

*“The European Council
reaffirms the importance the
Union and Member States
attach to Absolute Respect
of the
Right to Seek Asylum¹”
... and offers ...
“Guarantees to those who
seek protection in or access to
the
European Union²”*

The ECRE Tampere Dossier

*A Compilation of Non and Inter-Governmental Observations
on the Special Meeting of the European Council
on the Establishment of
an Area of Freedom, Security and Justice,
15/16 October 1999, Tampere, Finland
and a selection of Presentations
made at the
“ECRE EU Tampere Summit
Parallel Meeting”*

- June 2000 -

¹ Presidency Conclusions, Tampere European Council – 15/16 October 1999, § 13

² Presidency Conclusions, Tampere European Council – 15/16 October 1999, § 3

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TAMPERE

FOREWORD – FORWARD !

ECRE, the European Council on Refugees and Exiles, is the umbrella organisation for co-operation between close to 70 non-governmental organisations concerned with refugees in 24 European countries. ECRE campaigns on behalf of its pan-European membership for humane and fair asylum policies. It also works towards establishing the highest standards of refugee protection and assistance in Europe and promoting these good practices.

In the context of the above mandate, ECRE prepared for substantial action over the course of 1999, a year which promised to be decisive for the future developments in the field of asylum and hoped for positive influence over these developments. To that end it devised a campaign and published a document entitled *'Guarding Standards - Shaping the Agenda'*¹. The overall aim was to guard established standards and shape the agenda of EU asylum and immigration policy into the new millennium.

¹*'Guarding Standards – Shaping the Agenda' (April 1999), which was published in collaboration with the European Network Against Racism (ENAR) and the Migration Policy Group (MPG), analyses the Amsterdam Treaty provisions on asylum, anti-discrimination and migration from a comprehensive and non-governmental perspective, and contains sixty-nine specific recommendations compiled in an 'Alternative Action Plan'.*

The crucial event of 1999 was the Special Meeting of the European Council on the Establishment of an area of Freedom, Security and Justice on 15-16 October at Tampere, Finland. In accordance with the Treaty of Amsterdam, Heads of State and Government of the European Union met in order to set forth objectives and priorities in the field of asylum and migration.

The Summit offered both threats and opportunities for the future direction of asylum policies. Would governments and Heads of State fall back on the lowest common denominator approach, agreeing with those asserting that the Refugee Convention is out of date, or be seen to take a positive lead on refugee and asylum issues at this critical event?

ECRE's campaign culminated in the organisation of an ECRE EU Tampere Summit Parallel Meeting, organised to take place during the Tampere Summit on 15 October 1999. The ECRE Parallel Meeting was attended by some 300 people and was well-covered by the media. The strategic objective was to promote a more progressive, Europe-wide approach to providing protection and to enable a broad audience to take part in reflections and discussions designed to illustrate the potential in the EU for a more progressive and harmonised policy towards asylum seekers.

When the Summit Conclusions² came out, ECRE broadly welcomed them, with the Finnish Prime Minister, Mr Lipponen, referring to ECRE's position

²*'Presidency Conclusions, Tampere European Council 15 and 16 October 1999', is included on pages 65-77 of this Dossier.*

both at the closing press conference³ as well as at the European Parliament⁴. He quoted ECRE in stating that, “*in many respects Tampere was a step away from Fortress Europe*”. However, ECRE reaffirmed that it would need to remain vigilant as to the implementation of the Tampere Conclusions⁵.

The Presidency Conclusions of the Tampere European Council, affirmed that the European Council “*has agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement*”.⁶ Such statements are of crucial importance, considering past trends in EU asylum policy suggesting that the Refugee Convention is out of date and current restrictive and potentially dangerous trends, such as the Action Plans of the High Level Working Group on Asylum and Migration, which seem to be focused on control rather than protection. Though the Tampere Council represented an encouraging start to the development of refugee protection within the Union, it remains only that. ECRE and its member agencies will therefore be watching events very closely and will strive to ensure that the EU and its

constituent parts live up to the promises made at Tampere, especially in light of the commemoration of the 50 years of existence of the Geneva Convention in 2001.

In his speech at a conference in The Hague on 6 April 2000, EU Commissioner for Justice and Home Affairs, Antonio Vitorino, stated: ‘*The European Council of Tampere has provided us with the political guidance needed to implement the obligations which are laid down in the Amsterdam Treaty. It clearly stated that the area of freedom, security and justice we are bound to develop according to art. 2 of the Treaty, should not be regarded as the exclusive preserve of the Union’s own citizens. Our aim from now on is to develop a European Union which is open to those led justifiably to seek access in our territory, and which is able to respond to humanitarian needs on the basis of solidarity. The cornerstones of this policy with regard to protection will be: the absolute respect of the right to seek asylum, a full and inclusive application of the Geneva Convention, maintaining the principle of non-refoulement and the development of specific forms of protection, offering an appropriate status to any person in need of such protection*’⁷.

Moreover, the so-called “Scoreboard for monitoring the setting up of the Area of Freedom, Security and Justice”, was introduced as “*a first step in implementing the guidelines of the extraordinary European Council of Tampere*” by Commissioner Vitorino⁸.

³ *Closing official Press Conference of the Finnish EU Presidency on the Special Meeting of the European Council on the Establishment of an area of Freedom, Security and Justice, Saturday 16 October 1999.*

⁴ *Prime Minister Paavo Lipponen, President of the European Council, at the plenary session of the European Parliament in Strasbourg on October 27, 1999.*

⁵ “*Observations by the European Council on Refugees and Exiles on the Presidency Conclusions of the Tampere European Council, 15 and 16 October 1999*”, is included on pages 78-81 of this Dossier.

⁶ *Presidency Conclusions Tampere European Council 15/16 October 1999, 6 13.*

⁷ ‘*Common European Asylum System*’, speech by Antonio Vitorino, European Commissioner for Justice and Home Affairs at a conference on a new Aliens Act, Hague, 6 April 2000.

⁸ *Justice and Home Affairs Council of 27 March 2000.*

ECRE is pleased to note that there is an apparent interest from the Commission not to lose the positive political momentum generated at Tampere. In this light, it therefore seems to be the right time for ECRE to fully support the Commission and remind all other relevant actors in the EU asylum arena, in particular the governments of the 15 Member States of the EU of the obligations they have undertaken at Tampere. But this is not all that the "ECRE Tampere Dossier" is about. It also includes many important reflections made at the ECRE EU Tampere Parallel Summit on key asylum issues. These reflections are still very valuable contributions to the debate on how to take Tampere further.

The ECRE Tampere Dossier is published in 2000, a year that can be seen as a 'bridge' in asylum developments. It links 1999, the Amsterdam Treaty and the Tampere EU Summit to 2001, which will see the 50th anniversary of the 1951 Refugee Convention and the next EU Summit, which will cover asylum and migration issues. ECRE is publishing the Tampere Dossier in 2000 on the one hand to keep up the positive momentum created at Tampere and on the other, to prepare the ground for the next EU Summit relating to asylum and migration, which will be held under the Belgian Presidency in Brussels in December 2001. During that Summit the EU Heads of Government and State and their Ministers of Foreign Affairs will take stock of the progress in the development of the EU asylum and migration policy. ECRE will organise a new ECRE Parallel Summit, again bringing together the key refugee protecting agencies and other interested parties from civil society from the EU and beyond, and all other relevant actors to be able to comment on the progress or lack thereof.

Finally, the lessons of the holocaust that led to the Universal Declaration of Human Rights, the Refugee Convention and the creation of the Council of Europe, also inspired the creation of the European Union - a Union which is not only about the free market, the Euro or abolition of internal borders but which is rooted in the ideals of peace, justice and the absence of conflict in Europe. The refugee agencies of Europe with ECRE as their network and their common voice will continue to remind Europe's governments and the European Union, most prominently now after the Tampere Summit, of these ideals. Where those ideals are lacking or cannot be achieved, where prevention does not work and human rights abuses continue in the world, people are forced to flee and suddenly become refugees. European Union Member States must then at least protect and care for the refugees, according to their international legal obligations as signatories to the Refugee Convention. Tampere reminded governments of this responsibility in stating explicitly and unambiguously that there needs to be an ***"absolute respect of the right to seek asylum"***, with ***"guarantees to those who seek protection in or access to the Union"***.

Peer Banek
ECRE General Secretary

Introduction

'*The road to Tampere*' describes the main written elements of the advocacy strategy that ECRE followed in relation to the Special Meeting of the European Council on the Establishment of an Area of Freedom, Security and Justice. In addition, it includes the UNHCR recommendations⁹ to the Tampere Summit and the Comments¹⁰ by Amnesty International on the EU Extraordinary Summit of Tampere.

Six months before the Tampere Summit took place, ECRE issued a note¹¹ in which it asked European Union Heads of State and Government to reconfirm their commitment to the human rights principles on which the Union was founded, to show political leadership towards a truly harmonised, Europe-wide approach to refugee and asylum issues, and to demonstrate determination in achieving this goal.

Just before the Summit took place an 'Appeal'¹² was addressed to Prime Ministers and Ministers of Foreign Affairs highlighting three issues that ECRE believed were implicitly and explicitly at stake in Tampere. These included the *Refugee Convention*, the *Regionalisation of Refugee Intake* and the *Impact of Immigration Controls on the Right to Seek Asylum*. The 'Appeal', together with a 'Background Note'¹³ also highlighted the voluntary commitments undertaken by Member States within the framework of the Justice and Home Affairs Council of the European Union and why these commitments should be honoured in practice.

