should be granted access to airports, including the transit area and other frontier control posts, to investigate possible requests for asylum of which they are informed,
 - f) that all those seeking asylum are given a thorough and expert hearing as far as possible on entry,
 - g) that those seeking asylum can for this purpose obtain the services of an impartial and competent interpreter,
 - h) that those seeking asylum are not detained or arrested as illegal immigrants before they have even been able to present their request for asylum,
 - i) that those seeking asylum are not held in expulsion custody for long periods of time after their requests for asylum have been rejected not even if there is no country to which they can be expelled,
 - j) that those seeking asylum are not sent back to their country of origin without being granted access to a proper asylum procedure,
 - k) that persons who do not come under the definition of refugee as set out in the Geneva Convention but who nevertheless have clear grounds for requesting asylum are given an appropriate legal status which rules out compulsory return to their country of origin for at least as long as such seekers of asylum are in a situation similar to that of refugees,
 - l) to provide a humanitarian solution for people whose requests for asylum have been rejected by due process but whose lives could be at risk on their return to their country of origin,
 - m) that the well-founded fear of torture must be recognized by all courts in the Member States as grounds for asylum, if necessary by introducing and enacting a law to this effect in the Parliament of the Member State concerned,
 - n) that those seeking asylum are not extradited to countries in which they are threatened by torture and/or the death penalty irrespective of whether the courts of a Member State regard torture or the death penalty as adequate grounds for asylum,

- o) that the extradition of refugees can no longer take place before their request for asylum has been decided on with the force of law and after their recognition as being entitled to asylum,
 - p) that no particular deterrent measures should be taken against those seeking asylum, in particular, no assignment to camps, no ban on employment, no restrictions of freedom of movement within the country of reception and no degrading method of granting social aid,
 - q) that those seeking asylum are granted limited residence permits immediately after they have made their request for asylum which will allow them to take up employment, take part in language courses and vocational training measures and provide legal and social counselling,
7. Criticizes the increasingly restrictive interpretation of the concept of a refugee as set out in the Geneva Convention of 1951 and the additional protocol of 1967;
 8. Notes that this interpretation must take account of the circumstances which nowadays cause those seeking asylum to leave their country;
 9. Advocates that refugees who have already left a country of reception which could only grant them limited scope for integration should not be denied recognition in the new country of refuge because of the request for asylum already presented in another country;
 10. Believes it incompatible with the obligations under the Geneva Convention on refugees for Member States to subject those 'spontaneously' seeking asylum to a more restrictive asylum practice because of the introduction of refugee quotas;
 11. Condemns the attempts by certain Member States to remove the ban on extradition for political offences under the slogan of combating terrorism, as an assault on the right of asylum;
 12. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and the UNHCR.

EUROPEAN PARLIAMENT

COMMITTEE ON LEGAL AFFAIRS AND CITIZENS' RIGHTS

WORKING DOCUMENT

by

Mr H.O. VETTER

on the problems of the right
of asylum raised by
motions for resolutions
Doc. 2-619/84 and Doc.2-745/84

6 February 1985

95/84 117/84
De.-pf.jb.

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PE 107.655/Ann.I/fin.

I. On 16 October 1984, the Committee on Legal Affairs and Citizens' Rights appointed me rapporteur on a motion for a resolution concerning asylum for Basque refugees in France (Doc. 2-619/84).

On 30 November 1984, my appointment was extended to cover a further motion for a resolution, on the forced deportation of Basque refugees by the French Government (Doc. 2-754/84).

I initially saw it as my task to investigate the circumstances described in the motions for resolutions (II). However, both my findings, which were considered under the procedure adopted by the Committee on Legal Affairs and Citizens' Rights, and a number of other facts which emerged in the course of my inquiries now prompt me to suggest a possible future approach to this subject (III).

II. The circumstances described in the motions for resolutions

1. Motion for a resolution Doc. 2-619/84 (asylum for Basque refugees in France)

The version set out in the motion differs in only minor details from the facts which were brought to my knowledge. My sources were in the main newspapers: Le Monde, Frankfurter Allgemeine Zeitung, Financial Times, Le Soir, El Pais and Süddeutsche Zeitung. All their accounts present a picture in which there are essentially no inconsistencies:

On 9 August 1984, the Office of the Public Prosecutor attached to Pau Court recommended the granting of an application from the Spanish Government for the extradition of four Basques. On 24 August 1984, the court also authorized the extradition of three other Basques. An application was rejected in one other case.

The Basques concerned, who were being held in Fresnes prison, then began a hunger strike: contradictory statements as to their subsequent physical condition, subsequently came from their counsels and government sources.

On 21 September 1984, the highest court of appeal (la cour de cassation) confirmed the decisions of the lower court (cf Flash Dalloz No. 33, 11 October 1984, Jurisprudence).

On 23 September 1984, the French Government decided that three of the Basques concerned should be extradited to Spain and the remaining four deported to Togo. The decision was signed by the Prime Minister, Laurent Fabius, and countersigned by the Minister for Justice, Robert Badinter.

Speaking in an interview, the then minister for European Affairs and Government Spokesman, Roland Dumas, indicated that prior to reaching its decision, the French Government had secured three guarantees from the Spanish authorities:

- (a) The extradited persons would not be handed over to the police or placed in police custody, but be entrusted directly to the competent judges.
- (b) The extradited persons would be free to choose their own lawyers in Spain. They could, if they wished, be represented by foreign lawyers.
- (c) Foreign observers would be allowed to attend the trials of the extradited persons.

On 26 September 1984, the Conseil d'Etat, to which the Basques had applied as the highest authority, rejected an appeal against the decision of the government (cf Flash Dalloz, loc. cit.). The courts argued consistently at all three levels that the murder charges which had been brought fell within the purview of common law, and the accused could not therefore enjoy the same protection as that afforded for 'political crimes'.

The extradition was completed on the evening of 26 September 1984.

The allegations concerning the practice of torture in Spain were verifiable only in part. Amnesty International's annual report for 1984 lists a series of proven cases of torture (p. 301 et seq.), which generally occurred in police custody and involved for the most part persons being held under anti-terrorist laws (see also PE 94.889).

The guarantees received by the French Government also refer to the risk of torture and maltreatment.

In addition, there are proceedings pending in Spain against a number of police officers who have been charged on precisely those grounds.

It is thus generally assumed that conditions in Spanish prisons have fundamentally improved since the end of the Franco regime but that torture and maltreatment are continuing in police stations. However, a relative improvement in the situation has been observed there too. (That is why the competent subcommittee of the Political Affairs Committee apparently does not wish to include Spain in its next annual report).

It should finally be pointed out that Spain was among the first signatories to the United Nations convention outlawing torture.

2. Motion for a resolution Doc. 2-754/84 (Forced deportation of Basque refugees by the French Government)

The alleged forced deportations did indeed take place. The discrepancies in the figures quoted in the press are of no importance: more than twenty Basques have at all events been deported to the countries listed (on the four Basques who were deported to Togo, see above).

The French Government regularly obtains advance permission from the states concerned to deport Basques there. The costs of their residence and accommodation are borne by the Spanish Government.

The use of the term 'refugees' to describe the Basques in the motion for a resolution cannot be taken to mean that they have the right to the status of refugee as recognized in the Geneva Convention.

III. Suggested approach

Although the circumstances described in the motions for resolutions are largely true, there are certain arguments against drawing up a report on those two motions alone.

Some of the requests made in the motions have inevitably lapsed with the passage of time. For instance, it can now be of no avail to request the President of the French Republic, as does paragraph 2 of document 2-619/84, 'to refuse extradition to Spain'.

As rapporteur, I had occasion while investigating the circumstances evoked to acquaint myself with other problems pertaining to the right of asylum in other Member States.

I accordingly came to the conclusion that it would be perfectly possible - and moreover, given certain anomalies, urgently necessary - to draw up a report on the problems of the right of asylum, which would afford an opportunity of discussing the problems raised in the two motions for resolutions and of considering the economic and social aspects. The subject would then be placed automatically in the Community context.

The two motions tabled under Rule 47 of the Rules of Procedure cannot in all honesty be taken as the basis for such a report, because the scope of the subject clearly extends beyond the narrow complex of problems with which the motions are concerned. I would therefore suggest that authorization for an own-initiative report on the problems of the right of asylum be requested from the enlarged Bureau, pursuant to Rule 102.

EUROPEAN PARLIAMENT

COMMITTEE ON LEGAL AFFAIRS AND CITIZENS' RIGHTS

Notice to Members

No. 44/85

Please find attached a short report by Mr VETTER, rapporteur on the problems of the right to asylum, on the conference which he attended at the office of the UN High Commissioner for Refugees in Geneva from 28 to 31 May 1985.

DIRECTORATE-GENERAL FOR COMMITTEES
AND INTERPARLIAMENTARY DELEGATIONS

Annex

12 July 1985

(PE 99 697)

122/85

The influx of people seeking asylum and refugees to Europe

Talks between the UN High Commission for Refugees

and government representatives and observers, observers from international organizations and non-governmental organizations

from 28 to 31 May in Geneva

Short Report

submitted by

Heinz Oskar VETTER, Member of the Committee on Legal Affairs and Citizens' Rights

The impetus for the organization of these talks was provided by the observation by the UN High Commissioner before his executive committee that in Europe today people seeking asylum and the governments involved are confronted with such difficult problems that a coordinated policy is called for. The governments of all the Community Member States, with the exception of Luxembourg, and ten other members of the Council of Europe and Yugoslavia had sent representatives; observers from African, Asian and North American states attended. The Commission of the European Communities was represented by observers. At the request of the Committee on Legal Affairs and Citizens' Rights, the Bureau of Parliament asked me to attend the talks as an observer in preparation for an own-initiative report which is shortly to be drawn up on the problems posed by the right to asylum and refugees in the Member States of the European Community.

The starting-point for the talks was a note by the High-Commissioner, distributed beforehand, which discussed the problem of the large influx of refugees, 'refugees' from social and economic problems and the problems faced by governments and people seeking asylum, against the background of European traditions and standards and the legal position. Possible solutions were discussed, including, apart from the traditional suggestions (incentives to return home, integration locally, resettlement), the possibilities of cooperation between governments at European regional level (consultation procedure and tackling the situations from which refugees seek refuge).

The following points worthy of mention emerged from the discussion by government representatives: Europe's problems with those seeking asylum nowadays do not come from refugees as defined by the 1951 Geneva Convention or the 1967 Protocol on the status of refugees, but rather from the growing number of people seeking escape from severe unrest and armed conflicts in their home country; they should be treated humanely and above all not sent back to troubled areas; the existing law on refugees already requires this; in this connection the imminent expulsion of families from the United Kingdom was mentioned. The need for the industrialized countries to assist the countries where refugees first apply for asylum by shouldering some of the burden in a spirit of solidarity and by seeking lasting

(PE 99 697/Ann.)

solutions in the regions affected was universally acknowledged. The causes of the influx of refugees should be tackled by the UN or comparable international organizations. All governments wanted a speedier asylum procedure. The Council of Europe should make clear which state should be responsible for considering an application for asylum, to prevent seekers of asylum being sent from pillar to post. Public understanding should be sought for the plight of those seeking asylum and refugees, who are in a worse position than other foreigners.

Further talks are to be held between the High Commissioner and governments.

During the discussion by government representatives, Mr Widgren, Secretary of State in the Swedish Government, who was apparently very much in favour of these talks, spoke out inter alia against short-term work permits for seekers of asylum. The German representative pointed out that in 1977 in Geneva the Federal Government had argued in favour of establishing the right to asylum as an enforceable legal right for the individual under international law; he called for a Council of Europe agreement on international solidarity and the even distribution of the burden and spoke against the abuse of the right to asylum. The French ambassador warned against the danger of European host countries' rivalling one another in their poor treatment of seekers of asylum.

In my capacity as an observer sent by the Bureau of Parliament in preparation for the drafting of an own-initiative report, I announced that a hearing of the authorities and organizations concerned would be proposed, as part of our work, in order to take stock of the situation and improve the lot of asylum seekers and refugees uniformly throughout the Community Member States; I stressed our concern with the following points:

- coordination of the right to asylum in the Community Member States,
- uniform application of the right to asylum in the Community Member States,
- shared responsibility by Community Member States and possibly a sharing of the burden according to e.g. population and per capita income,
- appointment of a European Community officer for refugees,
- Community measures for improved social and professional integration of refugees,
- a coordinated policy by Community Member States, to ensure greater respect for human rights in the home countries of refugees.

Understandably, the European Community bodies represented at these talks for the first time did not wish to take part in the confidential talks. However, the Community and its Member States have already made available considerable resources in the Community budget (Chapter 92 and Article 950) and under Article 203 of the Lomé III Convention. Provision is also made for allocating funds in this way in Article 204 of the new Lomé Convention. It therefore seems, particularly in the light of the political goal of a people's Europe, that the Community must coordinate the laws and policies of its Member States regarding asylum seekers and refugees.

(PE 99 697/Ann.)

EUROPEAN PARLIAMENT

COMMITTEE ON LEGAL AFFAIRS AND CITIZENS' RIGHTS

NOTICE TO MEMBERS No. 78/85

Please find attached a statement to the press drawn up by Mr VETTER, the rapporteur on the problems of the right of asylum, consisting of an account of his tour of the Federal Republic of Germany in November and December 1985.

DIRECTORATE-GENERAL FOR COMMITTEES
AND INTERPARLIAMENTARY DELEGATIONS

Annex

13 December 1985

Doc. 78/85

(PE 102.942)

INTERIM REPORT ON THE FEDERAL REPUBLIC OF GERMANY

Following a tour by Mr Heinz Vetter, Member of the European Parliament, as part of an inquiry into the situation of persons seeking asylum in the European Community.

The European Parliament has instructed Mr Heinz Vetter to draw up a report on the coordination of the right to asylum in the European Community. Mr Vetter announced this on 4 June 1985 at a press conference in the European Parliament's Information Centre.

Over the past few weeks Mr Vetter has toured the Federal Republic of Germany to acquaint himself at first hand with the legal and social position of refugees. He has visited centres in Mülheim/Ruhr, Essen, Heilbronn, Cologne and Zirndorf and spoken to persons seeking asylum, representatives of the authorities and political leaders as well as the representatives of the Commissioner for Refugees in Bonn, the Federal Ministry of the Interior, representatives of the German Bundestag's Committee on Internal affairs, the Head of the Federal Office for the recognition of foreign refugees and representatives of the Free Welfare Institutions.

Early in 1986 Mr Vetter will visit France, the United Kingdom and Italy. He will submit a report on his findings to the European Parliament in mid-1986.

The situation in the Federal Republic of Germany

In his overall assessment of the situation of persons seeking asylum in the Federal Republic of Germany, Mr Vetter notes that Germany has, characteristically, created a perfect legislative solution to this problem, but allowed serious shortcomings to mar the implementation stage. It emerged notably in talks with representatives of the ministries and politicians that the instruments set up to deal with the refugee problem - which will continue for decades - are designed to deter refugees rather than to solve the refugee problem. Furthermore, the development of the situation since 1980 shows that all deterrence measures, notably assembly refugee camps, the ban on work for persons seeking asylum, obligatory residence, cuts in national assistance, mass catering, the introduction of the principle of payment in kind, etc. have been to no avail. There were 51 493 persons seeking asylum in 1979, 107 818 in 1980, 49 391 in 1981, 37 423 in 1982, 19 737 in 1983, 35 278 in 1984, and 60 433 in 1985 up to October.

(Source: Federal Ministry of the Interior and Federal Office for the recognition of foreign Refugees). At the same time the proportion of refugees granted recognition has increased: 14.0% in 1979, 12.0% in 1980, 7.7% in 1981, 6.8% in 1982, 13.7% in 1983, 26.6% in 1984, approximately 33% in 1985.

Two-thirds of refugees are not granted asylum; however, in practice persons from certain groups of countries such as Iran, Ethiopia, Lebanon and above all Eastern bloc countries are allowed to remain in the Federal Republic of Germany and are not deported to their country of origin, even if they have not been granted asylum.

(PE 102.942/Ann.)

In view of this - and leaving aside humanitarian considerations - deterrence measures such as those introduced since the beginning of 1980 are unjustifiable. They create extra paper work for the authorities and add substantially to the financial contribution of taxpayers. For instance, Bavaria and Baden-Württemberg admit that their deterrence measures cost them an extra several million marks in addition to Federal Public assistance for refugees which the Federal Government allocates to the Länder.

There is no doubt that those responsible for persons seeking asylum, from the head of the camps or homes to the alien authorities officials, sincerely desire to treat them considerately; however, they are subject to political dictates and are forced to act as they do. They have to deal with problems on the spot when disturbances occur because of German-style mass catering, because of aggression due to cramped quarters and because it takes between four and six years for a refugee to be granted asylum.

Mr Vetter considers that the role of the Federal Commissioner who is appointed - and may be dismissed by the Federal Minister of the Interior under Paragraph 5 of the asylum procedure law and is responsible for establishing a uniform court practice in the Federal Länder should be scrutinized particularly closely: for he is entitled to appeal against any decision by the Federal Office for the recognition of foreign refugees, which delays asylum procedures unnecessarily. Between 5 June and 5 September 1985 the Federal Commissioner for asylum affairs lodged a total of 1 028 actions to set aside decisions granting asylum to refugees by the Federal Office in Zirndorf with the competent higher administrative court. The Federal Commissioner requested the Federal Administrative Court to examine whether Sri Lankan nationals of Tamil origin should be granted asylum. Mr Vetter considers that neither the Federal Commissioner nor the judges are competent to decide on such fundamental questions.

Mr Vetter called on Federal German politicians of all political persuasions to lay down clear political guidelines to deal with the refugee problem rather than merely to deter refugees: this requires measures at national, European and international level.

Accommodation

Under the asylum procedure law, persons seeking asylum should normally be accommodated in assembly camps. The three most populous Federal Länder visited by Mr Vetter - Baden-Württemberg, Bavaria and Nordrhein-Westfalen - have adopted different approaches in this matter: Bavaria and Baden-Württemberg accommodate refugees in assembly camps where possible, while Nordrhein-Westfalen concentrates on enabling persons seeking asylum to live in decentralised accommodation; under this system they are housed in lodgings rented by the city authorities. In Baden-Württemberg there is also a tendency to provide decentralised accommodation because, according to the Ministry of the Interior, the camps are over-crowded.

There are enormous differences between accommodation in lodgings and in assembly camps. The assembly camps which are often severely crowded - with an average 5 sq. metres living space per person - do not provide conditions consonant with human dignity.

(PE 102.942/Ann)

In principle, there is nothing wrong with accommodation in assembly camps for a maximum of four to five months; however, persons seeking asylum have to remain in these camps for up to five years. This is totally unacceptable on humanitarian grounds.

In addition, during their long stay in the camps, refugees are barred from working or training and there are hardly any qualified staff to look after them.

If refugees are accommodated in assembly camps or temporary homes, minimum standards must be fulfilled as regards accommodation, benefits and care as laid down, for instance, by the Free Welfare Associations.

The principle of payment in kind

Nordrhein-Westfalen, Baden-Württemberg and Bavaria have adopted differing arrangements regarding benefits to refugees. Bavaria and Baden Württemberg apply the principle of payment in kind, i.e. they provide mass catering and an allowance of approximately DM 70.- which generally has to cover travelling expenses and other small contingencies of everyday life; where refugees are housed in decentralised accommodation, Bavaria and Baden-Württemberg pay them in kind. In Nordrhein-Westfalen persons seeking asylum receive DM 390.- under the Federal National Assistance Law and have to provide for themselves.

Mass catering pays only scant attention to the ethnic and religious eating habits of persons seeking asylum and is also a source of unrest and frequent conflict in refugee accommodation. For short periods of time - three to four months - this type of catering would be quite acceptable; however, in view of the long period of time involved - up to five years - this principle of payment in kind is unacceptable on humanitarian grounds.

Compulsory residence

Paragraph 25 of the Asylum Procedure Law lays down the conditions under which persons seeking asylum may temporarily leave their place of residence. Thus the aliens authority may allow foreigners to leave their permitted area of residence temporarily if there are urgent reasons for this or if they have an appointment with authorised persons, the high commissioner for refugees or with organizations concerned with the welfare of refugees.

In practice, however, this residence obligation often leads to absurd, indeed inhuman decisions. Thus persons seeking asylum have been prevented from attending a visit of the President of the Federal Republic, an information meeting by the church on refugee problems and a christening of a nephew.

Ban on work

Foreigners seeking asylum in the Federal Republic of Germany are prohibited from working while their application is being processed. The various Länder have adopted different arrangements in this matter. In Baden-Württemberg persons seeking asylum are prohibited from working for the entire period during which their case is processed; while in other Länder the ban lasts for two years. Eastern block refugees are also treated differently; they are barred from working for up to one year. Furthermore, persons seeking asylum may not take part in vocational training or education; they are thus condemned to remain idle: a lifting of this ban on work would have a negligible impact on the labour market.

(PE 102.942/Ann.)

Care of persons seeking asylum

In the assembly camps it was noticeable that there are only very few trained staff for looking after refugees. Moreover, the ergotherapeutic measures and sports facilities are very limited. No trained interpreters for ensuring smooth communication between persons seeking asylum and the administration and leaders of homes were in evidence. On the credit side, many groups in the population are endeavouring to look after persons seeking asylum and establish social contacts between them and the local population. As regards care, minimum standards should be fulfilled on the lines formulated and demanded by the Free Welfare Associations.

Duration of procedure

Public officials and politicians as well as the persons seeking asylum themselves complained about the long duration of the asylum procedure. On average it takes a person four years to be granted asylum; in some cases people have to wait eight or nine years. According to the Federal Office in Zirndorf the local aliens authorities take approximately three to four months to submit an application to Zirndorf. The Federal Office takes ten and a half months (for October 1985) to consider a case. According to its director, the Federal Office was able substantially to shorten the procedure for recognition of refugee status this year by the recruitment of additional staff. The process is delayed when the Federal Commissioner for Refugee Affairs (in the case of the Tamils for instance) or the refugees' lawyers lodge appeals with the higher administrative court. It is noticeable that the Länder Bavaria and Baden-Württemberg take almost twice as long as Nordrhein-Westfalen to grant asylum. A representative of the Bavarian State Ministry and the director of the Federal Office attributed this to the 'burden of cases' which had accumulated from previous years.

De Facto refugees

It emerged in the course of Mr Vetter's visits that an increasing number of refugees who have not been granted asylum are nevertheless given accommodation and are allowed to remain in the Federal Republic on humanitarian grounds - notably refugees from Iran, Ethiopia, Lebanon and Eastern bloc countries. According to the Federal Ministry of the Interior there are at present 220 000 de facto refugees in the Federal Republic of Germany.

It became clear in the course of discussions that there was no reason why persons seeking asylum from these countries should be housed in assembly camps and thus constitute an unnecessary burden for the administrative courts if they are allowed to remain in the Federal Republic even without being granted asylum. The increasing number of the de facto refugees constitute a substantial drain on the resources of the communes, since it is they rather than the Land - or Federal Government - that provide for de facto refugees.

Statistical records of refugees

It became clear in the course of numerous discussions that assessments of the numbers of refugees and persons seeking asylum in the Federal Republic of Germany vary considerably. The Federal Ministry of the Interior issued the

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following figures in September 1985:

'At present there are a total of approximately 605 000 refugees residing in the Federal Republic of Germany. This figure can be broken down as follows:

- 59 000 persons entitled to asylum,
- approximately 118 000 members of their families,
- approximately 31 000 'quota' refugees, admitted as part of humanitarian aid (e.g. from Southeast Asia),
- 42 000 stateless foreigners,
- 5 000 refugees recognised abroad with members of their families, who have arrived in the Federal Republic of Germany,
- approximately 220 000 de facto refugees; these are persons who have submitted no application for asylum or whose application has been rejected, but who - for humanitarian or political reasons - extended voluntary departure - are not deported to their country of origin, and
- approximately 130 000 applicants for asylum whose applications are still being processed.

There is therefore one refugee per 101 inhabitants of the Federal Republic of Germany'.

According to the UN Commissioner for refugees on 1 January 1985 there were 126 700 refugees in the Federal Republic; he estimated that since 1952 the Federal Republic of Germany has granted asylum to approximately 120 000 applicants.

The figures of the Federal Ministry of the Interior differ considerably from those of the High Commissioner for Refugees, even allowing for a margin of error of 50 000 either way.

They are therefore unsuitable for international comparisons since the UN-Commissioner for Refugees uses the same statistical methods in respect of all countries.

UNHCR-figures as on 1 January 1985:

Denmark: 8 500, United Kingdom: 135 000, Holland: 15 100, Belgium: 36 400, the Federal Republic of Germany 126 700, France: 169 900, Italy: 15 100, Greece: 4 000, Spain: 10 000, Portugal: 600, Sweden 90 500, Norway: 10 000, Austria: 20 500, Switzerland: 31 200.

An international comparison would have to be based either on the UNHCR figures or the figures supplied by the individual countries. If the figures provided by an individual country - as in the case of the Federal Republic of Germany - are combined with UNHCR figures, this gives a distorted picture of the real situation.

Regionalization

Some politicians have proposed a scheme for the regionalization of the refugee problem. This means that refugees from Third World countries fleeing crises and hunger should not come to Europe but be accommodated in neighbouring states. Given that there are between 17 and 20 million refugees today, and in view of the concentration in some states (e.g. 700 000 refugees in Somalia, 690 000 in Sudan, 250 000 in Burundi, 2 900 000 in Pakistan, 1 800 000 in Iran) it is clear that only a very small proportion of refugees comes to Europe. The UN Commissioner for Refugees estimates the number of persons seeking asylum in

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Europe as follows: 80 700 in 1982, 67 000 in 1983 and 103 500 in 1984. It

is doubtful whether such a small trickle of refugees to Europe can be further regionalized.

If this regionalization scheme is intended seriously, the UN Member States will have to increase their contribution substantially to finance the work of the UN High Commissioner for Refugees. In February 1985 the High Commissioner complained that resources were inadequate and that on the present - and the planned - budget he could not even guarantee the survival of refugees in many refugee camps.

Proposals to coordinate the right of asylum

Mr Vetter interprets his mandate as proof that the European Parliament is taking seriously its self-appointed task of developing a social and legal community. He considers that the European Community does not wish to remain merely an economic community. Having learned the lessons of the past it seeks to create ever closer ties between the people of Europe: this is its responsibility before the world.

Mr Vetter maintains that Europe must serve as a model and guarantor for respect of human rights and the protection of refugees. This applies notably to the European Community, the only community of states in the world which may lay down supranational legislation which is binding at national level. For this reason a people's Europe must also include the right of asylum. This is a matter of urgent necessity in view of the proposed legislation to abolish identity controls at the Community's internal frontiers and to create a general right of residence. In this connection it is important not to seal the Community off from the Member States of the Council of Europe.