⁹ "Setting the European Asylum Agenda : UNHCR Recommendations to the Tampere Summit" (July 1999), is included on pages 15-21 of this Dossier.

¹⁰ Comments by Amnesty International on the Tampere Summit (July 1999), is included on pages 22-25 of this Dossier.

¹¹ "Note by the European Council on Refugees and Exiles on the Special Meeting of the European Council on the Establishment of an area of Freedom, Security and Justice, 15/16 October 1999, Tampere, Finland" (May 1999), is included on pages 7-8 of this Dossier.

¹² "Appeal by the European council on Refugees and Exiles to the Heads of State and Government of the European Union in view of the Special Meeting of the European Council on the Establishment of an area of Freedom, Security and Justice, 15/16 October 1999, Tampere, Finland" (September 1999), is included on page 9 of this Dossier.

¹³ "Background Note to the Appeal by the European council on Refugees and Exiles to the Heads of State and Government of the European Union in view of the Special Meeting of the European Council on the Establishment of an area of Freedom, Security and Justice, 15/16 October 1999, Tampere, Finland" (September 1999), is included on pages 10-14 of this Dossier.

**Note by the
European Council
on Refugees and Exiles
on the Special Meeting of the
European Council on the
Establishment of an area of
Freedom, Security and Justice,
15/16 October 1999,
Tampere, Finland**

The European Council on Refugees and Exiles (ECRE) is placing great hope on the upcoming Special Meeting of the European Council on the Establishment of an area of Freedom, Security and Justice, to be held in Tampere, Finland on October 15-16. The close to 70 European refugee assisting NGOs from 24 countries within and outside the European Union, gathered in ECRE, see the Tampere Summit as an opportunity for European Heads of State and Government to reconfirm their commitments to the human rights principles on which the Union is founded, to show political leadership towards a truly harmonised, Europe-wide approach to refugee and asylum issues, and to demonstrate determination in achieving this goal.

ECRE feels that the Kosovo refugee disaster clearly demonstrates, on the one hand, the general public's sense of solidarity with regards to refugees, but on the other hand, the inability of European governments to decide upon common, concerted action in refugee situations. The results of harmonisation on asylum issues have clearly been insufficient in the Maastricht Treaty era 1993-1999. Therefore, ECRE sees the entry into force of the Amsterdam Treaty as a challenge and an historic opportunity to move forward in this area and to start a

harmonisation process clearly founded on principles of refugee protection and human rights standards. For a detailed analysis and recommendations ECRE refers to its document "*Guarding Standards - Shaping the Agenda*" and its Alternative Action Plan for the implementation of the Treaty.

ECRE stresses the Refugee Convention (Geneva, 1951) forms the basis for global refugee protection. Any EU asylum policy must be devised recognising the Refugee Convention as its legal foundation. ECRE calls for a correct, inclusive and gender-sensitive interpretation of the Refugee Convention's definition of who is a refugee, as contained in article 1. ECRE stresses that the Refugee Convention is still valid and relevant today, as it contains provisions relating to rights granted to refugees, the possibility for *prima facie* determination, and provisions for when the need for refugee protection ceases. Any harmonised approach to the interpretation of the Refugee Convention should reflect international best practice and follow the advice of UNHCR. Given a correct interpretation of the Refugee Convention, it may also be appropriate to formulate a complementary refugee definition for situations not covered by the Refugee Convention. **ECRE hopes that the Tampere Summit will result in a clear commitment from the Heads of State to the Refugee Convention, the European Convention on Human Rights and other international human rights instruments as the foundation for European Union asylum policy, and a clear commitment to interpret the Refugee Convention in a correct manner based on developments in human rights law.**

The idea of a common European asylum area, as reflected in the Dublin

Convention, can only be applicable if an asylum-seeker can be assured of receiving similar standards of reception and following a similar asylum procedure, regardless of the Member State where the asylum application has been lodged. Apart from common standards of interpretation of the refugee definition, this means the adoption of legally binding measures concerning conditions for reception of asylum seekers, and asylum procedures. These procedures must be designed so that they are fair and efficient, and hence enable the asylum seeker to fully present his or her claim. ECRE finds this issue particularly acute in light of the future enlargement of the European Union. ECRE believes it is possible over time to develop a single, EU asylum procedure. **ECRE wishes that the Tampere Summit recognises the necessary link between harmonised standards of reception and a harmonised asylum procedure and any scheme related to the determination of the Member State responsible for examining an asylum claim.**

ECRE recognizes that there are great differences amongst Member States concerning the extent to which they have so far received refugees on their territories. Responsibility sharing is an important issue, not because it directly improves refugee protection but because resolution of this issue would allow many other areas of harmonisation to progress in a far more positive atmosphere, and could prevent deterrent measures being imposed in future refugee crises. **ECRE hopes to see a commitment from the Tampere Summit to the development, as soon as possible, of a regional agreement on responsibility sharing which demonstrably increases the capacity for refugee protection within the Union.**

For a long time, ECRE has advocated an approach to asylum issues within the European Union, where policy areas such as human rights, humanitarian assistance, conflict prevention and peace-keeping are integrated into policy making. Therefore, ECRE follows with great interest the developments in, and results of, the High Level Working Group on Asylum and Migration. **ECRE hopes to see a commitment from the Tampere Summit to broader and more profound cooperation between various policy sectors and the different pillars of the Union, as a necessary prerequisite for a truly proactive, human rights based, and comprehensive asylum policy.**

ECRE stresses that the above goals cannot be reached unless EU structures mirror the commitments in substance. The Amsterdam Treaty foresees a full communitarisation of asylum matters. **ECRE urges Heads of State to commit themselves at the Tampere Summit to place communitarisation of asylum issues on the agenda of the next Inter-Governmental Conference on the reform of the European Union.**

18 May 1999

APPEAL
by the
European Council on Refugees
and Exiles
to the Heads of State and
Government of the European
Union
in view of the Special Meeting of
the European Council
on the Establishment of an area
of Freedom, Security and Justice,
15/16 October 1999, Tampere,
Finland.

The European Council on Refugees and Exiles (ECRE) urges the European Council to “identify with Europe’s humanitarian tradition of affording protection to refugees and others in need of international protection”¹⁴, and calls upon the Heads of State and Government to state explicitly that they commit themselves to:

Reaffirm the importance of the 1951 Geneva Refugee Convention

- Confirm that in further harmonisation of EU asylum policies to take as a starting point a full and inclusive application of the 1951 Convention refugee definition, thereby following the UNHCR’s guidelines.

Guarantee access to protection in the European Union

- Confirm that plans to ‘regionalise’ refugee protection enhance the opportunity for refugees to find protection, rather than act as a substitute for providing protection of refugees in the European Union.

Apply immigration controls that respect the right to seek asylum

- Confirm that immigration and asylum are distinct issues, and provide assurances that in any measures on irregular immigration, the right of and possibilities for those in need of protection to seek asylum in the European Union, is safeguarded.

September 1999

¹⁴ ‘Guidelines for a European Migration and Asylum Strategy’ from the *German Presidency* to the Strategic Committee on Immigration, Frontiers and Asylum, Brussels, 23 June 1999

**Background Note
to the
Appeal by the European Council
on Refugees and Exiles
to the Heads of State and
Government of the
European Union
in view of the
Special Meeting of the
European Council
on the
Establishment of an area of
Freedom, Security and Justice,
15/16 October 1999, Tampere,
Finland.**

This note is intended as an explanation of the attached Appeal to the EU Heads of State and Government on the Tampere Summit. It also covers some areas of concern for ECRE, which are not raised in the Appeal, but which are likely to be addressed by the Summit. The note also highlights the voluntary commitments entered into by Member States within the framework of the Justice and Home Affairs Council of the European Union, and why those commitments should be honoured in practice.

The 1951 Convention relating to the Status of Refugees

ECRE agrees with the Council that the Refugee Convention “*will remain the cornerstone of any EU asylum policy*”¹⁵. ECRE however believes it makes no sense for an instrument for the protection of human rights to be interpreted in a

¹⁵ ‘Preparation of the European Council of Tampere-Asylum and Immigration Issues’ from the *Finnish Presidency* to the Strategic Committee on Immigration, Frontiers and Asylum, Brussels, 9 July 1999, 10015/99, page 5, § 16.

restrictive manner, especially as the restrictions to the scope of the Refugee Convention are already built in by the States which drafted it. ECRE, therefore, calls for a correct, inclusive and gender-sensitive interpretation of the Refugee Convention’s definition of who is a refugee, as contained in article 1¹⁶.

ECRE appeals to the Tampere Summit to make a clear commitment to the Refugee Convention, the European Convention on Human Rights and other international human rights instruments, taking into account relevant developments in human rights law¹⁷ as the foundation of a European Union asylum policy.

Complementary Protection

ECRE believes that there is a case for complementing the Refugee Convention by an instrument which covers those in need of international protection who fall truly beyond a correctly purposive interpretation of the Refugee Convention¹⁸. This should not be taken as implicit approval of the current European practice of granting discretionary forms of protection instead of recognition of refugee status.

ECRE however believes it makes no sense for an instrument for the protection of human rights to be interpreted in a restrictive manner, especially as the restrictions to the scope of the Refugee Convention are already built in by the States which drafted it. ECRE, therefore, calls for a correct, inclusive and gender-sensitive interpretation of the Refugee

¹⁶ Note by the European Council on Refugees and Exiles on the Special Meeting of the European Council on the Establishment of an area of Freedom, Security and Justice, 15/16 October 1999, Tampere, Finland, ECRE, May 1999, page 1 § 3.