Mr Vetter considers that the following measures in particular are necessary in order to achieve European coordination:

- The coordination of the right of asylum in the EC Member States so as to clarify and make legally binding in Community countries the general application of the right of asylum in its present form and of the recommendations of the UN High Commissioner in respect of refugees. It should prohibit the forced period of residence in camps for the duration of the recognition procedure, the compulsory labour requirements, the practice of arresting refugees at national frontiers without legal justification and violations of the principle of non-repatriation. The duration of the recognition procedure must be shortened, without reducing legal protection in difficult cases. A coordination of the right to asylum should under no circumstances lead to a general reduction in refugees' rights.
- This applies equally to the standardization and the improved application of the right to asylum in the EEC countries. If possible this should be achieved by strengthening the committees laying down recommendations for court practice and by giving the Court of Justice of the European Community in Luxembourg and the European Human Rights court in Strasbourg the right to review cases in this field.

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- A common responsibility of EEC Member States to accept refugees and, if necessary, a distribution of the burden according to population and per capita income of EEC countries, but without depriving refugees of the free choice of their host country.
- The appointment of an EEC Commissioner for refugees who could act as an intermediary between persons seeking asylum and the authorities and seek cooperation between the parliaments.
- Measures for better professional and social integration of refugees, if possible with EEC assistance.
- A coordinated policy of the European Community and the Member States vis-a-vis refugees' countries of origin so as to safeguard human rights at source.

Mr Vetter calls on the governments of Member States to allow free access to facts, figures and planning relating to refugee policy since this is the necessary basis for any objective discussion and constructive proposals for solutions.

Dusseldorf, 4 December 1985

(PE 102.942/Ann)

COMMISSION OF THE EUROPEAN COMMUNITIES

COMMITTEE ON LEGAL AFFAIRS AND CITIZENS' RIGHTS

Notice to Members

No. 14/86

Please find attached a report by Mr VETTER, rapporteur on the right of asylum, on his visit to the Kingdom of Belgium in February 1986.

DIRECTORATE-GENERAL FOR
COMMITTEES AND DELEGATIONS

Annex

14 March 1986/hm

WG(VS1)/3633E

De.-apt

(PE 104.350)

Synopsis of the legal and social situation of persons
seeking asylum and refugees in Belgium

1. On 26 and 27 February 1986 the rapporteur carried out an on-the-spot investigation of the legal, economic and social situation of persons seeking asylum and refugees in Belgium.
He visited a reception centre (Centre d'accueil) for persons seeking asylum in Braine-le-Comte and had talks with representatives of the UNHCR, the Ministry of Justice and the State Secretariat for Social Emancipation and with independent welfare organizations.
In general, these discussions and the examination of numerous documents revealed that the situation regarding asylum is comparatively liberal in Belgium.
In view of the sharp increase in the number of persons seeking asylum, however, far-reaching changes are to be made in the near future.

1. Legal basis and procedure for the grant of asylum

2. The grant of refugee status is governed in Belgium by the provisions of the 1951 Geneva Convention, the additional Protocol of 1967 and a number of Belgian (amending) laws and implementing provisions.
3. The procedure for the award of refugee status consists, in principle and in the majority of cases, of two stages¹:
 - (a) the Ministry of Justice (aliens department) decides on the admissibility of applications
 - (b) the UNHCR representative decides on the grant of refugee status.
4. The aliens department of the Ministry of Justice decides on the admissibility of requests for asylum, regardless of the regularity or otherwise of the method of entry into the country, on the basis of the following criteria:

¹ The special case of the so-called 'assimilated' refugees will not be discussed here since it hardly ever arose in practice. Nor is any reference made to quotas of refugees since they benefit from simplified procedures and provisions.

- whether the specified deadlines for the submission of applications have been respected
 - whether the applicant, after leaving his/her country of origin, did not stay in another country for longer than three months and was not expelled from that country before entering Belgium
 - whether a request for the grant of asylum has been submitted in another country.
5. If a request for the grant of asylum is declared admissible by the Ministry of Justice (aliens department), the UNHCR representative is informed accordingly so that he can take the final decision on the award of refugee status. It is possible to lodge an appeal in the event that the Ministry of Justice does not come to a favourable decision on the request - approximately 10% of the requests are declared inadmissible by the aliens department. If the Ministry of Justice stands by its refusal and all means of appeal are exhausted, a deportation order is issued to the applicant and he must leave the country within a specified time limit.
 6. By decree of 22 February 1954, the Belgian Foreign Minister delegated his power to decide on the refugee status of individuals to the UNHCR representative in Belgium. In accordance with the criteria laid down in the Geneva Convention and the additional protocol thereto, the UNHCR representative decides whether or not a person will be granted refugee status in Belgium.
 7. Once refugee status has been granted, the UNHCR representative provides the necessary certification and notifies the Minister of Justice, who immediately issues a residence permit. If the UNHCR representative comes to an unfavourable decision, the applicant has three weeks in which he may submit further material to support his request. There is, however, no body to which applicants may appeal against the final decision of the UNHCR representative. In addition, the reasons for the decision are given orally and not in writing. If the UNHCR representative does not grant refugee status, the applicant loses his right of residence and must leave Belgium.

2. Economic and social situation of persons seeking asylum

8. If the applicant has complied with all the necessary formalities within the specified time limits in Belgium, he is given the status of a 'candidat-réfugié' and enjoys the following protection and rights:
- he/she cannot be deported until the procedure has been concluded
 - he/she may take up residence in any part of Belgium
 - if he/she finds work, the employer can ask for a provisional and temporary work permit
 - if he/she is without financial means, an application for social assistance may be made to the CPAS (Centre Public d'Aide Social) of the locality in which the applicant is registered (Bfrs 15 000 maximum per month).
9. According to the law, persons seeking asylum who are properly registered in a locality may seek work and accommodation for themselves. However, this is becoming increasingly difficult, despite the assistance of welfare organizations, because of the increasing numbers of persons seeking asylum and the economic crisis in Belgium.
10. The number of persons seeking asylum in Belgium has more than doubled in six years - from 2 427 in 1979 to 5 255 last year, i.e. between 400 and 500 per month. UNHCR statistics set the number of refugees in Belgium at 35 000 in 1983, which, with a population of 9.8 million, represents approximately 0.36% (as compared with 0.19% in the FRG). The number of refugees in Belgium was calculated to be 36 400 in January 1985. Most of the refugees and persons seeking asylum come from Turkey (primarily Christians), Ghana, Zaire, Iran, India and Pakistan².

²The specific problem of the variations in the figures quoted will be discussed later in the report. Only a few figures are given here

11. As a result of this relatively sharp increase in the number of persons seeking asylum, the processing of applications is taking longer and there are at present approximately 1 500 awaiting attention. This has major financial consequences for the CPAS of the local authorities who must pay the applicants social assistance while their applications are awaiting a decision. Certain local authorities, particularly in and around Brussels, are therefore refusing to accept any more persons seeking asylum (or other foreigners). As a result, the originally very liberal and generous law of 15 December 1980 has been amended such that the Minister of Justice can stop the movement of persons seeking asylum into localities with a high proportion of foreigners, which he has since done in the case of 7 municipalities.

Other consequences have been the extension of the visa requirement, particularly since January 1986, and the drop in the proportion of applicants granted refugee status, which was still about 60% in the 1970s but has since fallen to 48%.

3. Forthcoming changes

12. The changes in the procedure for the grant of asylum planned for the end of 1986 are designed to help ensure that

- the applications are processed more efficiently and more promptly,
- the number of claims for social assistance is reduced as far as possible and cases of abuse are prevented,
- persons seeking asylum have a better legal status.

13. In order to achieve these aims, there are moves within the UNHCR headquarters in Geneva and at ministerial level in Belgium to follow the example of the French procedure for the grant of asylum. It is also proposed that the Foreign Ministry should regain the powers delegated to the UNHCR representative, for the following reasons:

- Belgium is the only country in the world in which the UNHCR representative has the power to decide independently on the grant of refugee status. The staff of the UNHCR representation is not sufficiently large to deal with the increasing number of applications to be processed and the UNHCR is unable to finance any increase in staff

- there is as yet no body to which individuals can appeal against decisions taken by the UNHCR representative in Belgium. A body of this sort, which has been called for in Belgium for many years, must be created in the near future for both legal and democratic reasons

 - decisions taken by the UNHCR representative in Belgium are not justified in writing at present, and an oral justification is given only on special request. This must also be changed so that in future decisions are justified in writing and thereby allow the possibility of appeal, for which purpose the applicant may call on the assistance of a lawyer.
14. The border authorities of France, the Federal Republic and the Benelux countries have for some time now had working parties which are concerned with improving the management of the policing aspects of border controls (Saarbrücken Agreement).

EUROPEAN PARLIAMENT

COMMITTEE ON LEGAL AFFAIRS AND CITIZENS' RIGHTS

Notice to Members

No. 22/86

Please find attached a summary report by Mr Vetter, rapporteur on problems of the right of asylum, on his fact-finding mission to the United Kingdom in March 1986.

DIRECTORATE-GENERAL FOR COMMITTEES
AND DELEGATIONS

Annex

7 April 1986/hm

122/85

(PE 105.233)

Summary report on the legal and social situation
of refugees and persons seeking asylum
in the United Kingdom

1. From 2 to 4 March 1986, your rapporteur visited the United Kingdom to investigate at first hand the legal, economic and social situation of persons seeking asylum and refugees in that country.

I held talks with representatives or senior officials of the UNHCR, the Home Office, the British Refugee Council and other independent charities, as well as with several Members of the national parliament. I also visited a reception centre, Basle Court, and was able to speak with a number of refugees and persons seeking asylum.

A. Legal basis for the processing of applications for asylum

2. The legal basis determining the award of refugee status consists of:

- the Immigration Act (1971)
- the immigration rules and
- the 1972 immigration appeals rules.

B. Procedural practices

3. Approximately 4 000 applications for asylum are currently registered each year in the United Kingdom. This relatively small number is generally thought to be due to the fact that the United Kingdom is an island and the farthest point in a series of possible host countries. The infrequency of applications does not mean that the asylum procedure in the United Kingdom is entirely without its problems.

Given below is a schematic account of the individual stages of the procedure that is set in motion, in typical cases, when an applicant arrives in the United Kingdom or submits his application for asylum. Comments, impressions and criticisms will be added as and where appropriate.

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I. Procedure to be following by applicants on arrival

4. An application made on arrival in the United Kingdom must be addressed to an immigration officer, and will be forwarded by him to the Home Office. An immigration officer cannot turn away an applicant. Applicants who can prove that they have relatives or acquaintances willing to offer them accommodation or who are in a position to provide security are normally allowed into the country on condition that they register with the police. In other cases, the immigration officer may approach the British Refugee Council or one of its subsidiary organizations. If, owing to overcrowding at the reception centres, those organizations cannot offer accommodation, the applicants for asylum may be held in detention - as also occurs when there are particular grounds for suspicion. The list of detainees is regularly submitted to the Home Office and reviewed.
5. The need to make an application for asylum immediately on arrival in the United Kingdom applies above all to persons wishing to enter who have no visa but are required to have one on account of their nationality. The introduction of compulsory visas for nationals of certain countries is used as a means of stemming the flow of refugees: although Commonwealth nationals are in principle not required to hold visas, last year, after the Netherlands and the Federal Republic of Germany had attempted to restrict the flow of incoming Tamils and more and more Tamils were accordingly seeking refuge in the United Kingdom, compulsory visas were introduced for Sri Lankan nationals. In the wake of the ensuing considerable public discussion, this was made a temporary measure.
6. Applicants whose ultimate destination is the United Kingdom may need a transit visa to travel through other countries. This creates problems in the cases where visas are not required by the United Kingdom itself. Applications for transit visas or other declarations of intent made by persons stopping off in other countries are recorded by the local police and notified to the United Kingdom, which means that immigration officers frequently have prior knowledge.
7. When an application for asylum is made by a person already in the country, the applicant is generally required to register with the police.

(PE 105.233/Ann.)

II. Consideration of applications for asylum

8. After an application has been lodged, the applicant is summoned for an interview with a Home Office official. Until a decision is reached on his application, this is generally the only stage of the deliberations in which the applicant is directly involved.

Allowing for any appeals, the procedure lasts between six months and three years.

III. Appeals

9. When an application is rejected by the Home Office, the means of redress open to the applicant depend on whether he holds a valid visa: if he does, then he may - with the assistance of the UKIAS (United Kingdom Immigrants' Advisory Service) Refugee Unit, which is automatically advised of every rejected application - lodge an appeal, initially before an arbitration board and subsequently before a Court of law.
10. If an unsuccessful applicant does not hold a valid visa, all he can do is approach the Home Office for a second time, with the appropriate assistance from the independent charities referred to above. The authority which rejected the application has the power to review its decision. There is no possible judicial remedy.

It should also be noted that Members of the national parliament have the right to intervene and, in that way, occasionally prevent a planned deportation at the last minute.

IV. The social situation of persons seeking asylum and refugees

11. Finding somewhere to live is frequently the first problem encountered on arrival in the United Kingdom by persons seeking asylum - especially if they wish to avoid being held in detention. The reception centres run by the British Refugee Council have a limited number of places. Persons who are accepted in such centres - for a maximum period of three months - are looked after by trained staff and given practical guidance by the other residents. The common predicament and the existence of cultural ties creates a sense of community, and this makes it easier for new arrivals to settle in. Yet conflicts can occasionally also arise in the centres.

(PE 105.233/Ann.)

Persons seeking asylum, whether living in a reception centre or outside, are looked after by the independent charities, which arrange places on language courses and certain other training courses. In practice, it is only where whole groups of refugees are assigned to given areas (as occurred in the case of the Vietnamese boat people) that genuinely comprehensive programmes of education and training, under what are termed community programmes, are organized to assist their integration into society.