¹⁷ Id. 2, page 1, § 4.

¹⁸ Id. 2, page 1, § 4.

Convention's definition of who is a refugee, as contained in article 1¹⁹.

ECRE appeals to the Tampere Summit to make a clear commitment to the Refugee Convention, the European Convention on Human Rights and other international human rights instruments, taking into account relevant developments in human rights law²⁰ as the foundation of a European Union asylum policy.

Complementary Protection

ECRE believes that there is a case for complementing the Refugee Convention by an instrument which covers those in need of international protection who fall truly beyond a correctly purposive interpretation of the Refugee Convention²¹. This should not be taken as implicit approval of the current European practice of granting discretionary forms of protection instead of recognition of refugee status.

A complementary protection instrument should be drafted within the next two years along the lines of the 1969 Organisation of African Unity Refugee Convention and the 1984 Cartagena Declaration. A clear distinction must be made between temporary protection and complementary protection. The rights attached to complementary protection should be comparable to those of the Refugee Convention²².

¹⁹ Note by the European Council on Refugees and Exiles on the Special Meeting of the European Council on the Establishment of an area of Freedom, Security and Justice, 15/16 October 1999, Tampere, Finland, ECRE, May 1999, page 1 § 3.

²⁰ Id. 2, page 1, § 4.

²¹ Id. 2, page 1, § 4.

²² Guarding Standards-Shaping the Agenda Paper, ECRE, April 1999, page 12-13

'Regionalisation' of refugee intake

While it is true that the vast majority of refugees seek refuge in neighbouring countries within their region of origin, for some refugees neighbouring countries cannot provide durable protection or ensure their physical integrity. In the past several years and most recently during the crisis in Kosovo, we have witnessed and continue to witness the inability of neighbouring States to ensure the safety of all refugees and the inability to provide treatment in accordance with recognised basic human rights. It is wholly understandable that a person who faces a risk of persecution or a threat to his/her life should seek protection in as secure an environment as possible. Furthermore, it is a reality of the modern world that refugee flight is sometimes more feasible via an international flight than over land routes. It is also a reality that someone at risk of persecution in another region may have strong family or community ties in Europe. These facts should be recognised by European politicians rather than denied²³.

ECRE stresses that reception in the region should not be considered as a substitute for providing protection in Europe, but should be viewed as a means to enhance the opportunity for refugees to find protection. ECRE urges that reception in the region should, as a minimum, ensure the physical integrity and human rights of all persons received, and guarantee that such displaced persons are not forced into reception locations against their will²⁴. ECRE fully shares UNHCR's views that "*measures to strengthen the protection capacities of*

²³ Observations by the European Council on Refugees and Exiles on the work of the *High Level Working Group* on Asylum and Migration, ECRE, June 1999, page 2, § 6.

²⁴ Id. 6, page 2, § 7.

countries in the region of origin do not absolve EU Member States of their responsibility to fulfil their protection obligations towards asylum-seekers”, “nor should asylum-seekers ever be returned to a region solely on the ground that EU humanitarian aid has sponsored reception facilities to which they supposedly could have fled”²⁵.

Combating irregular immigration (and its impact on the right to seek asylum)

ECRE questions the extent to which push and pull factors acting upon global refugee and migratory movements can be counteracted merely by border control, visa system, carriers sanctions, pre-boarding checks in countries of origin or transit countries, etc. Many Council debates seemed to cling to the assumption that more and better deterrents are the only way forward – that the uncontrollable will ultimately be controlled. The Council’s analysis of illegal entry and trafficking of persons as growing problems of the 1990s is an accurate one, but ECRE would argue that it is a problem to which European Union policies have contributed. For years, NGOs have warned about pushing people into clandestine and often life-threatening channels if all legal entry channels are closed. It is the legitimate concern of States to control their borders, yet such control policies – if pursued in isolation – can be counterproductive. Thus any possible declining number of asylum applicants, may be explained not simply in terms of deterred fraudulent applicants, but also in terms of genuine refugees forced to remain in their country of origin, seek protection in other regions of the world, or forced to hide illegally and

insecurely on European territory. It is impossible for ECRE to verify this alternative explanation, as it is impossible to estimate how many victims of torture and persecution have been prevented from seeking asylum in recent years²⁶.

It is therefore vital that with any measures taken at the EU level in order to control irregular migration, the EU must make a clear distinction between immigration control measures and the institution of asylum.

ECRE in this context agrees with the Council that generally spoken “*the fight against illegal immigration may not lead to undermining the functioning of the asylum system*”²⁷ and that more specifically “*the systems of immigration control applied by some Member States have to be consistent with the *acquis communautaire* and compatible with one another. They must not infringe the right to asylum and to family reunification*”²⁸.

Asylum seekers must be exempt from penalties for illegal entry. This exemption is guaranteed by Article 31 of the Geneva Convention, which recognised that the refugees who escaped Nazi persecution had relied on traffickers and illegal routes (for example, Raoul Wallenberg or Oscar

²⁵ Setting the European asylum agenda: *UNHCR recommendations to the Tampere Summit*, UNHCR, July 1999, page 5, § 29.

²⁶ Observations by the European Council on Refugees and Exiles on the *Austrian Presidency of the European Union’s Strategy Paper on immigration and asylum policy*, ECRE, September 1998, page 3, § 9.

²⁷ ‘Preparation of the European Council of Tampere-Asylum and Immigration Issues’ from the *Finnish Presidency to the Strategic Committee on Immigration, Frontiers and Asylum*, Brussels, 9 July 1999, 10015/ 99, page 5, § 18.

²⁸ Guidelines for a European Migration and Asylum Strategy’ from the *German Presidency to the Strategic Committee on Immigration, Frontiers and Asylum*, Brussels, 23 June 1999, 9547/99, page 6, § 17.

Schindler, or those fishermen who *for a fee* ferried Jews to relative safety during the War). Or in the Council's own words "*allowance must, however, be made for the specific situation of people in extreme need who seek the help of criminal organisations to flee their country or conceal their identity*"²⁹. Indeed, to enter illegally implies nothing about the credibility of an individual's claim to need asylum. Therefore it is important that any measure taken to combat irregular migration and trafficking in human beings makes a clear distinction between punishing the traffickers and protecting the victims (often refugees)³⁰.

High Level Working Group on Asylum and Migration

The European Council on Refugees and Exiles (ECRE) welcomes the establishment of the High Level Working Group on Asylum and Migration as a potentially important step towards a more comprehensive, EU cross-pillar approach to migration and asylum policy. However, ECRE considers that this potential will not be realised if the Working Group's sole objective is to curb the arrival of 'illegal' migrants to the European Union and its approach to its agenda is primarily control-oriented. As the Working Group's mandate unambiguously relates to asylum, ECRE urges that its approach be protection-oriented and human rights based³¹.

The Action Plans drawn up by the Working Group should not be seen as set

in stone, but rather be taken as a starting point for further discussion with experts from UNHCR and other inter- and non-governmental organisations, in "Expert Meetings" and/or "Round Tables", similar to the model used under the EU's First Pillar. The emphasis on regionalisation of refugee protection in the Plans cannot in ECRE's views in any case absolve the EU of its own protection obligations. The Action Plans should also be more specific about what implementation measures are envisaged so as to make discussion meaningful and implementation successful.

Readmission agreements

In relation to the use of readmission agreements (or readmission clauses in other association agreements), ECRE wishes to repeat its concerns about the return of asylum seekers on 'safe third country' grounds under the terms of such agreements. These agreements usually fail to provide sufficient safeguards to ensure that individuals will be protected from *refoulement* to their countries of origin, and a number of the countries selected for initial consideration by the High Level Working Group on Asylum and Migration should be recognised as being far from safe. This should be acknowledged in the texts of the action plans, and steps should be taken to ensure that readmission agreements are in line with States' obligations under the 1951 Convention and other human rights instruments³².

²⁹ Id. 11, page 9, § 30.

³⁰ Guarding Standards-Shaping the Agenda Paper, ECRE, April 1999, page 21

³¹ Observations by the European Council on Refugees and Exiles on the work of the *High Level Working Group on Asylum and Migration*, ECRE, June 1999, page 1, § 1.

³² Observations by the European Council on Refugees and Exiles on the Work of the High Level Working Group on Asylum and Migration, ECRE, June 1999, page 3, § 9

Consultations with UNHCR and non-governmental organizations

In relation to asylum policy ECRE believes the EU has a duty to consult with the guardian of the Refugee Convention, UNHCR, and with relevant NGOs and to be transparent in its work. Transparency and consultation are vital to give effect to the stated commitment in Declaration 17 to the Amsterdam Treaty to consult. ECRE therefore is happy to take note of the fact that the Council *“sees a need, in framing and implementing the European migration and asylum strategy, to take due account of specialist know-how and give proper consideration to the views of relevant international organizations and of the social partners and non-governmental organizations, where their respective interests are effected. The UNHCR in particular will be consulted when framing and implementing the parts of the strategy relating to asylum policy”*³³.

Concluding remarks:

ECRE believes that the Tampere Summit should aim for a direct and perceptible improvement in EU refugee protection arrangements and demonstrate *‘Union added value’*³⁴, otherwise there is no point to harmonisation of asylum policy. ECRE is reassured that *“the European Council is aware of Europe’s position as a continent marked by migratory movements and (that it) highlights the crucial positive impact of immigration into Europe on the continent’s cultural,*

*demographic and economic development over centuries”*³⁵.