12. According to the Home Office, an applicant may take a job at the earliest six months after he has applied for asylum. This seems to be a fairly new ruling, since all the applicants without exception have never heard of it. They implied that the Home Office would not allow them to take a job, whereas the Department of Health and Social Security was encouraging them to do so, because that would ease the financial burden on the social services. In practice, applicants for asylum usually fail to find a job, for the situation on the labour market is already extremely difficult.
13. Applicants for asylum and recognized refugees who are not in gainful employment and have no other source of income are dependent on social security. They usually eke out their existence in small bed and breakfast accommodation: the cheapest category of bed and breakfast is frequently filled entirely by persons seeking asylum.

V. The role of the charitable organizations

14. The care of refugees and persons seeking asylum is undertaken solely by the independent charities grouped together in the British Refugee Council. These organizations are financed by central government, as well as by numerous donations. Some of the money they receive comes from the European Social Fund. Their work is hampered by the low endowment of this fund and its poor management: they are usually not told until the April of a financial year whether they will be receiving a grant, and how much, and are then paid the sum concerned in September, with the injunction to spend it by the end of the year. The British Refugee Council is thus regularly obliged to walk a financial tightrope.

Despite these problems, the charities do much impressive work.

(PE 105.233/Ann.)

EUROPEAN PARLIAMENT

COMMITTEE ON LEGAL AFFAIRS AND CITIZENS' RIGHTS

Notice to Members

No. 53/86

Please find attached a summary report by Mr VETTER, rapporteur on the problems of the right of asylum, on his visit to Denmark in June 1986.

DIRECTORATE-GENERAL FOR
COMMITTEES AND DELEGATIONS

index

9.10.1986

120/85

(PE 107.292)

SUMMARY REPORT ON THE LEGAL AND SOCIAL SITUATION OF PERSONS
SEEKING ASYLUM AND REFUGEES IN DENMARK

1. On 2 and 3 June 1986 your rapporteur investigated at first hand the legal, economic and social situation of persons seeking asylum and refugees in Denmark.

I held talks with representatives or senior officials of the Ministry of Justice, Danish Refugee Aid (or the Danish Refugee Council, the Flygtningehjaelp), the Danish Red Cross, the Danish Federation of Refugees' Friends, the president of the appeal tribunal (Flygtningenaevnet) and a national MP. I visited a reception camp (Sandholm-Lejren) and was able to speak with persons seeking asylum and refugees.

A. Legal basis for dealing with persons seeking asylum

2. Denmark has ratified all the major international agreements on refugees, including:

- the Geneva Convention relating to the Status of Refugees of 28 July 1951 and the Additional Protocol of 31 January 1967.

The national legal basis consists of:

- the Aliens Law No. 226 of 8 June 1983, which entered into force on 1 October 1983, and was
- amended by Law No. 232 of 6 June 1985 and Law No. 574 of 19 December 1985.

B. Procedure

3. In Denmark, which has a population of about 5 million inhabitants, the numbers of asylum seekers have increased in recent years as follows:

<u>Year</u>	<u>Applicants</u>
1981	211
1982	228
1983	approx. 600
1984	4 312
1985	8 698

(PE 107.292)

The largest groups of applicants are Poles, Lebanese, Turks, Iranians and Tamils.

The following is a typical and schematic account of the individual stages completed by a person applying for asylum, from his arrival in Denmark or his submission of an application. Comments, impressions and criticisms are given as and where appropriate.

4. Two main groups of asylum seekers may be identified: the so-called quota refugees under § 8 of the Aliens Law and the spontaneous applicants under § 7 of the Law. The first group comprises refugees who have arrived in Denmark on the basis of an agreement negotiated by the Government with the UNHCR. In view of the increase in the number of spontaneous applicants and the resulting financial burden only about 250 quota refugees per year are now admitted.
5. The vast majority of asylum seekers submit a spontaneous application either in Denmark, or at the border when they enter the country, or at a Danish consulate or embassy. Under Article 7 of the Aliens Law applicants for asylum in principle have a subjective right to be issued with a residence permit, if they come under the Geneva Convention on Refugees (so-called Convention refugees (C) or if, for other important reasons, they cannot be required to return to their country of origin (so-called de facto refugees (F)). The second category was specifically extended for important humanitarian reasons by the amendment of 6 June 1985 to the Law.
6. In principle an asylum seeker cannot be turned away without having his application examined. The applicant is first given a hearing by the police and is then handed over to the aliens directorate which is part of the Ministry of Justice and which conducts another hearing. The Danish Refugee Council gives the applicant advice on all practical and legal matters. The decision of the director for aliens closes the first stage of the procedure. The procedure up to this point lasts on average 2-4 months, with some cases taking considerably longer.

7. An asylum seeker whose application has been rejected or who has only been granted F-status and not the sought-after C-status may lodge an 'appeal' against the unfavourable decision. The distinction between C and F-status is important in as far as de facto refugees only receive an alien's passport which makes it more difficult for them to travel abroad. This prevents them from working abroad and rules out in particular the import-export business which is popular with refugees.

8. The appeal tribunal now comprises 43 people. In addition to the presidency, which consists of 7 people (1 president and 6 deputy presidents) who are all judges, it has 36 members, of which the Ministries of Justice, Social and Foreign Affairs and the Bar Council each appoint 6. The remaining 12 are appointed by the Danish Refugee Council. All the members are employed by the Minister of Justice.

The appeal tribunal meets regularly in chambers of 7 members: a president, a representative of each of the above-mentioned ministries and the Bar Council and two members of the Danish Refugee Council. These chambers decide on both individual cases and the formulation of guidelines on the basis of which proceedings can be conducted in tripartite committees. If a case appears to be particularly simple, the decision may be taken by a tripartite committee, which consists of a chairman and one representative of each of the three ministries and of the Danish Refugee Council.

The applicant is advised by a lawyer during the appeal proceedings.

The appeal tribunal's decision has to be substantiated. About one-third of the appeals lodged are successful.

With 1 400 cases still pending the average length of proceedings rose to about 8 months in April 1986.

(PE 107.292)

9. There is one important exception to the procedure described above which fulfils the requirements of a constitutional state on account of the legal basis on which it has been developed:

The amendment of 19 December 1985 to the Aliens Law made possible a simplified procedure for rejecting an application for asylum where the application is 'clearly groundless'. If the aliens directorate reaches this conclusion after its initial examination it must refer its decision to the Danish Refugee Council. If the latter disagrees with the directorate's judgment, which has occurred in about 25% of cases so far, the normal examination procedure is started. If it agrees the applicant is deported at the end of this procedure lasting 1-2 weeks. There is no possibility of appeal.

So far this procedure has been applied in about 90 cases.

10. The background to this drastic change in an otherwise extremely liberal law is as follows: Since 1983 the number of asylum seekers had been constantly rising and in the second half of 1985 the increase accelerated sharply. At the same time disturbances were caused by Danish trouble-makers directed at refugee accommodation (e.g. in Kalundborg). This was a shock to the nation which had hitherto been proud of its liberal attitude. Nevertheless, and even if application of the short procedure has so far been restricted to relatively few cases, the last amendment seems questionable. It removes the legal guarantees from a procedure which otherwise could almost be described as exemplary. It opens the door to further, more far-reaching deterrence measures should they be required by the economy or the mood in the country. Thus, on the basis of the new text, it seems likely that decentralized examination procedures, conducted by representatives of the two institutions concerned, will be carried out using the simplified method at the border. This would come very close to a violation of the principle of 'non-refoulement' or protection against forcible return.

(PE 107.292)

11. A measure which involved no amendment to the law but proved still more effective was an informal agreement between the Swedish, Danish and GDR governments. When there was a rapid increase in the number of Iranians who were flown into East Berlin by the GDR airline, Interflug, and then applied to Sweden or Denmark for asylum, Sweden and Denmark forced the GDR to promise only to allow asylum seekers through if they had the necessary entry visas. The stream was drastically reduced. The introduction of the visa requirement also greatly reduced the stream of Tamils who are almost always recognized as refugees in Denmark.

12. The proportion of people recognized as refugees in Denmark in the period 1981-1985 varied between about 51% (1982) and 75% (1985).

C. The social situation of persons seeking asylum and refugees

13. Persons seeking asylum are allocated a place of residence by the police. Provided they maintain contact with this place, the applicants are allowed to travel around the country. The Danish Red Cross has undertaken the task of accommodating them. They are accommodated in communal lodgings, i.e. former hospitals, barracks and hotels. The cost is borne by the Ministry of Justice.

In addition to board and lodging, the applicant receives a weekly allowance of 150 krone. If he is feeding himself he receives 400 krone a week.

14. Persons seeking asylum are prohibited from working throughout the entire procedure. Up until now they have also been banned from taking part in language courses while the application is pending. From the autumn of 1986 the Red Cross will be offering Danish courses of up to 60 hours in its centres. Along with a few opportunities for sport, this is the first significant attempt to reduce the nervous strain and stress of the constant waiting in the centres. The psychological stress in the camps during the waiting period which - according to many accounts - last up to two years is extremely severe.

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15. Recognized refugees initially receive a residence permit restricted to five years with the prospect of subsequent conversion into an unlimited one.

They enjoy the same civil rights as Danish citizens with the exception of the right to vote in elections to the Folketing. However, - like all foreigners - they may vote in local elections after three years of uninterrupted residence.

Refugees have exactly the same right as Danish citizens to further education and to take part in courses which make their present qualifications valid in Denmark.

The Danish Refugee Council carries out integration programmes of 12-18 months which also bridge the gap between being recognized as refugees and becoming eligible, a whole year later, for certain social benefits. In particular, language courses of 6 to 12 months are offered.

D. The role of the charitable organizations

16. The Danish Refugee Council is a non-government umbrella organization comprising a large number of free welfare associations, including the Red Cross. It currently employs 1 200 to 1 300 staff, including some 400 interpreters.

Despite the outwardly highly impressive achievements of the charitable organizations there is some unease in Denmark about their role. For this reason, the Danish Federation of Refugees' Friends was founded on 1 February 1986, and is attacking the administration and associations for being too efficiency-orientated, too bureaucratic and too hostile to refugees. The federation concerns itself both with individual cases which appear hopeless to others and with the general development of political opinion in the country.

EUROPEAN PARLIAMENT

COMMITTEE ON LEGAL AFFAIRS AND CITIZENS' RIGHTS

Notice to Members

No. 54/86

Please find attached a summary report by Mr VETTER, rapporteur on the problems of the right of asylum, on his visit to Italy in May 1986.

DIRECTORATE-GENERAL FOR
COMMITTEES AND DELEGATIONS

ANNEX

4 July 1986

122/85

(PE 107.293)

Summary report on the legal and social situation of persons seeking asylum and refugees in Italy

1. Introduction

As on his previous fact-finding missions, the rapporteur was able during his visit to Italy from 21 to 23 May 1986 to gather a great deal of information about the legal and social situation of applicants for asylum and refugees. In Capua and Latina he was able to talk to the occupants of the refugee camps themselves about their present situation and to have discussions with the competent local and regional authorities, Government representatives and representatives of the UNHCR. He also had detailed talks in Rome with UNHCR representatives, Italian MPs, senior officials of the Ministry of the Interior and the Foreign Ministry, representatives of the charitable organizations and the three trade union federations.

To sum up, the legal and social situation of applicants for asylum and refugees in Italy was considered by almost all those consulted to be unsatisfactory, albeit for different reasons. The cause is attributed to the legal basis which no longer provides an adequate framework for dealing with today's demands and problems. However, it remains to be seen whether the attempts being made by a number of people to change this will succeed in the near future.

2. Legal basis

Following the experiences with Fascism, the right to asylum was - as in the Federal Republic of Germany - adopted as a fundamental principle (principio fondamentale) in Article 10 of the Italian constitution. However, the legal implementing provisions to which it refers have still not been enacted.

The legal basis for the determination of refugee status therefore consists of:

- The Geneva Convention relating to the Status of Refugees of 28 July 1951 and the Additional Protocol of 31 January 1967
- the agreement between the Italian Government and the Office of the United Nations High Commissioner for Refugees, on cooperation between the Italian Government and the UNHCR, of 2 April 1952
- the exchange of notes between the Italian Foreign Ministry and the Office of the United Nations High Commissioner for Refugees, concerning the creation of the Joint Recognition Committee, of 22 July 1952

- the Law approving the above-mentioned agreement of 15 December 1954 (Official Gazette of the Italian Republic, No. 19, of 25 January 1955)

Although Italy signed the 1957 Geneva Convention on Refugees and the Additional Protocol of 1967, it availed itself of the possibility of applying the geographical restriction provided for Article 1, Section B (1)(a) of the Geneva Convention, whereby only people who have left their home country because of 'events occurring in Europe' may be recognized as refugees. In practice, this means that in Italy only asylum seekers from Eastern European states have any chance of acquiring refugee status under the Geneva Convention. However, the Italian Government has on a few occasions allowed groups of non-European refugees - Chileans, Indonesians, Vietnamese (boat-people), and Afghans - to enter the country regardless of the geographical restriction and granted them refugee status. (A maximum of 4 000 people so far).

2. Procedure for the determination of refugee status

The Joint Vetting Committee (Commissione paritetica di eleggibilita), which consists of representatives of the Foreign Ministry, the Ministry of the Interior and the UNHCR, decides on award of refugee status. The chair alternates between the representatives of the Foreign Ministry and those of the UNHCR. If no decision can be reached, the chairman has the casting vote. The Joint Vetting Committee generally meets twice a month in Latina where it decides on the applications for asylum after the applicants have had an initial interview with the aliens department of the police (Questura) and have filled in a questionnaire.

The Committee's decision is final. If there is a change in circumstances the case can naturally be reviewed. Reviews of applications on which a decision has already been reached, exceptional cases and applications from people who are not living as asylum seekers in the Latina reception camp are decided by the committee in Rome.

The Joint Vetting Committee issues people who have been recognized as refugees with a certificate.

The UNHCR representative alone decides on the refugee status of asylum seekers from non-European countries who are placed under his mandate if they are recognized as refugees (so-called mandate refugees). The Italian Government accepts this recognition in as far as it tolerates the mandate refugees in its territory and does not deport them.

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3. Social and economic situation

Asylum seekers and refugees from East European states are usually accommodated in camps and provided with basic essentials by the Italian state during the vetting procedure or while they are waiting for an entry visa into another state. Some remain in the camp after they have been recognized as refugees. If they have the financial means to do so asylum seekers may also live outside the camps.

There are at present two long-term camps in Italy for which the Ministry of the Interior is responsible:

- the camp in Latina is currently fully occupied by about 850 asylum seekers and refugees from Eastern Europe (the largest group is from Poland). Latina serves as a reception camp or a transit camp and the UNHCR representative has an office in its grounds;
- the camp in Capua is at present accommodating more than 600 asylum seekers and refugees; some of the asylum seekers living here have already been in the camp for several years.

As there are not enough places in the camps a further 1 500 or so people are accommodated in hotels and guest-houses at the Italian Government's expense. There are plans to set up an association in the north of Italy for the Vietnamese refugees. Asylum seekers living in the camps do not have the right to work but it is tolerated if they take (poorly) paid jobs.

Once they have been recognized as refugees they have to a large extent the same rights as Italians and may also claim social security but they are not entitled to hold public office, to vote or to stand for election. There is no possibility of naturalization for five years. Refugees who have been recognized by the UNHCR as so-called mandate refugees are paid a full allowance by the UNHCR for a maximum of four months and are then paid a reduced allowance for a further nine months. Help in integrating, for example language and vocational training courses, is provided by the charitable organizations and is usually financed by the UNHCR.

As far as the right to work is concerned, mandate refugees are treated in the same way as foreigners. This means that there are now virtually no legal possibilities of employment for them.

4. The charitable organizations

International Social Service and Caritas are the principal charitable organizations involved in caring for applicants for asylum and refugees in Italy.

Both organizations look after not only applicants for asylum and refugees recognized under the Geneva Convention or by the UNHCR but also and especially the large number of de facto refugees who do not belong to either category but are also unable to return home. (Free food and various integration programmes). The representatives of both organizations are critical of the geographical restriction which is still being applied and the lack of reception and integration facilities for asylum seekers and refugees. They therefore welcome and support all the associations which might be able to help change the present situation.

5. Particular problems

As a result of maintaining the geographical restriction, Italy's refugee figures are very low compared to the rest of Europe and the world. In 1985 only 225 out of 4 093 applicants were recognized as refugees under the Geneva Convention and 600 out of 1 327 applicants to the UNHCR were recognized as mandate refugees. Since Italy acceded to the Geneva Convention a total of approximately 15 000 refugees have been recognized. The East Europeans who come to Italy do not usually intend to seek asylum there but regard Italy as a country they wish to pass through on their way to the USA, Canada or Australia. In previous years most of these Eastern European asylum seekers obtained entry visas to these countries relatively quickly. Over the last two years, however, only a very few entry permits have been granted with the result that the asylum seekers are staying longer and longer in the two refugee camps.

However, the main problem is posed not by the officially recognized and registered refugees but by the so-called de facto refugees who have to manage as best they can and enjoy no legal or social security. They are an easy target for exploitation of all kinds.

Italy, which has a long tradition of emigration amongst its own people, has now become a country of immigration, even if there is widespread reluctance to acknowledge this. It is mainly people from the Mediterranean countries (Libya, amongst other North African countries), but also people from Asia, who enter Italy, generally illegally, in order to seek not only work and food but also protection from persecution of all kinds. Depending on who supplies the figures, the number of illegal aliens in the country varies between 800 000 and 1.5 m. There are also conflicting opinions about the number of possible de facto refugees amongst these aliens, especially as it is very difficult to draw a line between so-called economic and political refugees. All the social

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interest groups have therefore been calling for some time for comprehensive and fair legislation on aliens both to increase the legal security of all foreigners and to ensure the proper regulation of entry, residence and work permits. Bills have been submitted for this purpose - also prompted by the series of terrorist attacks in the past year - but some have met with considerable public opposition and have consequently been withdrawn and revised (aliens bill and bill on the legal status of migrant workers).

The bill submitted to the Cabinet (Consiglio dei ministri) by the Interior Minister, Scalfaro, at the beginning of the year provided for the removal of the geographical restriction in applying the Geneva Convention.

The intention was that Italy should follow the other Western European states in taking account of the actual movements of refugees (i.e. most refugees today come from Third World countries and not Eastern Europe). Furthermore, the promise made by the Foreign Minister, Mr Colombo, at a public press conference in July 1982 to the then UN High Commissioner, Mr Poul Hartling, would have been fulfilled. However, this passage of the bill was removed, largely on the initiative of the Minister of Finance, Mr Gorla, on the grounds that lifting the geographical restriction would be far too costly for Italy. The rapporteur heard similar arguments at the Foreign Ministry, based on Italy's special geo-political position, which would result in an increased flow of potential refugees if the geographical restriction were lifted. The view was also expressed that a survey of the foreigners in the country should be carried out first before the restriction was lifted.

An all-party working group of Italian MPs has also produced a bill for the abolition of the geographical restriction in addition to the legalization of foreigners staying in the country illegally. The chairman of the working group, Mr Foschi, is currently trying to win the support of the relevant social groups for his bill. These groups include the three main trade union federations, which have now recognized that the problem of foreigners in Italy, whether they are there legally or illegally, and for reasons of political persecution or out of economic or social necessity, comes within their sphere of interest.

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EUROPEAN PARLIAMENT

COMMITTEE ON LEGAL AFFAIRS AND CITIZENS' RIGHTS

Notice to Members

No. 55/86

Please find attached a short report by Mr VETTER, rapporteur for questions concerning the right of asylum, on his visit to Spain in September 1986.

DIRECTORATE-GENERAL FOR COMMITTEES
AND DELEGATIONS

Annex

27 October 1986

122/85

SHORT REPORT ON THE SITUATION OF
REFUGEES AND PERSONS SEEKING ASYLUM IN SPAIN

A. Preliminary remarks

1. Discussion partners in Spain

From 17 to 19 September 1986 I visited the relevant authorities and groups in Madrid in order to gain a personal impression of the practice of asylum and the situation of refugees in Spain. This provided an opportunity for extensive discussions with senior officials from the Foreign Ministry, the Interior Ministry and the Ministry of Justice as well as the Ministry for Labour and Social Security in the Inter-ministerial Committee for refugee questions, and finally with the representative of the UN High Commissioner for Refugees. I also discussed the role of relief agencies with leading members of the Red Cross and the Spanish Committee for Refugee Aid (SCRA). I also met a representative of the trade union UGT and leading members of the Society For The Defence of Human Rights, the Institute for Latin American and African Studies (ILAAS) and the Institute for Latin American-European Relations.

2. Development of refugee policy in Spain

Until 1959 Spain received refugees only from other European countries and in the early 1960s mostly Cubans en route for the USA. After 1973 there was an increasing flow of refugees (around 50 000 in all) from South America, who were treated as immigrants and who either reclaimed Spanish citizenship or applied for it after two years. At present the majority of refugees come from Angola, Cuba, Iran, Poland, Ghana, Chile and Iraq. Whereas in the past mainly families and groups of people sought asylum in Spain, today more and more individuals are arriving.

In July 1978 the Spanish Government signed the Geneva Convention on Refugees and stepped up cooperation regarding the reception of refugees with the UN High Commissioner and the non-governmental organizations active in Spain. In 1984 and 1985 the laws on asylum and foreigners were passed and came into force in 1985. At the same time steadily increased budget allocations replaced the efforts of the UN High Commissioner for Refugees which had predominated until then. In this period the number of applications for asylum rose from 1 500 in 1984 to around 1 700 in 1985 and 2 500 in 1986 (estimate).

3. Public relations work

Since then the Spanish Government has tried to familiarize the authorities, relief agencies and other interested members of the public with the rights laid down in the Convention on refugees, with Spanish legislation and the measures taken by the relief agencies.

Despite the exceptionally high unemployment rate (on average 22% across the country) and despite the fact that the asylum law guarantees applicants material aid and social security, recognised refugees and applicants for asylum, who currently number around 3 500, are clearly not seen as a burden in Spain. There is at present no public discussion in Spain about a refugee problem, rather there is concern about the problem of foreigners in view of the large numbers (between 500 000 and 1 000 000) living illegally in Spain. They could be expelled from the country at any time.

B. Bases in law

1. Spain has signed the following international conventions which have a bearing on the status of refugees:

- the Geneva Convention on Refugees of 1951 and the New York Protocol of 1967,
- 6th Protocol of the European Convention on Human Rights on the abolition of the death penalty,
- Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 17 March 1978.

2. Recognition of refugees in Spain is based on Chapter 1, Article 13 of the Constitution and on Law No. 5 of 24 March 1984 (right of asylum and position of the refugee; adoption of the 1951 Geneva Convention on Refugees and the Protocol of 1967), implemented by Royal Decree No. 511 of 20 February 1985, and on the Organic Law No. 7 of 1 July 1985 (Law on foreigners), implemented by Royal Decree No. 1 119 of 26 March 1985.

3. Refugee status - right of asylum

Law No. 5/84 translates international law on refugees into Spanish law and makes a basic distinction: it covers

- refugee status in line with the provisions of the Geneva Convention and the Protocol of 1967 and

- the granting of the right of asylum as a sovereign decision of the Spanish Government, which provides an improved legal status, like the work or residence permit.

C. Procedure

1. Applications for refugee status and the right of asylum must be addressed to the offices of the Ministry of the Interior. Applications for asylum can also be made at Spanish embassies or consulates abroad.

2. Applicants for asylum and refugees may enter Spain regardless of whether they have valid identity or entry papers and regardless of the question of the first country of asylum.

If a foreigner living in Spain decides to apply for refugee status, he must make the application within one month of the state of persecution beginning, and before his visa runs out, and in the case of illegal entry, within fifteen days of crossing the border.

3. On making the application applicants receive temporary identity papers which allow them to claim certain social security benefits.

4. After preparation and after examination by an inter-ministerial subcommittee made up of representatives of the Ministries of the Interior (Chair), Foreign Affairs, Labour and the UN High Commissioner the application is forwarded to the inter-ministerial committee, consisting of representatives of the Ministries of the Interior (chair), Foreign Affairs, Justice, Labour and Social Security.

The representative of the UNHCR and the recognized relief agencies can deliver a written opinion on the application.

On making the application the person claiming asylum receives temporary identity papers valid for three months, which can be renewed for further periods of three months until a decision is reached on the application, and which entitle the applicant to take up residence anywhere in Spain.

5. For persons in a situation similar to that of persecution (e.g. fleeing a civil war) - Palestinians from the Lebanon, Lebanese nationals, Tamils, Columbians, Salvadorians, Iranians, Iraquis - who does not fulfil the conditions of the Geneva Convention, but whose return home would threaten their life or their freedom, the inter-ministerial committee generally recommends the right of residence in accordance with the law on foreigners.

6. The Interior Minister makes his decision on the basis of a justified proposal by the Department of Documentation and a report by the inter-ministerial committee. If he decides against the application an appeal can be lodged; if the Interior Minister cannot resolve the appeal himself he must refer it to the Council of Ministers. Only on certain technical grounds can legal action be taken against the rejection of an application by that body.

7. The granting of asylum

Spain understands asylum as protection granted on the basis of a sovereign political decision by the state; asylum can be granted to the following groups of persons:

- refugees under the terms of the Convention (such refugees in other countries can apply for asylum at Spanish embassies or consulates),
- persons who are being persecuted,
- for political crimes or crimes connected with political activities,
- for exercising basic rights or fighting to win recognition of basic rights which are protected under the Spanish Constitution,
- for racial, ethnic, religious or political reasons, or because they belong to a particular social group,
- or stand accused or have been convicted of such actions, even if they represent offences under criminal law.

Applicants for asylum cannot be turned away at the frontier or expelled from the country, except if there is clearly no possibility of them being granted asylum; in addition, any expulsion procedure must be suspended if an application for asylum has been made.

8. Proportion of applications approved

On 1 September 1986 out of a total of 8 883 applications for refugee status 2 561 had been approved, 3 004 rejected, dropped or withdrawn; 2 709 were still pending. Of the 3 159 applications for asylum 778 had been approved, 302 rejected or dropped by the applicant and 2 012 were still pending.

9. Whilst preparing the application for refugee status or right of asylum the applicant can obtain the assistance of interpreters and translators and - through relief agencies - legal advice. This also applies to the examination procedure itself and the appeal procedure, if the application is rejected.

D. The economic and social situation of the refugees and applicants for asylum

1. Whilst their application is being processed, refugees and applicants for asylum and their dependants can, in cases of proven need, claim financial support through the Ministry of Labour and Social Security and take advantage of the social, medical, pharmaceutical, educational and cultural facilities provided by the state.

2. Whilst the application for refugee status or asylum is being considered (four months) single people receive Ptas 22 000 per month (from the fifth month onwards Ptas 30 000) and families receive Ptas 47 000 to 50 000; to alleviate the economic situation of families, adolescent children are treated as single people. Persons of pensionable age receive Ptas 14 000 per month, the same as Spaniards who are not members of a pension scheme.