In that context ECRE also welcomes the Council’s firm statement that *“Racism, xenophobia and discrimination should be resolutely combated in the economic, social, political and cultural fields, including the adoption of effective legislation, so as to encourage people to live together in peace and prosperity in Europe”*³⁶.

The quality of the notions of “freedom, security and justice” within the EU is inevitably, and rightly, judged in part by the EU’s response to the plight of refugees fleeing persecution. Yet within Europe we see pressures to shape asylum policy to accommodate nationalism and to weaken accepted international protection standards in the name of greater ‘efficiency’ or the need to meet ‘new’ challenges. The EU must take seriously the explicit commitment in the Amsterdam Treaty to form an asylum policy, which respects the Refugee Convention and the European Convention on Human Rights.

³³ Id. 11, page 5, § 11.

³⁴ ‘Preparation of the European Council of Tampere-Asylum and Immigration Issues’ from the *Finnish Presidency* to the Strategic Committee on Immigration, Frontiers and Asylum, Brussels, 9 July 1999, 10015/ 99, page 3, § 8.

³⁵ Id. 11, page 2, § 3.

³⁶ Id. 11, page 4, § 9.

**Setting the
European Asylum Agenda:
UNHCR recommendations to the
Tampere Summit
October 1999**

1. Introduction

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) attaches great importance to the convening of the European Council at Tampere in order to give impetus to the establishment of an area of freedom, security and justice under the new provisions of the Treaty on European Union, as revised by the Amsterdam Treaty. The Summit should give priority attention to the asylum issue as one of the important areas of justice and home affairs being subject to “communitarization” or increasing cooperation among Member States according to the relevant provisions of the Amsterdam Treaty.

2. UNHCR would like to see the Tampere summit stake out the political space within which a protection-based approach to asylum can be anchored and the fundamental rights of refugees and asylum-seekers secured. This will require political will in face of current trends. In manifesting such resolve, European States, which have traditionally been in the forefront of refugee law development, would remain a positive example to follow

the world over. The significance of the future EU asylum standards and policy orientations go well beyond the European context - they are bound to influence the attitude of non-EU asylum countries.

3. In accordance with Declaration No. 17 to the Amsterdam Treaty, UNHCR hopes to be fully associated with the preparation and subsequent implementation of the relevant parts of the EU migration and asylum strategy to be adopted at the Summit.

II. Implementing the Amsterdam Treaty provisions

4. UNHCR hopes that the Tampere Summit will mark the beginning of a process resulting in the establishment of a comprehensive, concerted and outward-looking asylum and migration strategy for the future - enlarged - European Union. The various EU legislative instruments and measures to be formulated during the next five years following the entry into force of the Amsterdam Treaty must be developed within a strategic framework which takes account of their inter-relationship and relative importance and establishes the sequence in which these instruments can best be prepared. In the view of UNHCR, a coherent approach requires that common standards for the application of substantive asylum law be developed first, followed by measures for the harmonisation of asylum procedures, complementary protection schemes and temporary protection arrangements.

5. Such an integrated strategy must keep a distinct focus on asylum policy and its protection dimension and ensure that asylum is preserved as a legal concept and not subordinated to the political, security and socio-economic dimensions of migration policy. Asylum is a right rooted in international human rights standards, and not a political offer subject to discretionary administrative measures, such as the establishment of admission quotas.
 6. The implementation of the asylum provisions of the Amsterdam Treaty should be aimed ultimately at the full harmonization of procedural and material asylum law. UNHCR calls on Member States to ensure that future binding EU asylum instruments are in accordance with international refugee law and human rights law standards, such as those laid down in the 1951 Convention and its 1967 Protocol, as well as in the European Convention on Human Rights, as stated in Article 6 and Article 63 of the Amsterdam Treaty.
 7. In codifying the present set of soft law asylum instruments, the present weaknesses of these instruments - which have led to problems in their implementation - need to be revisited with a view to adopting remedial measures and additional safeguards in order to render the future binding instruments truly protection-oriented. There is also a need to ensure coherence between the legal instruments to be developed under Title IV, in order to avoid that common measures in the areas of immigration and border control impact negatively on the right to seek and enjoy asylum.
 8. UNHCR calls on the Summit to commit itself to giving meaningful substance to the asylum provisions of the Amsterdam Treaty. In implementing these provisions, the danger of downward harmonization should be avoided; there is a risk that the unanimity voting procedure may result in movement towards the lowest common denominator unless there is a strong commitment to work by consensus and adopt standards which are in accordance with related international standards of refugee law.
 9. Moreover, difficulties of reaching unanimous agreement may lead Member States to empty the asylum provisions of Amsterdam of meaningful substance and to limit their contents to harmonisation of procedural issues of interest to States to the exclusion of substantive protection issues relating to the rights of the refugee. Recently this potential loss of substance has been in evidence in discussions of the European Commission's proposal on temporary protection.
- III. Towards a Harmonised EU Asylum Policy**
10. EU Member States have made substantial efforts to harmonise their asylum policies and practices, but much remains to be done. A harmonised European asylum policy should, in UNHCR's view, encompass the following five key elements: (i) a proper, common interpretation of the international definition of who is a refugee as contained in the 1951 Convention; (ii) accessible, fair and expeditious asylum procedures, complemented

by new approaches to particular refugee situations (such as temporary protection in cases of sudden and large-scale influx); (iii) proper sharing of responsibility for receiving asylum-seekers without shifting the burden to those least able to accept such responsibility; (iv) appropriate systems and procedures for effecting the return of persons not in need of international protection; and (v) a preventive policy to address the human rights violations and other causes of refugee flight and forced displacement.

11. In the view of UNHCR, a future EU asylum policy should take as a starting point the full and inclusive application of the 1951 Convention refugee definition. A future EU instrument aimed at harmonizing the application of the refugee definition should acknowledge that asylum claims resulting from persecution by third parties come within the ambit of the 1951 Convention, and that the essential criterion for extending international protection is the risk of serious harm befalling the person - the presence of a well-founded fear of persecution - irrespective of the agent of persecution. Those who fulfil the criteria for refugee status under the 1951 Convention should enjoy the full set of rights contained in that Convention and not be given a second-class form of subsidiary protection as a substitute.
12. UNHCR accepts the rationale for developing - and harmonizing - complementary forms of protection to cover protection needs which cannot be addressed by a proper application of the 1951 Convention. Every person determined to be in need of protection should benefit

from an appropriate level of legal security and socio-economic well-being derived from a status granted in accordance with objective criteria and not on the basis of administrative discretion. EU Member States, in determining needs for complementary protection are encouraged to consider how best to draw upon UNHCR's expertise in protection matters, taking due account of both the Office's supervisory role under the 1951 Convention and of its mandated activities.

13. UNHCR generally favours the adoption between States of agreements aimed at identifying the country responsible for examining an asylum request, as such agreements may help to avoid the problem of "refugees in orbit" and provide guarantees that an asylum request will be examined in substance by one of the contracting parties. UNHCR therefore has welcomed the entry into force of the Dublin Convention, provided its application is governed by fair and transparent procedures and due respect of protection principles, such as the protection of the family unit.
14. A transposition of the present Dublin mechanism in an EU legal instrument as foreseen by the Amsterdam Treaty needs to be conditioned on the maintenance of an agreed set of criteria to allocate responsibility for the examination of an asylum application in order to guarantee access to the asylum procedure in one of the EU Member States. Such a new mechanism should also provide for a humanitarian clause in order to avoid separation of family members or

- other situations impacting negatively the protection needs of asylum-seekers as a result of a strict application of the allocation criteria.
15. Harmonization of the criteria and procedures for the determination of refugee status can positively influence the fair and equitable application of the “Dublin” mechanism and ensure non-discriminatory treatment of all asylum applications irrespective of the country determined to be responsible for the examination of the claim.
 16. UNHCR expects the Summit to reaffirm that fair and satisfactory asylum procedures, based on international standards of procedural asylum law, are a cornerstone of Member States asylum systems. Such procedures serve the dual purpose of identifying those who need international protection and those who do not and can, in principle, be safely returned home. UNHCR recommends that each Member State adopt a comprehensive procedure for determining in a holistic way all protection needs.
 17. UNHCR favours the adoption of a single, unified asylum procedure in the EU in the medium-term. The Office sees this as a means to guarantee the effective harmonization of Member States’ asylum procedures and to resolve the existing considerable differences and exceptions which may result in discriminatory treatment and encourage secondary movement of asylum-seekers.
 18. A future common asylum system in the EU should result in a streamlining and simplifying of procedures - this being in the interest of asylum-seekers and the authorities alike. The speeding up of the processing of asylum claims can be achieved by, inter alia, a streamlining of the appeal procedure. A well-resourced, fair and efficient first instance determination procedure may provide quicker results and, consequently, ensure legal safety and material security for deserving applicants. By eliminating unnecessary delays, it may also provide less opportunity for misuse and limit the risk that drawn-out procedures becomes in themselves a pull factor.
 19. UNHCR supports recourse to temporary protection as a practical device which allows for a principled response by States to an urgent protection need in cases of sudden and large-scale influx of asylum-seekers displaced by war, mass expulsion or generalised violence. In such cases it may be impractical to apply individual status determination procedures. UNHCR believes that it should have a mandatory consultative role in any arrangements regarding the phasing in, review or termination of temporary protection regimes.
 20. Temporary protection schemes should be distinguished clearly from complementary forms of protection, the former being applicable in situations of sudden and large-scale influx, whereas the latter are to be the result of individual status determination procedures. Temporary protection arrangements must not be conceived and