3. The Ministry of Labour and Social Security holds an annual public meeting of all relevant authorities and agencies, at which the latter present their programmes. The budget allocations for these programmes have been increased from Ptas 580m in 1985 to around Ptas 836m in 1986, a rise of 44%.

4. Work permit

Whilst their applications are being considered, applicants for refugee status or asylum have no right to a work permit. During this period applicants may neither pay social security contributions nor claim such benefits, these being reserved in Spain for people in work.

When the procedure is completed, the granting of right of asylum covers permission to work, the right to free choice of domicile, which is valid throughout Spain, and the right of establishment in order to exercise a profession or a trade. Recognized refugees must actually apply for a work permit, which is valid throughout Spain, and which they are granted irrespective of the situation on the employment market.

E. Relief agencies

1. The Red Cross provides assistance above and beyond that required by law and supports refugees until their status is recognized or they are granted asylum. It meets refugees at the airport, clothes and accommodates them (in boarding houses rather than camps), provides Spanish courses and, if necessary, psychiatric help and health care. At present five reception centres are being set up at the most important places of arrival (Madrid airport Valencia, Cadiz, Barcelona, Canary Islands).

2. The SCRA is supported by Caritas, the Catalan Association for Support and Aid for Refugees (CASAR), the Spanish Catholic Committee on Immigration, the leading political parties, the unions and humanitarian and charitable organizations. On behalf of the UNHCR it provides legal advice and carries out public relations work, on behalf of the government it organizes the integration into local communities and the training of young refugees, and it is responsible for aid and repatriation measures for refugees from Latin America. The most important areas of activity of the SCRA are integration programmes, legal advice, training grants and job creation.

F. Concluding remarks

1. To sum up, emphasis should be placed on the basic position of the Spanish authorities, that of trying to integrate applicants for asylum and refugees into Spanish society. This positive attitude on the part of Spain no doubt has much to do with the country's own past: as a result of the Civil War 3 000 000 Spaniards were forced into exile. However, the restrictive refugee policy of the other European countries is having an influence on Spain as well.

2. When considering the approval rate for applications, the lengthy backlog and the resulting delays (up to 18 months) are particularly noticeable. A lack of administrative routine leads to overloading and bottlenecks in offices and courts and has unintentionally negative effects on the applicant (uncertainty, integration, withdrawal of application etc.) and on Spain itself.

3. The Spanish authorities and relief agencies were very receptive to the idea of coordinating the refugee policies of the EEC Member States at Community level, and of a sharing of the costs.

Summary report
on the legal and social position of refugees and
applicants for asylum in France

1. Over the period 23-25 June 1986 I gathered information on the legal, economic and social position of asylum-seekers and refugees in France, through numerous conversations with representatives of the High Commissioner for Refugees, the Ministries, welfare organizations and political parties in Paris. During my stay in Paris I also had the opportunity to visit a reception centre for asylum-seekers in Créteil (Paris), and to talk to some refugees. In the week of the July 1986 part-session I visited a working men's hostel in Strasbourg in which refugees have found accommodation.

General impressions

2. The number of people seeking asylum in France has risen steadily since 1981. 1981: 19 863; 1982: 22 505; 1983: 22 350; 1984: 21 714; 1985: 28 810. By comparison, there were approximately 2 000 asylum-seekers in 1974. Despite this increase France has a 'foreigner problem' rather than a 'refugee problem', according to the vast majority of the representatives I spoke to. Generally speaking, it would appear that no fundamental changes in the laws concerning persons seeking asylum have been undertaken to date. The rapporteur cannot yet estimate the effects which the new immigration regulations of July 1986 will have on those seeking asylum in France. It is worthy of note that France has increasing numbers of so-called de facto refugees. These are refugees who have either failed to undergo the relevant procedures or have not been granted refugee status, yet who remain in France nonetheless. The presence of this category of refugees has no legal or social foundation whatsoever.

The legal position

3. The legal provisions determining refugee status are as follows:

- The preamble to the Constitution of 7 October 1946, incorporated into the preamble to the Constitution of 4 October 1958, which states, inter alia:

'Anyone subject to persecution as a consequence of having worked to advance the cause of freedom shall have the right to asylum within the territories of the Republic.'
 - Law No 52-893 of 25 July 1952, concerning the establishment of the French Office for the Protection of Refugees and Stateless Persons (Official Journal, 27 July 1952).
 - Decree No 53-377 of 2 May 1953, concerning the French Office for the Protection of Refugees and Stateless Persons (Official Journal, 3 May 1953).
 - Law No 70-1076 of 25 November 1970, concerning the accession of France to the Protocol on the legal status of refugees, signed in New York on 31 January 1967 by the President of the General Assembly and the Secretary-General of the United Nations (Official Journal, 26 November 1970).
4. The authority responsible for granting refugee status is the director of the office for the Protection of Refugees and Stateless Persons (OFPRA); this office is autonomous and attached to the Ministry of Foreign Affairs. The director of OFPRA is assisted by a council (Conseil de l'Office) which advises him on questions of a general nature in connection with the official recognition of refugees. The council is made up of a representative of the Ministry of Foreign Affairs (chairman), representatives of the Ministries of Justice, the Interior, Finance, Labour, and Social Affairs and National Solidarity, plus a representative of officially recognized non-governmental refugee organizations.
 5. Persons to whom refugee status has been refused, or from whom it has been withdrawn, can protest against the decision to an appeals commission (Commission des Recours); this is made up of a representative of the

Council of State (chairman), a representative of the OFPRA council, and the representative of the UNHCR in France. Decisions reached by the appeals commission can be challenged in the Council of State as far as legal problems are concerned.

The UNHCR representative in France has the right to take part in the meetings of the OFPRA council, to present his point of view and to put forward proposals; as mentioned above, he is also a member of the appeals commission.

Those persons whose status as refugees is officially recognized receive a certificate to that effect from the director of OFPRA.

6. Having completed the formal description of legal procedure, the rapporteur would now like to focus on a number of details:

After a preliminary visit to the local prefecture, each applicant must obtain a residence permit of one month's duration and apply to OFPRA during that period. OFPRA then considers whether the request for asylum is justified. A decree of 27 May 1982 sets out the criteria which determine whether the claim is substantial. This list of criteria is, however, rather imprecise.

It is not necessary to be represented by a lawyer in the court of first instance convened by OFPRA. The welfare organizations involved in refugee work offer help and advice. In the case of an appeal, the costs of representation by a lawyer are not defrayed by legal aid.

7. According to the law, OFPRA is supposed to reach a decision within four months. In practice, it often takes up to one year. If an appeal is made subsequently then the procedure as a whole may take two to three years. With this in mind, the French Government is considering increasing the staff and financial resources of OFPRA.
8. On the basis of reports on the process of granting refugee status, a distinction may be made between spontaneous asylum-seekers, who submit their application after arrival in France, and so-called contingent or quota refugees. The latter enter France after submitting a request for

asylum to the French Embassy in their native country and passing a preliminary examination, or as part of an intergovernmental agreement. As far as the State agencies are concerned, these people have the advantage of belonging to a compact and identifiable group for whom provision can be made in advance. Their treatment can be described as good.

The spontaneous applications for asylum, on the other hand, for which no provision can be made in advance, are subject to discrimination in both legal and social terms. There are even reports of completely parallel cases where applications were accepted or rejected according to whether the applicants in question were quota asylum-seekers or spontaneous asylum-seekers.

The social position

9. An applicant seeking asylum in France arrives initially at one of the two reception centres in Paris. There he is given information and medical care. In general he is allowed to spend between 15 and 18 days in a reception centre. During this period, canteen food and 100 FF pocket money are provided. Afterwards, the asylum-seeker usually enters a refugees' hostel, of which there are about 300 in France.
10. Asylum-seekers are allowed to take up employment after receiving the temporary residence permit. Those who have a job or receive unemployment benefit have the right to claim welfare benefits and family allowances. In the opinion of the rapporteur, the asylum-seekers are provided with good accommodation both in the transit centre and in the hostel which he visited in Strasbourg.
11. Refugees granted official status are sent by the French refugee organization France Terre d'Asile to the various hostels. They are given lodging there for six months, receive French language lessons (42 hours in three months) and are looked after by a lady social worker. In Strasbourg, most of the refugees with official status find work in supermarkets and market-gardening firms.

Refugees lodged in a hostel of this type receive financial support from the State for six months. In Strasbourg, for example, half-board costs 1 770 FF per month. In addition, the refugee received 280 FF pocket money. In the seventh month, the refugee receives benefit of up to 2 000 FF from the city of Strasbourg, if he has failed to find employment. From the eighth month onwards he receives unemployment benefit.

The role of the welfare organizations

12. There is no doubt that welfare organizations such as France Terre d'Asile, CIMADE (the Ecumenical Mutual Aid Service), the Comité médico-social and the International Social Service carry out invaluable work on behalf of refugees. Problems concerning the medical care of the spontaneous refugees were mentioned. The Comité médico-social, in particular, deals with the health education and immediate medical treatment of the refugees. It considers that special therapeutic treatment is urgently needed, since many refugees have suffered torture. No facilities have been set up as yet.

The Basque problem

13. At the explicit enquiry of the rapporteur, it was confirmed that the description of the practice of deporting Basques to third countries given in Working Document PE 107.288 is accurate.

It was after our visit to Paris that the deportation of Basques direct to Spain, which had been determined shortly before, was carried out. The law of 2 November 1945 (!) which was used as legal grounds for the deportation states in Article 26 that refugees with official status cannot be expelled in this fashion. In one case which received the attention of the press, the refugee concerned was still at the stage of submitting an application to the Council of State.

EUROPEAN PARLIAMENT

COMMITTEE ON LEGAL AFFAIRS AND CITIZENS RIGHTS

Public hearing on the right of asylum

Brussels, 25 September 1986

SUMMARY RECORD

of the papers given by experts

12 November 1986

122/85

Michel MOUSSALLI

Delegate of the United Nations High Commissioner for Refugees
for Belgium and Luxembourg and for the
European Institutions

- I. Mr MOUSSALLI made the following points in his introduction:
1. Although the right of asylum was concept which had worldwide recognition, Europe had a special tradition in this area. This tradition was valuable and should therefore be defended against all the threats to which it was currently exposed.

The Council of Europe had been active for some time in this area and had initiated a whole series of positive steps.

The right of asylum that had been applied almost uniformly everywhere in the past went further than that defined in the Geneva Convention on the status of refugees in that it also included the right to asylum on exclusively humanitarian grounds. In the past Europe had responded positively to the flood of refugees mainly from Eastern Europe. Here, integration had been achieved. The vast majority of refugees today came from the Third World.

In recent years European countries had faced a growing number of applications for asylum: in 1983 there were 70 000, in 1984 104 000 and in 1985 166 000 applicants. This increase had resulted in the very principle of the right of asylum being called into question. It was a matter of great concern that the policy was frequently no longer geared to integration but to turning applicants back.

Any initiative by the European Parliament at Community level should be welcomed. Efforts should be made to begin developing the necessary awareness at political level of the need to find a solution in Europe. The problem affected Europe but by no means primarily Europe. The majority of those seeking asylum now came from Third World countries and most of them stayed in other Third World countries.

The increasing numbers in Europe had to be set against the figures for such countries, for example, Pakistan where there were currently some 3.5 million refugees.

- II. In answer to questions from Mr Stauffenberg, Mrs Fontaine, Mr García Amigo and Mr Wijsenbeek, Mr Moussalli stated that the figures for refugees published by the High Commissioner's Office were based on government data. Refugees from the DDR did not appear in the statistics submitted by the Federal Republic of Germany since they related to German nationals. The children of other refugees were included if they did not obtain the nationality of the host country. Some refugees did not wish to be naturalized on grounds of principle (e.g. White Russians) and therefore figured in the statistics indefinitely. Many were, however, naturalized and thus disappeared from the refugee statistics. The grounds for seeking asylum now included not only the classic reason of persecution by the State but also military conflict, natural disasters and famine. The trend towards a restrictive attitude to refugees could be observed in all countries in Europe. Efforts should be made to shorten the determination procedure for asylum claims, particularly since the length of the current procedure would offend public opinion.

Following a further discussion in which Mrs Miranda de Lage, Mr Bandres, Mr García Amigo and Mr Vetter took part, Mr Moussalli pointed out that Articles 1 and 2 of the Refugee Convention of the Organization of African Unity currently provided the best definition of the term 'Refugee'. However, the European States had rejected the text since they did not want to go beyond the wording of the Geneva Convention.

Dr Peter LEUPRECHT

Director for Human Rights at the Council of Europe

I. Prior to the hearing, Dr LEUPRECHT submitted the following written introduction:

WILL EUROPE REMAIN A PLACE OF ASYLUM?

Europe, which is traditionally regarded as a place of asylum and human rights, takes in only 600 000 of the world's 13 000 000 refugees.

Despite this low figure - 4.6% of the total - the countries of Western Europe are still trying to restrict the number of refugees entering their territory. This worrying trend has emerged in the three-fold context of the economic recession, the rise in terrorism and the resurgence of intolerance and racism. Against this background it must be asked what protection the legal instruments of the Council of Europe provide for asylum seekers and refugees?

The European Convention on Human Rights does not as yet guarantee a personal right to asylum. However, a number of the articles of the Convention can be invoked - and this has in fact been done on various occasions - particularly Article 3 (prohibition of torture or inhuman or degrading treatment) and Article 8 (respect for private and family life).

In addition, a variety of work is being done within the Council of Europe, particularly by a body specializing in the right of asylum, the Ad-hoc committee of experts on the legal aspects of territorial asylum and refugees, (CAHAR) set up in 1977, and by the Parliamentary Assembly and the Committee of Ministers.