- implemented as an substitute for refugee protection under the 1951 Convention left to administrative discretion, but rather as a variation of admission and temporary refuge based on *prima facie* or group determination of the need for international protection.
21. Any future temporary protection coordination mechanism established at EU level should include an agreement on standards of treatment for its beneficiaries, and not be limited to procedural and organizational matters only. UNHCR is strongly of the view that beneficiaries of temporary protection need to be accorded a standard of rights which takes due account of the fact that many of them meet all the criteria for 1951 Convention status.
 22. European asylum policy should be guided by the notions of international solidarity and burden-sharing. Any future EU burden-sharing mechanism should be complementary to, not at the expense of, global burden-sharing efforts, such as contributing to UNHCR programmes and providing for the resettlement of refugees. Account should be taken of the burden shouldered by countries in the immediate vicinity of the crisis region. While burden sharing can help ensure respect for the basic principles of refugee protection, it cannot be made a prerequisite to providing such protection. It should also take due account of humanitarian factors, such as the protection of the family unit or of cultural considerations which may call for exceptions to the application of distribution criteria.
 23. A regional burden-sharing mechanism should be comprehensively conceived to include action at the pre-departure stage (prevention, emergency preparedness, political and military/peace-keeping action), through the influx (protection and assistance to refugees and displaced persons), on to durable solutions (voluntary return, local integration, or resettlement).
 24. As with the implementation of a successor instrument to the Dublin Convention, the fair and effective implementation of a burden-sharing mechanism would benefit from the harmonization of conditions for the admission and standards of treatment of its beneficiaries. This can help to avoid discriminatory treatment and subsequent secondary movements.
 25. In order to preserve the integrity of the asylum systems in EU Member States, appropriate procedures for effecting the return of persons not in need of international protection need to be developed, provided these persons have been screened out through a formal refugee status determination procedure which properly applies the refugee criteria. Such return programmes can be promoted through the conclusion of readmission agreements and readmission clauses in cooperation agreements. In so far these arrangements include also the return of asylum-seekers whose cases have not been heard to third countries where they could have found protection, they must contain sufficient safeguards that the persons returned can effectively seek asylum in those countries.

26. The European asylum challenge cannot be addressed in Europe alone. It is clearly in the interest of European States to situate their asylum and migration policy within a broader approach which addresses political, human rights and developmental issues in countries and regions of origin. Such a comprehensive approach to asylum and migration must encompass the entire continuum of forced population movements, from their causes to their eventual solutions. Preventive action addressing human rights violations and other causes of refugee flight and forced displacement is a key element of such an approach.
27. UNHCR supports efforts to move the asylum debate out of a framework premised on restrictiveness and deterrence into one which engages more constructive foreign policy initiatives. In the view of UNHCR there are strong grounds to institutionalise the inter-pillar cooperation on migration and asylum issues that has recently been tested in the work of the High Level Working Group on Migration and Asylum.
28. UNHCR hopes that sufficient attention will be given to the protection dimension of the country plans which have been developed by the High Level Working Group so far, as well as those to be designed and implemented in future. Programmes for reception in the region, and/or return to countries of origin, need to be inspired by a number of protection principles such as physical safety, legal security and socio-economic well-being.
29. Measures to strengthen the protection capacities of countries in the region of origin do not absolve Member States of their responsibility to fulfil their protection obligations towards those who are seeking asylum on their territory.

IV. Concluding remarks

30. It is UNHCR's strong belief that a future harmonised European asylum policy must be firmly rooted in the proper and inclusive application of the 1951 Convention. The right to seek and enjoy asylum must be maintained as a human right and its further development and enforcement in Europe should be strengthened by the EU harmonisation process.
31. A comprehensive and forward-looking asylum policy in Europe that respects international standards for refugee protection will be to the benefit of refugees, asylum-seekers and States alike. The implementation of the relevant provisions of the Amsterdam Treaty represent an important opportunity to achieve this goal.
32. An important factor in the process to harmonise asylum policy and practice in the European Union is the future enlargement of the Union through the accession of candidate countries in Central Europe. These countries need to be further assisted in developing sustainable and comprehensive asylum systems which meet the requirements of EU membership as well as international standards for the protection of the refugee. Preparations for future EU membership are a unique opportunity

to help these countries to adopt and implement the necessary legislative and administrative arrangements to develop the required institutional capacity, and, hence, to turn from transit countries for asylum-seekers into countries of destination for refugees.

23 July 1999

**Comments by
Amnesty International
on the
EU Extraordinary Summit of
Tampere :
“Establishing an Area of
Freedom, Security and Justice”**

A European Council entirely devoted to Justice and Home Affairs shall meet in Tampere on the 15th and 16th of October. When the Heads of State and Government agree on the priority objectives for the European Union (EU) in order to achieve the aims set up in the Amsterdam Treaty, Amnesty International asks them to affirm that the harmonisation of asylum and immigration matters at EU level does not undermine international refugee and human rights law standards. In addition, the organization urges that a clear distinction be made between asylum and immigration matters in order to ensure that immigration control is not achieved at the expense of the rights of refugees.

1. Harmonisation of asylum issues.

A mechanism for harmonisation on substantive asylum issues has been set up at EU level by virtue of Title IV of the Treaty Establishing the European Community (TEC). Its effective development is however challenged by the actual mechanism established for its implementation, namely, the adoption of only minimum standards, the existence of a transitional period of five years in which the unanimous voting rule shall apply, and the possibility to “opt-out” for the United Kingdom, Ireland and Denmark. Amnesty International asks the Heads of State and Government to affirm

that if a harmonisation process is to be undertaken at EU level, it shall not result in the lowest common denominator for refugee protection. Such harmonisation must be in compliance with international standards, so that maximum protection is afforded to individuals in need of it. This is of particular relevance, since measures adopted at EU level in the field of asylum will now be Regulations and Directives, and as such, legally binding for Member States. The precedence that EU asylum provisions will take over national legislation of Member States requires that measures in the field of asylum respect fully the international obligations of Member States under international refugee law and international human rights law.

2. The 1951 UN Convention on the Status of Refugees

Amnesty International asks the Heads of State and Government to reaffirm their commitment to the UN Refugee Convention, interpreted in a way that covers all forms of persecution, in order to ensure that all individuals who fall within its scope are granted the protection that this instrument provides. In this regard, the UNHCR Handbook on criteria and procedures for determining refugee status, as well as the EXCOM conclusions, which reflect international consensus, are binding on Governments when interpreting the UN Refugee Convention. Other relevant human rights treaties, such as the European Convention of Human Rights, the Convention Against Torture and the International Covenant on Civil and Political Rights, which develop and complement the protection accorded to refugees, must also be taken into consideration when revising existing measures and adopting new ones in the field of asylum. Amnesty

International asks that the present development of international human rights law is taken into account in a comprehensive manner when adopting measures in the field of asylum, such as the harmonisation of the refugee definition, or the scope of the prohibition of *refoulement*.

The determination of refugee status requires the existence of fair and satisfactory procedures, in order to identify those in need of international protection. Such procedures must include a fair hearing in reasonable time, independent and expert decision-making bodies, individualised and thorough examination of claims (including individual interviews), legal assistance and a suspensive right to appeal.

3. Complementary protection arrangements

Having regard to the fact that certain individuals in need of international protection may not fall within the scope of the UN Refugee Convention, Amnesty International asks the Heads of State and Government to affirm that any additional, complementary protection arrangements adopted by EU institutions implies the granting of protection for all individuals who fall within the scope of human rights law provisions. This protection must be effective and durable and it must include legal security.

The determination of which individuals are entitled to international protection under complementary arrangements requires individualised examination of claims in fair and satisfactory procedures. The criteria for the granting of such protection, as well as the rights recognised to its beneficiaries must be clearly determined and they must be in

compliance with international human rights obligations.

Amnesty International asks the Heads of State and Government to affirm that the establishment of complementary protection regimes should in no case prevent individuals who fulfill the criteria set out in the UN Refugee Convention from having their refugee status recognised.

4. Temporary protection

In emergency situations of mass influx, temporary protection has been used by several European States as a tool in order to provide protection to specific categories of people without immediate recourse to individual refugee status determination procedures. Amnesty International opposes the use of temporary protection regimes.

Beneficiaries of a form of temporary protection are generally given fewer rights than those granted refugee status under the UN Refugee Convention. This raises serious issues regarding the ability of governments to deprive individuals of the rights that they are recognised under international refugee and human rights law. Most seriously, temporary protection status can often be terminated by the host state much more easily than refugee status. It is of concern that there is not international standard for the ending of temporary protection.

Amnesty International asks the Heads of State and Government to affirm:

- that any regime of temporary protection must always be based on the principle that international protection is a human rights obligation under international human

rights and refugee law and that such regime should not deprive individuals of accessing a refugee determination procedure to exercise their legitimate right to an individual examination of their asylum claim.

- that a temporary protection regime should be exceptional and this initial form of protection should be implemented only in emergency situations of a sudden and mass influx, as clearly defined in consultation with international bodies including UNHCR.