The work of the council of Europe is directed at four objectives:

- to extend the possibilities offered to those seeking asylum by the European Convention on Human Rights;
- to standardize the procedures for considering requests for asylum and the criteria for granting asylum;
- to remedy the situation of 'refugees in orbit';
- to strengthen solidarity between European States and those seeking asylum and between the countries of Europe themselves.

1. The Parliamentary Assembly's proposals that the right of asylum should be included as a personal right in the European Convention on Human Rights date back to 1960 and they have now been taken up by the International Federation for Human Rights which recently called for the drawing up of an additional protocol to the Convention, relating to the right of asylum.
2. An initial step towards standardizing procedures for considering claims for asylum has been taken with the adoption of a recommendation (R (81) 16) made by the Committee of Ministers in 1981 which attempts to define the fundamental principles which should be respected in any national procedure for granting asylum.

3. The position of refugees in orbit, exiles who are sent from one country to another without ever finding a host country, is one of the most distressing problems of western society. The Council of Europe has responded by two initiatives: Recommendation (84) of the Committee of Ministers calling for the application of the principle of non-refoulement, even in the case of persons whose refugee status has not yet been recognized, and the draft Convention on the responsibility for considering requests for asylum drawn up by CAHAR which will make it possible to designate the State responsible for considering the claim for asylum on the basis of well-defined criteria. As regards persons whose refugee status has already been recognized, the European Convention on the transfer of responsibility for refugees, concluded by the Council of Europe in 1980, permits them to settle in another country. At present this agreement applies only between seven countries: Denmark, Italy, the Netherlands, Norway, Portugal, Sweden and Switzerland.

In addition, Recommendation R (82) 21 of the Committee of Ministers on the acquisition by refugees of the nationality of the host country is designed to facilitate the integration of refugees into their country of residence.

4. This year, the Parliamentary Assembly in its recommendations 101 and 1031 appealed to governments to show greater solidarity towards refugees and called for greater solidarity between European countries; the Assembly also held a major debate on the problem of the right of asylum last week. For its part, the Committee of Ministers plans to hold discussions between European countries, within the framework of CAHAR, to establish jointly practical arrangements for inter-government cooperation.

Finally, it might be useful to set up a system for the exchange of information on the movements of asylum seekers.

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It is to be hoped that these texts will soon be taken into account by the democratic countries of western Europe. Only then will Europe retain its reputation as a haven of asylum and human rights.

II. In his presentation, Mr Leuprecht went on to develop the following points:

On the basis of gross national product and population figures, the countries of western Europe had to deal with a disproportionately small number of asylum claimants compared to other countries. In some countries in the Third World itself there was one refugee for every seven inhabitants. In Europe the ratio was 1:200, 1:300, or 1:1 000. The present reaction on the part of the European States was difficult to understand insofar as they were among the richest countries in the world.

In addition to Articles 3 and 8 of the European Convention on Human Rights referred to above, Articles 4, 5 and 13 of the European Convention on Human Rights and Article 2 of the Fourth Protocol might also be invoked to protect asylum-seekers.

As regards up-to-the-minute information, two days earlier approximately 70 non-governmental organizations had once again called for the drafting and adoption of an additional protocol to the Human Rights Convention providing explicitly for protection of the right of asylum.

In a personal comment, Mr Leuprecht said that societies could generally be judged by basic rights. The attitude to asylum claimants was a significant indicator of how liberal and humanitarian a society was.

III. In answer to questions from Mr Stauffenberg, Mrs Fontaine, Mr García Amigo, Mr Wijsenbeek and Mrs Vayssade, Mr Leuprecht said that the figures that he had quoted came from the UNHCR, and that the refugee figures for Europe probably accounted for a very small percentage. The question of members of the family joining a refugee had also been introduced into international law by the specific inclusion of the right to the reunification of families in the Final Act of the CSCE conference in Helsinki. Such potential refugees, who were being forcibly detained in their country of origin, could not be included in the statistics.

In some cases measures taken by countries in western Europe, such as the visa requirement, discouraged potential refugees.

Referring specifically to Professor Zuleeg, Dr Leuprecht endorsed the latter's comment that, according to the ruling by the Ninth Chamber of the German Federal Administrative Court under which acts of violence aimed at ensuring law and

order should not be regarded as political persecution. Jews involved in the uprising in the Warsaw ghetto would probably have had no chance of being recognized as refugees in the Federal Republic of Germany.

Restrictive trends were to be found everywhere in legislation, administrative practice and case law. The many deterrent measures introduced were having their effect on neighbouring countries.

Terrorist activities were not covered by the right of asylum. It was unlikely that any intelligent terrorist would apply for asylum.

The degree of harmonization between the countries of western Europe was inadequate. Not even all the relevant Council of Europe conventions had been ratified in all countries, a case in point being the Convention on the suppression of terrorism. The Extradition Convention caused no problems in countries with effective protection of basic rights such as the Member States of the European Community. However, problems of this nature had arisen within the Council of Europe in relation to Turkey.

Philip RUDGE
Project Secretary
European Consultation on Refugees & Exiles
(ECRE)

I. The following summary is taken from the paper submitted by Mr Rudge for the hearing:

1. SUMMARY

1.1 The view of many of the voluntary agencies participating in the European Consultation on Refugees & Exiles (ECRE) is that the best approach to the present European asylum situation requires a two-fold policy; on the one hand adherence by European States to their obligations under the United Nations 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees and the avoidance of harsh or inhumane "deterrence" policies; on the other hand a much more imaginative search for regional solutions that take fully into account the causes of conflict and social unrest and ways to promote international solidarity, including burden-sharing. The ECRE agencies therefore welcome the initiative taken by the European Parliament through its Committee on Legal Affairs and Citizens' Rights to examine the issue of asylum and to develop policies for a humane and coherent European approach to what is a global problem of massive dimensions.

1.2 By almost any comparison - statistical, political, economic - the refugee problems facing governments in Europe are relatively minor in the global context. The common perception of the arrival of asylum seekers in Europe owes more to a reaction to high levels of unemployment and prolonged recession than to a willingness to make an adequate appreciation of, and reasonable response to, the real scale of the tragedies affecting Central America, East Africa, the Middle East, South and South East Asia and elsewhere. It is hardly reasonable to say that the refugee community in Western Europe adds a major additional stress to employment and social problems, when refugees and asylum seekers represent substantially under 1% of the total population of this region. There is, furthermore, increasing evidence that harsh "deterrence" policies based on these assumptions actually "deter" very few but merely add to the sum total of human misery and severely reduce the capacity of the asylum seeker to contribute effectively to the social and economic life of the receiving country. Conversely, a humane and efficient determination procedure, consistently applied and adequately resourced, ensures that unfounded asylum claims are speedily resolved and that the majority of genuine refugees are enabled to rebuild their lives quickly and participate in the life of their new environment. The length of the determination procedures is a problem that can be solved and indeed the failure to deal with this problem both costs the host country more in the long run and causes serious damage to individuals subjected to it.

1.3 Nonetheless, the situation in Europe is perceived as a crisis and is leading increasingly to measures that threaten the refugee concept itself. There is evidently a feeling that things are out of control, that the problems will grow greater and that the international system is not coping. The consequences of this are potentially alarming. It is leading to a situation where European States may react either by refoulement of asylum seekers to areas where their lives and security are threatened or by introducing new policies which have the effect of passing the burden from one country to another rather than discussing better ways of sharing it.

1.4 It is now well-known that the changing nature of the asylum question in Europe is both a matter of the increasing numbers of asylum seekers and also of a change in their origin. The 1951 Convention was prepared during a period of the Cold War and derived from the complex situation resulting from the mass displacement of people during the Second World War. Beneficiaries at that time were those fleeing from Soviet-dominated regimes of Eastern Europe, although it should be stated that the geographical scope of the 1951 Convention was universal. During the 1960s it became increasingly clear that the refugee phenomenon was far broader in scale as more asylum seekers came from Third World countries and the 1967 Protocol expanded the terms of reference of the 1951 Convention by dropping the time restrictions and allowing those States which had adopted a geographical reservation to remove it. The only major western European country to maintain an asylum policy based on the original European geographical limitation is Italy, though even this country has exceptionally taken a quota of refugees from Chile and Indochina in recent years. So all principal countries of Western Europe have ratified or acceded to the 1951 Convention and 1967 Protocol relating to the Status of Refugees. How far the terms of the Convention and Protocol are actually incorporated into domestic law depends on the national jurisdictions in each country. Each European government therefore shares the same obligations under international agreements to grant the fundamental rights provided for in those texts to those refugees recognised on their territory.

1.5 Clearly the situation in Europe cannot be seen purely in terms of individual national policies. The agencies share the view that there is a need for extensive cooperation at the European level. A great deal of technical work has been carried out to deal with complex issues such as the responsibility for examining asylum requests, international support for adequate protection and assistance in countries of first asylum, ways of establishing regional settlement and resettlement programmes. It is the political will that has failed.

If progress can be made on these ideas and political initiatives can be taken in areas of the world where the political conflict generating asylum seekers seems intractable then it will be possible to counteract the feeling that there are no solutions in sight and that the burden on Europe is becoming intolerable, feelings which feed the racism and xenophobia which can only lead European asylum policy in increasingly isolationist and restrictive directions.

II. In his oral presentation, Mr Rudge made the following specific points: the maintenance of the right of asylum raised a serious problem concerning the protection of fundamental rights in Europe. The core of the problem lay in

1. the alleged abuse of the right of asylum by so-called economic refugees and
2. the restrictive trend in some countries whereby potential asylum-seekers were deterred by inhuman conditions and linguistic confusion.

As regards 1., the right of asylum was undoubtedly being abused. However, the numbers involved were small, as shown by the example of Denmark where only 4.5% of all asylum claims were classified as 'manifestly unfounded'.

As regards 2., the official figures - even those used by the UNHCR - were sometimes misleading. The deterrent measures taken by governments were not only immoral and ineffective but also, violated the European Human Rights Convention and the United Nations Covenants.

The Community should draw up minimum standards for dealing with asylum-seekers. Governments should comply with the law in force in a more constructive way. As regards the problems in the countries of origin, an imaginative search for regional solutions should be encouraged. International solidarity and burden-sharing and a liberal interpretation of the Geneva Convention on Refugees would represent significant progress. As regards the European Communities, the Commission should cooperate with non-governmental organizations. Europe still had a duty to assume part of the burden, to preserve its good reputation and to intervene politically to solve conflicts in the countries of origin.

III. In answer to questions from Mr Stauffenberg, Mrs Fontaine, Mr García Amigo, Mr Wijsenbeek and Mrs Vayssade, Mr Rudge said that there were three categories of refugees:

1. those recognized under the Geneva Convention relating to the Status of Refugees,
2. De facto refugees who were generally accepted on humanitarian grounds, and

3. those without any claim.

The term 'economic refugee' should be dropped. All those who had lived in European countries for a long period either as immigrant workers or students should be taken out of the figure of 725 000 asylum-seekers over the past 10 years. Many of those seeking asylum withdrew their applications or were not recognized as refugees. Ultimately some also returned to their country of origin.

This and other factors showed that the overall figure of 725 000 was too high. Deterrent methods did not have the desired effect. The reasons for leaving the country of origin still persisted. Most asylum-seekers did not come from the poorer countries but, for example, from Sri-Lanka and Iran, i.e. countries in which the personal safety of the individual was under threat. Following further discussion in which Mrs Miranda de Lage, Mr Bandres, Mr García Amigo and Mr Vetter took part, Mr Rudge pointed out that it was important to distinguish between the law and legal tradition. It was advocated that the European Parliament should seek to extend the protection for asylum-seekers beyond the narrow limits of the Geneva Convention on the Status of Refugees and to define minimum standards for dealing with asylum-seekers and refugees.

Professor Dr Manfred ZULEEG
Faculty of Law
Johann Wolfgang Goethe University, Frankfurt

1. Professor Zuleeg submitted the following written contribution to the hearing:
 - A.
 1. Although the right of asylum is not an area for which jurisdiction has been expressly transferred to the European Community, it is nonetheless of considerable significance since the free movement of persons is one of the main pillars of Community life and it would be undermined if the fear of the mass influx of asylum seekers were to determine foreign policy and adversely affect the attitude of the general public to foreigners.
 2. It would not be in keeping with all the Community stands for to recommend that the Member States should close their borders to asylum seekers; all the Member States know full well that they are committed to the humanitarian philosophy from which the right of asylum derives.
 3. The European Community can help to share the burden between the Member States more equitably, to work for and maintain a humanitarian right of asylum in all Member States and to increase the readiness to grant asylum.
 - B.
 - 1(a) In the Federal Republic of Germany, the right of asylum is defined as protection against political persecution. This touches on only one of the reasons why a person might be in need or danger. If someone is trying to escape from a distressing situation, he should not be accused of an 'abuse' merely because he adopts a course of action which is not in fact designed to deal with his particular case; the term 'abuse' implies a moral reproach which would not appear to be appropriate for most asylum-seekers.
 - 1(b) Under the 1951 Geneva Convention on the Status of Refugees and the 1967 Protocol, the term 'refugee' corresponds broadly although, it is widely held, not fully, with the term 'a person persecuted on political grounds' within the meaning of the second sentence of Article 16(2), of the Basic Law. Thus, the Geneva Convention on the Status of Refugees provides no protection worth mentioning for groups of people who are not covered by the provisions of the Basic Law referred to above.
 - 1(c) It must be assumed that, given the poverty and political unrest in many countries in the world, the large number of people seeking refuge in Europe will remain unchanged or even increase. Whether the right way to describe this is a 'flood' of asylum-seekers is somewhat doubtful.