5. The High Level Working Group on Asylum and Migration.

Amnesty International asks the Heads of State and Government to affirm that the comprehensive approach referred to in the terms of reference of the High Level Working Group on Asylum and Migration (HLWG) is reflected in their Action Plans. The Action Plans should be protection-oriented, not only control-oriented for those who flee from human rights abuses. Such protection must always include the respect for the principle of *non-refoulement*.

Amnesty International acknowledges that there has been an improvement in transparency in the activities of the HLWG and welcomes the involvement of UNHCR from an early stage of the process. Amnesty International asks for further transparency, including full access to reports, as well as clarification of the sources used for the drafting of the Action Plans.

The concept of reception in the region should not undermine the right of an individual to seek and enjoy asylum. International refugee law does not require

that a refugee must seek asylum in the first country whose territory he or she reaches. It is the country where a refugee applies for asylum which is obliged to consider the application substantively, and when an asylum seeker has compelling reasons to remain, he or she should not be removed to another country. The establishment of any reception in the region mechanisms should not absolve EU States to perform their duties as asylum countries.

Any concept of reception in the region must take into account the international responsibility for the protection of refugees. Amnesty International asks the Heads of State and Government to affirm that a regional approach to refugee and asylum matters does not undermine efforts carried out at the international level for the protection of refugees worldwide.

6. The role of the European Court of Justice

Due to the jurisdiction that Article 68 of the Treaty Establishing the European Community confers on the European Court of Justice (ECJ) regarding measures adopted under Title IV of the Treaty, it is foreseeable that the ECJ shall be called to rule in the future on matters that involve, *inter alia*, the refugee definition, the visa regime, carriers' sanctions, manifestly unfounded applications, third country concepts, or the determination of the Member State responsible to examine an asylum application³⁷. The ECJ shall have to

³⁷ The position of Amnesty International on these issues has already been collected in the document of 21 May 1999 "Amnesty's recommendations about the Commission's Working paper 'Towards Common Standards on Asylum Procedures' (3 March 1999)".

interpret EU provisions in accordance with international human rights standards. Diverging international judicial resolutions arising between the ECJ and international treaty monitoring bodies may lead to serious conflicts of international obligations for Member States if it is not ensured that EU norms are in accordance with human rights provisions.

16 July 1999

Introduction

ECRE's advocacy campaign, as described in the previous chapter, culminated in the organisation of the ECRE EU Tampere Summit Parallel Meeting, which took place during the EU Tampere Summit on 15 October 1999³⁸⁻³⁹.

At this Parallel Meeting, an ECRE Statement⁴⁰ was handed over by refugees from Kosovo to Tarja Halonen, then Finnish Foreign Affairs Minister and currently President of Finland, stressing the need for a non-restrictive approach to harmonisation of asylum policy and the role that the EU could play in transforming general commitments to human rights into concrete measures. In her reply Mrs Halonen stressed that the right to asylum is a cornerstone to an EU Area of Freedom, Security and Justice, and that this right has to be safeguarded. She concluded her speech by thanking ECRE and all relevant NGOs for their 'important input in promoting a humane and fair asylum policy in Europe'.⁴¹

The Parallel Meeting was attended by some 300 people, of which one third are estimated to have been media representatives. ECRE members, human rights organisations, international press, MEPs, academics, politicians, government officials, refugee representatives, local NGOs and members of the general public attended the meeting. The presence of so many media representatives resulted in ECRE's position on the Tampere Summit and on asylum policies in general to be very well-covered throughout Europe.

The ECRE Parallel Summit also showed the fundamental significance of listening to the personal contributions and objective comments made by refugees themselves. Alongside the important theoretical contributions from experts, it is crucial to hear from the people who are subject of all the discussions. Minoo Jalali, an immigration law practitioner in the UK and refugee from Iran, started her speech at the ECRE EU Tampere Summit Parallel Meeting by saying: 'I'm the one associated with criminals, terrorists, economic and bogus migrants'. She then went on to note the contradictions in the policies of many European States, e.g. they shorten the time limit within which to lodge an appeal to a few days but they take a year to reach a decision. Ms Jalali felt that the crisis in Kosovo had changed public support for refugees a little but noted that refugee tragedies in e.g. Africa did not receive the same sympathy, because 'it's further from home'. She explained how difficult it is to live in insecurity and not being able to plan for any future and expressed the hope that some of the most restrictive practices would be changed. She highlighted as an example of restrictive practice the fact that airlines have assumed the role of

³⁸ *The Final Programme of the ECRE EU Tampere Summit Parallel Meeting is included on pages 28-29 of this Dossier.*

³⁹ *ECRE's Press Release "Protection Not Control", on the outcome of the ECRE EU Tampere Summit Parallel Meeting is included on page 63 of this Dossier.*

⁴⁰ *Conference statement of the European Council on Refugees and Exiles appealing to the Heads of State and Governments with a view to the EU Tampere Summit on the Establishment of an Area of Freedom, Security and Justice.' ECRE biannual General Meeting Helsinki 14-17 October 1999, is included on pages 30-31 of this Dossier.*

⁴¹ *Mrs Halonen's speech is included on page 32 of this Dossier.*

immigration officer and the problems for asylum seekers to obtain the necessary documents to flee their country and seek asylum elsewhere. She offered a personal example: she herself had had to pay smugglers in order to flee her country but that did not make her a 'bogus' asylum seeker. She concluded by saying: *'Democracy owes access to protection to people who fight for democracy in their own countries'* BBC World Service transmitted their interviews with the Afghani⁴² and Iranian speakers at the Meeting through Afghani World Service (reaching an estimated 25 million Afghani nationals and refugees) and Persian World Service (several million).

Many other important reflections were made during the ECRE EU Tampere Summit on key topical issues such as :

- The development of comprehensive EU asylum policies under the Amsterdam Treaty and the role of the European Parliament, National Parliaments and Civil Society in this process⁴³;
- Harmonisation of EU Asylum Policies⁴⁴;
- The regionalisation of refugee intake, and the impact of immigration control on the right to seek asylum⁴⁵;

⁴² Ms Fatima Galani, whose speech *'Why being a woman is enough reason for asylum status: Women's situation in Afghanistan'* is included, on pages 60-62 of this Dossier.

⁴³ Mr Schori and Mrs Syvärinen's relevant speeches are included on pages 33-36, respectively 43-46 of this Dossier. Id. 11.

⁴⁴ Mr Hall and Mrs Stenman's relevant speeches are included on pages 36-39, respectively 41-43 of this Dossier.

⁴⁵ Mrs Odofin's article on this issue is contained on pages 39-41 of this Dossier.

- The precedent setting impact of EU Asylum Policies on global refugee standards formulation⁴⁶;
- The integration of refugees⁴⁷;
- Combating root causes of forced migration⁴⁸;
- The potential and dangers of the work of the High Level Working Group on Asylum and Migration⁴⁹⁻⁵⁰.

ECRE believes that the above presentations are still very valuable contributions to the debate on how to take Tampere further. This debate however, should not be the prerogative of the key actors within the European Union institutions only. ECRE feels it is equally important to involve representatives of expert NGOs, inter governmental organisations such as UNHCR, academics and the public, as well as refugees themselves, as much as possible in the debate.

⁴⁶ Mr Edminster's relevant speech is included on pages 46-47 of this Dossier.

⁴⁷ Mrs Sianni's relevant contribution is included on pages 48-49 of this Dossier.

⁴⁸ Mr Parisel's relevant speech is included on pages 53-57 of this Dossier.

⁴⁹ Mr Kyröläinen and Ms Gil-Bazo's relevant speeches are included on pages 50-52, respectively, 57-60 of this Dossier. Id.3. – Id. 11.

⁵⁰ Mr Peter Mardsen (British Refugee Council) analysis of the High Level Working Group's Action Plan on Afghanistan, and Mr Thomas Uwer (WADI – Germany) analysis of the High Level Working Group's Action Plan on Irak, as presented at the Meeting, are available from the ECRE EU Office.

“ECRE EU TAMPERE SUMMIT
PARALLEL MEETING – FINAL
PROGRAMME”

“ECRE EU TAMPERE SUMMIT
PARALLEL MEETING – FINAL
PROGRAMME”

**European Union
and Asylum Policy
Conference Statement of the
European Council
on Refugees and Exiles
Appealing to the Heads of
State and Governments with a
View to the EU Tampere
Summit on the Establishment
of an Area of Freedom,
Security and Justice.**

**ECRE Biannual General Meeting
Helsinki 14- 17 October 1999**

The European Council on Refugees and Exiles, representing 66 refugee-assisting Non Governmental Organisation working for the protection of refugees in 24 countries across Europe, is convinced that a European policy on asylum and refugees must be developed. The envisaged enlargement of the EU has to be taken into account when governments agree in Tampere on the way the Treaty of Amsterdam will be put into practice. Such European policy should be based on established international principles, especially the 1951 Refugee Convention, and on the best examples of existing national practice. However, ECRE fears that the European Council may seek the lowest common denominator and transpose existing common positions developed over the last decade into EU instruments. Freedom, justice and security must be ensured not only to citizens and residents of the Union but also to those seeking asylum in our countries.

While we recognise the need to address the root causes of forced migration the EU must keep a distinct focus on protection and ensure that the institution of asylum is not subordinated to control measures. In particular, the EU should ensure that those fleeing their home countries have physical access to protection in its territory. Therefore, ECRE is worried by the Action Plans proposed by the High Level Working Group on Asylum and Migration with regard to the almost exclusive emphasis on « regionalisation » of refugee protection and assistance and refusal of access to EU territory. There is an apparent contradiction between the description of the most severe human rights violations in almost all of the countries examined and the measures which are proposed. ECRE calls upon the EU to ensure that the comprehensive approach towards asylum of the High Level Working Group is protection-oriented.

ECRE has observed that the definition in the 1951 Refugee Convention has been restricted in practice in many EU countries, even in the protection of Kosovo refugees. We call upon the EU to re-affirm its commitment to the application of the Refugee Convention. In drafting an instrument on the interpretation of the Convention, ECRE urges the EU to adopt the guidance of the UNHCR.

ECRE is convinced of the need to formulate an EU policy on complementary protection for those who are clearly not covered by a correct and inclusive interpretation of the Refugee convention but who,

nevertheless, cannot be returned to their home countries.

ECRE believes that the Dublin Convention must be reviewed, especially from the perspective of the right to family unity of asylum-seekers and refugees.

Mass arrival of refugees from a crisis area which, for a limited period of time, overwhelms an individual determination procedure may be addressed by temporary protection arrangements. Such measures must include a level of rights similar to those of Convention refugees on the basis of an EU agreement and must, anyhow, not prevent access to determination procedures prior to return.

ECRE calls upon the Heads of States and Governments to use the Tampere meeting as a unique opportunity to change fundamentally the restrictive and security-oriented approach of EU harmonisation efforts to date and to demonstrate the added value of the EU by transforming the commitment to human rights into concrete measures.

ECRE EU Tampere Summit
Parallel Meeting
15 October 1999

Tarja Halonen

Finnish Foreign Affairs Minister

Ladies and Gentlemen,

It is an honour for me to be able to address your meeting. I salute your decision to convene here in Tampere simultaneously with the special meeting of the European Council. The European Council on Refugees and Exiles with its 70 member organisations represents a remarkable expertise on asylum policy.

The European Union is a community of shared values, where human rights are among the guiding principles. The goal of the European Council in Tampere is to take a step towards the Area of Freedom, Security and Justice based on our common values. Therefore this meeting offers an opportunity to confirm the respect for human rights.

The principle of non-discrimination is at the core of human rights protection. Fighting discrimination and combating racism on the basis of the Treaty of Amsterdam should be further strengthened in this meeting.

Regarding international protection, the Union is committed to the Geneva Refugee Convention and other relevant human rights instruments. The right to seek asylum is an essential element in

establishing the Area of Freedom, Security and Justice. A well-functioning, fair and efficient asylum system safeguarding the legal protection of asylum seekers is our common goal.

I'm especially concerned by the persecution and violence that women experience. Women and children are a clear but too often an invisible majority of the world's refugee population. Their special needs while seeking asylum have to be addressed as you have stated in your position papers.

It is clear that asylum and migration are two distinct –although interlinked– phenomena which have to be dealt with and analysed separately. The distinction has to be reflected also in today's discussions.

Migration policy must be based on respect for human rights. I would like to mention, in particular, the need to guarantee the rights of the victims of human traffickers. Tackling the root causes of migration like poverty and injustice, will not undermine our international commitment.

There is a continuous need for international protection across the world. The right to seek and enjoy asylum has to be safeguarded. The European Union is working towards this goal. I thank you for your important input in promoting a humane and fair asylum policy in Europe.

ECRE EU Tampere Summit
Parallel Meeting
15 October 1999

Pierre Schori

Vice-President for Foreign and
Security Policy of the Socialist
Group in the European Parliament

Dear Friends,

At long last the fundamental issues of common concerted action in refugee situations have come to the forefront in the European Union. The Tampere Summit might, we strongly hope so, become the turning point in a necessary systematic shift of our attitudes and policies regarding basic humanitarian issues that involve so many people inside and outside the EU.

The process started under the Austrian Presidency. For the first time migration and asylum questions were treated as a priority matter in the long list of urgent matters to attend. The Austrian government courageously presented a first draft of an EU strategy, which gave rise to a heated debate. The German presidency elaborated the texts, which also became objects of intense discussions. The simultaneous outbreak of the Kosovo disaster did not contribute to a more generous climate but the work went on. And today, we not only have the Finnish Presidency's proposals on our agenda but also a joint contribution from France, Germany and the UK. We have, in other words, entered in a dynamic and formative phase, which has the ambitious task of turning the European Union into an area of Freedom, Security and Justice. We are facing this huge challenge in a time when the EU is about to open up to

a series of new member states, an opening which in turn represents new challenges, both for the EU and candidate countries. We will never achieve a successful enlargement without extending the principles and laws of that same area of Freedom, Security and Justice in full and to the whole of the new Union. This means among other things that human rights have to apply to all persons living in the Union, without any discrimination against anyone. If we succeed in this historic endeavour, Europe will never be the same again, and it will be a better Europe, where we can all breathe freer.

But the challenges are of course not only European, we are living in a world severely divided between haves and have-nots, and also wired and not wired. To the dangers of creating a globe with economic and social apartheid we also risk the emergence of a technological apartheid. The globalisation of our days, of deregulation and Internet, has brought more growth and development than ever before. But there is a manifest danger that the same forces that promote progress also leave millions and millions of people behind, on the side or even totally separated from even the hope of a decent life. We have the latest UNDP Human Development Report where those who only see the advantages of globalisation can find the facts of this new, dramatic divide. And we have all heard World Bank president Jim Wolfensohn's warning: if nothing is done to reverse the trend world poverty will be doubled in 30 years. Today already the majority of our fellow human beings live in poverty and a fifth of us, mostly women, in abject poverty.

In the post-Cold war, poverty is the main enemy to peace, development and democracy and a major refugee-producing factor. No arsenals will do, no

nuclear arms race will give security in this situation. You cannot shoot at poverty, but poverty can shoot back at you. Therefore solidarity and security are two faces of the same coin in today's world, and therefore it is not only morally outrageous but also politically mindless when rich countries begin to cut down on international development aid.

The millennium shift might mean champagne and fireworks for some, and hopes for a better future for others, but only for the great many of this earth the year 2000 is another bitter chalice. They would certainly be even more bitter when they learn that the international community, mainly the EU, allocates 25 times more money per refugee from Kosovo than on one from Africa.

But mind you, this is not only a third world drama, it is also very much a European dilemma. Not only has Europe been a major refugee producing region over the last years- in 1998 40% of applicants in Europe were from Kosovo and Turkey – but there are also other homegrown problems. The so-called new poverty is growing rather than receding within one of the world's most powerful economic blocks: the number of homeless, the feminisation of poverty and problems of poor single parent households, mass unemployment, the enclavisation of the disadvantaged in socially and culturally sealed off neighbourhoods. Europe runs the risk of having a permanently unemployed section of the population. And when we are facing these problems we can only imagine the difficulties and tragedies in less developed nations.

We cannot therefore conduct a serious policy on migration and asylum in an isolated fashion, by only creating laws and rules for refugee reception and

criteria for asylum status, necessary as they are. But as migration and its causes are globalised, we must also globalise our policies and our ways of working.

It may sound insignificant in this context but I would like to say anyway that the reform we undertook in my sphere in 1997 moving the responsibility of asylum and migration from the Ministry of labour into the Swedish Ministry for Foreign Affairs and joining it with International development Cooperation gave me, yes, a lot to do with two ministerial hats and being deputy foreign minister as well, but we thus not only underlined that migration and asylum were trans-national matters but also part and parcel of a policy for international solidarity. we could thus join regular refugee and asylum questions with foreign aid, conflict prevention, programs for human rights and democracy, reconstruction and return, all under one ministry and one minister, in a comprehensive approach.

During the Kosovo crisis I found how necessary such an integrated approach was. When the first Council of Ministers met after the outbreak of the war, it happened to be the development ministers. there I advocated for fast and effective support to the refugees but also for burden-sharing and temporary protection, something that former commissioner Anita Gradin persistently fought for but received no support. But my colleagues said that this was the responsibility of the Justice and Home Affairs Council. I then asked for an urgent meeting of my colleagues of my other hat, but now they said that this was a matter for the Foreign Ministers.

As you can understand I therefore strongly support the inter-pillar cooperation on migration and asylum

issues that has recently been tested in the work of the High Level Working Group. policy areas such as conflict prevention, poverty eradication, human rights and democracy, humanitarian aid, peace-keeping should be integrated into a modern and efficient policy for migration and asylum.

It is in this vein that I find the Swedish government's suggestion of creating a common European information and analysis centre to be interesting. the centre could also serve to combat false statistics and increase knowledge and understanding about the causes of migration and exile. I would also like to see a migratory and asylum dimension integrated in Javier Solana's secretariat.

But a policy cannot only be modern and efficient, it must also be just and fair, clear and credible and, not least, human and compassionate.

last month an advisor to a former powerful European leader told the International Herald Tribune that his country's foreign policy "these days is driven by a simple priority: to prevent poor foreigners from swamping our prosperous country. Given the dangers of right-wing extremism, the idea is to do whatever necessary to keep would-be immigrants from leaving their homes and heading this way".

Now, we all know what has happened over the last weeks, months and years in Europe. demagogues and racists try to win votes by invoking fear and distrust. It is not only Austria and Germany, UK, France and Italy. We can see the ugly face of xenophobia and racism also in Norway and Denmark and my own country, Sweden. it is a serious problem, and of course we should do everything we can to root out the causes of forced

migration and asylum-seeking. But we should do it, not by giving in to chauvinism and gruel propaganda and restricting our refugee policy in the process and going soft on the dark and anti-democratic forces but instead by challenging demagoguery and ignorance at home and by conducting a comprehensive policy abroad against poverty and environmental destruction and for democracy and development.