2. It is quite true that the Federal Republic of Germany is pursuing a policy of closed borders and deterrents vis-à-vis asylum-seekers. Evidence of barriers at the borders can be seen in the visa requirement for the main countries of origin of asylum-seekers. This policy of deterrence can be seen in a number of ways in which life on German soil is made difficult for asylum-seekers and in statements by politicians.

3(a) Although criticism is justified in a number of individual aspects or cases, the determination procedure in the Federal Republic of Germany is based on constitutional principles. These principles could therefore be adopted throughout Europe, particularly the guarantee that administrative decisions should be subject to judicial review.

3(b) The procedure itself could be shortened if more staff (civil servants and judges) and resources (gathering of information on the situation in the countries of origin) were made available.

3(c) Asylum-seekers who are not recognized as victims of political persecution but are nonetheless allowed to remain in the country should be 'tolerated' only on a temporary basis since they have only minimum legal protection. The person concerned should acquire a residence permit as a secure basis for his stay.

4(a) Throughout Europe, welfare services for asylum-seekers should be such as to encroach as little as possible on the individuality of persons held in camps, for example priority should be given to letting them look after themselves and adopt a way of life that reflects their own cultural tradition.

4(b) The European Community should play an advisory and educational role in working towards the establishment of the right of asylum on humanitarian grounds and provide a forum for political agreements. In addition, agricultural surpluses could be made available to feed asylum-seekers and recognized refugees. The Community could finance measures to improve the professional and social integration of refugees. Although there are legal obstacles to any legally binding coordination of the right of asylum at Community level, in my view these difficulties are not insurmountable. The goal should be to achieve a uniformly higher standard as regards the right of asylum in the interests of asylum-seekers.

5(a) The refoulement from one country to another of those seeking or entitled to asylum is unacceptable on both legal and social grounds. Thus, burden-sharing within the Community should be reviewed to spread the economic repercussions of asylum in accordance with the potential of the individual Member States and incorporating a contribution from the Community as such.

5(b) The Community's political and economic contribution to solving the refugee problem should attack the root of the problem, namely the instability in many countries in the world. A development aid policy, without any need for reciprocity as in the Lomé Conventions, concentrating on aid for self-help and an open trade policy towards poor third countries are an integral part of a preventive and forward-looking asylum policy.

6. The rights and obligations of recognized refugees in the European Community should be based primarily on the Geneva Convention, without prejudice to more favourable national arrangements, such as those provided for in paragraph 3 of the Asylum Procedure Law in the Federal Republic of Germany. The European Community could also envisage extending the free movement of persons to recognized refugees.

II. In his oral presentation, Mr Zuleeg added the following points:

Although the Treaties establishing the European Community did not give the Community express jurisdiction as regards the right of asylum, its terms of reference did at least include harmonization, owing to freedom of movement that had to be safeguarded and the removal of internal frontiers, which were the preconditions for creation of the internal market. In addition, the Community was fundamentally committed to safeguarding standards relating to basic rights.

It would be inaccurate to describe the present situation as an abuse of the right of asylum. The number of de facto refugees was much higher than the estimated number of refugees under the Geneva Convention. In the future, the numbers could be expected to remain constant or to increase. Nevertheless it would be totally wrong to speak of a 'flood'. The Federal Republic of Germany was adopting deterrent measures and keeping its borders closed. Although there was a constitutional basis for the asylum procedure the applicants were badly off while it was going on. Welfare arrangements should be established on a European basis in order to order properly to protect individuality. The European Community could serve as a forum for harmonizing such arrangements. Food surpluses in the European Community could be used to solve the problems of food supplies in some Third World countries. This would remove the causes of the refugee problem in the countries of origin. Coordination between the Member States could not go as far as the actual distribution of refugees between Member States. It was, however, conceivable that the costs could be allocated according to a specific formula.

Finally, the Community could contribute, at political level, to overcoming the problems in the countries of origin.

III. In answer to questions by Mr Stauffenberg, Mrs Fontaine, Mr García Amigo, Mr Wijsenbeek and Mrs Vayssade, Professor Zuleeg said that it was difficult to arrive at a clear definition of the term refugee. Figures for the breakdown between political and economic grounds varied widely. Even the distinction between these two areas was anything but clear. In its restrictive ruling on the Tamils, the Federal Administrative Court had maintained that a situation approximating civil war did not constitute political persecution, despite the fact that the case typified persecution of one specific group. The term refugee should not be defined too narrowly.

Since the right of asylum was granted without reference to the political persuasion of the applicant, it did not provide a means of singling out potential terrorists.

The media had very little influence on decisions concerning asylum-seekers. It was, however, conceivable that protection might be eroded in the longer term.

The European Community should pursue a development policy in the countries of origin to help remove the reasons for people becoming refugees. Within the Community itself, measures to deter asylum-seekers should be abolished. The Community should compile joint statistics and data on conditions in the countries of origin. The determination procedure should be speeded up.

In the Federal Republic of Germany there were in fact no cases of recognized refugees from other Member States. Once a person had been recognized as having refugee status, he could not be deported to a third country except on grounds of a criminal offence. The illegal immigration figures were determined largely by the imposition of restrictions (visa requirements). The number of illegal immigrants in the Federal Republic was estimated at 200 000, some of whom were also working illegally. The restrictive aspects of the Asylum Procedure Law and in a number of proposals to amend the Basic Law were limited by the protection afforded by Article 1 of the Basic Law which, for example, prohibited extradition to countries practising torture.

After further discussion, in which Mr Stauffenberg, Mrs Miranda de Lage, Mr Bandres, Mr García Amigo and Mr Vetter took part, Professor Zuleeg recommended that the broader definition of the term 'refugee' adopted by the Organization of African Unity should be used otherwise there would be no basis on which to tackle the real problems.

Representatives of the Dutch, Belgian and German sections of

AMNESTY INTERNATIONAL

- I. The Amnesty International representatives submitted a paper for the hearing from which the following summary has been taken :

Conclusions and recommendations

1. The institutions of the European Community have on many occasions expressed their firm commitment to the promotion and protection of human rights. It is important that the European Community and its member states take an active role in pursuing its human rights policy to prevent people becoming refugees, so far as this is possible.

Violations of human rights in refugee-originating countries are a major factor in causing refugees to seek protection elsewhere. The commitment to the promotion and protection of human rights of the institutions of the European Community entails the obligation not to send back individuals to countries where they are likely to become victims of human rights violations. This principle of non-refoulement should be made explicit in basic documents relating to the human rights policy of the European Community and its member states.
2. Whenever measures are taken to harmonize and coordinate the refugee policies of the member states in the framework of the European Community, these should be designed to conform fully with the basic principles set out in international instruments regarding the protection of refugees, and basic refugee determination procedures should be designed to meet this requirement :
 - The policy should ensure that the fundamental principle of non-refoulement is strictly observed in practice, both at the border and within the territory of a state, in cases where individuals may be subjected to human rights violations if returned to their country of origin. This fundamental principle should be followed irrespective of whether or not an individual has been formally recognized as a refugee.
 - Administrative practices in refugee determination procedures should ensure that the asylum request be dealt with objectively and impartially by the competent authorities, who should be knowledgeable about national and international refugee law, and should make use of comprehensive information about the human rights situation in the countries of origin (including information provided by independent non-governmental organizations). The authorities should make judgments solely on the merits of the case, free from diplomatic and political pressures.

- Procedures for determining asylum claims should be made to work as quickly as possible, so long as this is consistent with maintaining adequate legal safeguards. This would ensure that the legal status of an asylum applicant is clarified as quickly as possible, so providing more certain protection against refoulement.
- The policy should make clear which country is responsible for examining an asylum request. Recent experience shows that where this responsibility is not clearly identified, the concept of "country of first asylum" may be applied in a way which creates "refugees in orbit". (This recommendation follows the conclusions of the Executive

Committee on UNHCR that asylum should not be refused solely on the grounds that it could be sought from another state).

- The policy should follow the principle that an asylum claim will be treated as "manifestly unfounded" or "abusive" only if the applicant is clearly fraudulent or if the request for asylum is made on grounds which are not included in the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. (This recommendation follows the conclusions of the Executive Committee of UNHCR.)
 - If EC governments impose visa requirements on the nationals of certain countries, they should nevertheless observe their obligation not to expel those who may not have the necessary visa but who may be subjected to human rights violations if returned to their country of origin.
3. The European Parliament should regularly review refugee policy and procedures in European Community member states to ensure that these principles continue to be observed.
 4. The European Parliament should reiterate its support for initiatives that seek to make reliable information more readily available to those responsible for the determination of asylum applications, especially at the European level.
 5. The European Community and its member states can play an important part in making the general public aware of the special situation and needs of refugees ; this could be done by means of public information programs and human rights education.

II. In his presentation, Mr Bleichrodt developed the following points:

Amnesty International's terms of reference were much wider than solely dealing with asylum claimants and refugees. Its staff monitored all violations of human rights of which they were aware and were generally opposed to capital punishment even when the death penalty was imposed following proper legal proceedings.

Amnesty's information on the human rights situation in Sri Lanka, for example, prompted it to call for no Tamil to be sent back to that country.

To its knowledge, the Basques extradited from France to Spain had been tortured. Amnesty International had therefore requested the French Government not to carry out any further extraditions.

Turkey had forced a number of Iranians to return to Iran. In view of the geographical reservation adopted by Turkey to the scope of the Geneva Convention on the Status of Refugees, the Turkish authorities did not consider that they were under any obligation to take in non-European refugees. In Amnesty International's opinion, the principle of not turning refugees back was binding in international law and outweighed other considerations.

III. In answer to questions by Mrs Miranda de Lage, Mr Bandres, Mr García Amigo, on the situation in Spain, and Mr Vetter, Mr Zwamborn outlined the information available to Amnesty International and which had in fact been published some time earlier. He offered to hold separate discussions on this matter since it was not central to the hearing itself.

Gilbert JAEGER

President of the
BELGIAN REFUGEE AID COMMITTEE

- I. Prior to the hearing, Mr Jaeger submitted a document going into each point raised in the rapporteur's questionnaire, with specific reference to the situation in Belgium.

- II. In his presentation, Mr Jaeger also made the following points:

He agreed with previous speakers that the number of asylum claimants in Europe was both insignificant in world terms and small in relation to the total population of the countries of the European Community. The figure was in any case lower than that for immigrants entering Europe for economic reasons.

The concept of the political refugee had emerged in the nineteenth century and no longer corresponded exactly to the legal principles now applied such as the Geneva Convention on Refugees. The political refugee represented only part of the refugee concept as it should now be understood. More specifically, the origin of the asylum claimants had changed as a result of crises in other continents.

The Geneva Convention on the Status of Refugees (particularly the associated Recommendation E) and the European Convention on Human Rights gave all Member States sufficient legal instruments to deal with the refugee problem. Work within the Council of Europe had also defined something akin to de facto refugee status.

The number of refugees could not be reduced either by violating accepted standards or by deterrent measures. The latter were not effective and also infringed the existing guarantees of basic rights. Deterrent measures had first been introduced in 1980 when the number of asylum-seekers in Western Europe was 116,500. After a temporary fall the figure for 1985 had then risen to 169,600.

One possible way of reducing the number of refugees would be to make it easier for them to emigrate or to return voluntarily to their country of origin. The main thing, however, was to combat the reasons for people becoming refugees.

The European Community should, as a matter of urgency, seek to arrive at a definition of the 'country of first asylum'. This would require the drafting and ratification of a convention. The European Parliament should formulate a policy consistent with basic rights and act as a driving force. Furthermore an asylum-seeker status should be defined to ensure a degree of protection during the procedure for examining applications for asylum. The European Community should take action to deal with the causes of under-development in the Third World. More specifically, the European Parliament could be a more effective spearhead than the UN General Assembly. The efforts made by Canada and the Federal Republic of Germany in 1980 in the UN could be taken up by the European Parliament and consolidated.

- III. In answer to questions by Mrs Miranda de Lage, Mr Bandres, Mr Garcia Amigo and Mr Vetter, Mr Jaeger read out the text of the definition of 'refugee' in the Convention on African Unity. He recommended that this definition should be adopted by the European Parliament and by the Member States.

Henriette TAVIANI

President of FRANCE TERRE D'ASILE

Mrs Taviani raised the following issues in her presentation:

In France the refugee determination procedure was carried out by the Office for the Protection of Refugees and Stateless Persons (Office français de protection des réfugiés et apatrides, OFPRA). The new Aliens Act of September 1986 increased the risk that spontaneous asylum-seekers would no longer be admitted to the procedure. In the wake of terrorist attacks, a general visa requirement had been imposed on all foreigners with the exception of Community nationals and the Swiss. The inherent risk for asylum claimants arose from a linguistic confusion which had removed the clear dividing line that had existed in the past between terrorists, traditional immigrants from the Maghreb countries and asylum-seekers. Even the published figures for asylum-seekers failed to draw a clear distinction between this group and other foreigners. The resulting situation was one of unacceptable confusion.

The number of refugees under quotas fixed in advance had declined. The refugee determination procedure itself had become considerably longer since, owing to lack of foresight, no action had been taken when it was becoming obvious that there were not enough staff to process applications. The Government had wrongly assessed the situation in the troublespots in the world and the effects on France itself.

In France too, deterrent measures had been taken. The worsening social position, for example, would make it more difficult to integrate asylum-seekers and refugees. The percentage of claims for asylum rejected in France had risen from some 25% in 1950 to approximately 60% in 1985.

The association of the refugee problem with terrorism was unacceptable as demonstrated by the fact that out of the total of 1 million individuals who had claimed asylum over a period of thirty-five years, only two had been found guilty of involvement in terrorist action (one in 1964 and one in 1984).

In principle, the way in which a country treated minorities was a yardstick for the extent to which basic rights were protected.