And the same goes for the EU who must develop a policy of two parallel paths, one of the harmonisation of asylum and reception systems and the other of the ability to prevent and manage crisis situations. the Amsterdam treaty gives us a historic opportunity to start a harmonisation process firmly based on principles of refugee protection and human rights standards. here, of course, any departure must start from the 1951 Geneva convention and continue with international best practice as we modernise our legislation. Furthermore, it is not only advisable but also necessary and most useful to always follow the advice of UNHCR as well as to co-operate as much as possible with relevant NGOs. In Sweden this attitude has led to fruitful cooperation in many practical situations, e.g. at the border where NGOs offer assistance to asylum-seekers. I know from hearings we have had in the European Parliament with especially Foreign Minister Tarja Halonen, that the Finnish government and presidency also follow this line.

The European Parliament follows events in this area closely. Last week we adopted a multi-party resolution where we underlined among other things the following:

The implementation of the AFSJ must seek not only to guarantee the security

of persons, but also to foster individual rights, fundamental freedoms and democratic safeguards, displaying open-mindedness and a spirit of tolerance: It calls therefore for particular emphasis to be laid on:

- action to combat discrimination;
- involve NGOs and civil society;
- proceed in a spirit of transparency.

We also want the Tampere Summit to urgently draw up a plan to combat and prevent crime, including specifically, the trade in human beings; crimes against children; racism and xenophobia; money laundering; tax havens and terrorism.

We went on to state that we deem member states' inertia in adopting legislation to implement Article 18 of the EC Treaty – granting European citizens the personal, direct right to move and reside freely within EC territory – to be unjustifiable. We consider it urgent, in order to facilitate the integration of legally resident third-country nationals, for the EU to address the principles governing the status of such persons.

I would add that it is vital that the 12 million people who are third-country nationals must be part of the free movement inside the Union and be given the same rights and obligations as any other EU citizen. I would also add that the economic, social and political integration of immigrants in the EU member states is doubly important as it affects both the countries to which they have immigrated and their countries of origin. Following this argument it is important to strengthen the rights of third-country nationals on the labour market, as they often end up in a secondary labour market due to a consistent demand for cheap labour. Also we can see the value of well-integrated

resident immigrants playing a part in the economic development of their home countries. the value of migrant remittances has been estimated to more than 70 billion US\$.

Let me finish by this remark:

In these times of Haider and other demagogues it is probably a wise policy to underline that we demand respect for the asylum-seeker but that the asylum-seeker must also respect our laws. But our laws need to be constantly reviewed and revised when necessary. no legislator, no politician, not even a bleeding heart can foresee the problems and complexities of the nightmare that is forced migration and exile. And above all: seeking asylum is a human right, maybe the ultimate human right for our fellow human being. Let us together make that view prevail in our respective countries and the EU.

Thank you!

**ECRE EU Tampere Summit
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15 October 1999**

Raymond Hall

**UNHCR Regional Representative
in Brussels**

With the entry into to force of the Amsterdam Treaty on 1 May of this year, the European Union entered a new phase in the harmonisation of asylum policies.

From the point of view of UNHCR, this process involves both opportunities and dangers. We have reached a crucial moment with the Summit here in Tampere, where European Heads of State

and Government are expected to establish the political guidelines which will frame subsequent policy formulation and legal development in relation to refugees and asylum-seekers under the Amsterdam Treaty.

New Opportunities or New Dangers?

The Tampere Summit offers an opportunity to ensure that the European Union responds in a principled and coherent way to the challenge posed by refugees and asylum-seekers. It should give a much needed impetus to efforts to iron out very significant differences between the asylum policies and laws of individual European States and to move beyond an unacceptable situation where an individual may qualify as a refugee under the 1951 Refugee Convention in one EU Member State but not in another. This would be a definite victory for refugee protection.

But there is also a danger that the European approach to harmonisation will be based on a control perspective that, by closing borders and through a range of other restrictive measures, will make protection increasingly difficult to obtain for refugees. Over the recent years, UNHCR has raised with governments its concern about the deterioration in the quality of protection of refugees. In an increasing blurring of the distinction between refugees and ordinary migrants, people fleeing from persecution and requesting asylum are often perceived by policy makers and public opinion as merely seeking economic opportunities. In harmonising their policies, Member States may be tempted to settle for the lowest common denominator of refugee protection. This is the danger that must be laid to rest at Tampere.

In the run up to the Summit, we have urged States not to shy away from

committing themselves to the highest standards of refugee protection. We have appealed to Governments maintain a distinct focus on asylum and not to allow it to be subordinated to migration policy. For, unlike migrants, refugees move in search of protection. Equally importantly, we have recalled that asylum must be upheld as a right rooted in international law and not subjected to political discretion.

We therefore expect Heads of State and Government meeting at Tampere to make a strong political commitment to asylum. Without such a commitment, we fear that the opportunity presented by the Amsterdam Treaty may be lost.

The asylum agenda

To make the most of the opportunities offered by the Amsterdam Treaty, the European Union needs to take a strategic rather than a “laundry list” approach to the development of asylum policy. UNHCR has suggested that this approach should revolve around the following key elements.

◆ First and foremost, who is a refugee?

Any coherent, protection-based asylum strategy must start with a common understanding of who it is that is in need of protection and what the content and legal basis of that protection will be. The cornerstone of a harmonised European asylum policy needs to be a common interpretation of the refugee definition contained in the 1951 Convention. Contrary to the current practice of some European States, that interpretation should recognise all types of persecution, including persecution carried out by non-State agents and persecution that takes the form of sexual violence against women.

◆ Subsidiary forms of protection

Not all victims of violence and conflict or other persons with a valid claim to protection fall within the scope of the 1951 Refugee Convention, even when it is properly applied. Many who are rightly or wrongly excluded from its application currently lack adequate protection in a number of European States. UNHCR therefore urges States to develop a common approach to subsidiary forms of protection. It would, however, be unacceptable if such measures were to be little more than a pretext for granting a lesser degree of protection to victims of persecution who meet the criteria for protection as Convention refugees.

◆ Temporary protection

Both 1951 Convention status and complementary forms of protection are the result of individual status determination procedures which may be difficult to apply in situations of large scale influx. In such cases, UNHCR supports recourse to temporary protection as a practical device which allows States to respond to the protection needs of large numbers of asylum-seekers displaced by war and generalised violence, without necessarily applying individual procedures. The beneficiaries of temporary protection arrangements must, however, be accorded a consistent standard of rights throughout the EU, which takes due account of the fact that many of them fulfil all the criteria for recognition as refugees under the 1951 Convention.

◆ Asylum procedures

Individual status determination procedures must remain at the heart of European asylum systems. Fair and efficient asylum procedures are in the

interests of States as well as in the interests of refugees. They guarantee that refugees are duly recognised and provide a basis for States to return home those who do not require protection.

In many parts of the European Union, asylum procedures are in crisis. Problems of capacity need to be urgently addressed. At the same time, UNHCR believes there is scope for shortening and streamlining the procedures themselves, particularly at the appeal stage, while ensuring that fundamental safeguards are respected.

To achieve coherence, the European Union must resolve considerable differences in procedural legislation and practice amongst the 15 Member States. At the least, harmonisation is needed to ensure that asylum seekers enjoy an equal chance of obtaining protection throughout the Union - which is far from being currently the case. UNHCR would welcome a bolder step by the European Union -- agreement on a common asylum procedure.

◆ Comprehensive Approaches

Finally, a common European asylum system needs to address the causes of forced population displacement, in order to prevent future outflows and contribute to an environment conducive to return and sustainable re-integration of refugees and displaced persons. Active promotion of respect for human rights, reconciliation and reconstruction, as well as long-term development aid are key elements in policies and strategies aimed at both prevention and durable solutions. UNHCR has welcomed the Union's effort to integrate constructive foreign policy initiatives and development co-operation into a comprehensive approach to refugee producing situations. We have co-operated closely with the EU's

High Level Working Group in formulating Action Plans on a number of refugee producing countries and regions. We insist, however, that the asylum and protection dimension of the Action Plans must be given due priority in the course of their implementation.

It is in the hands of the European Union and its Member States to ensure that the asylum-related provisions of the Amsterdam Treaty do not simply reinforce the restrictive trends of the 1990's, but that they place refugee protection on a proper footing in harmony with the aims of freedom, security and justice to which the European Union aspires. It is crucial that the Tampere Summit give an unambiguous signal in this respect.

ECRE EU Tampere Summit
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Clara Odofin
Legal Officer
ECRE

The Impact of Immigration Control on the Right to Seek Asylum⁵¹

Immigration and the trafficking of migrants have become major issues on the agenda of European Union States. Illegal entry and trafficking of persons are viewed as one of the growing problems of the late 1990s, but ECRE would argue that it is a problem to which

European Union policies have contributed. For years, NGOs have warned about pushing people into clandestine and often life-threatening channels if all legal entry channels are closed. The right of States to control immigration, by controlling entry and enforcing borders, has never been questioned. However, the dilemma which *should* face European Union States is how to exercise their right to control immigration without infringing the rights of asylum seekers and without undermining EU asylum policies. ECRE is concerned that enforcement of controls has come to dominate policy-making within the European Union and that initiatives taken or planned by Member States do not sufficiently discriminate between asylum seekers and other migrants, thereby failing to safeguard the rights of refugees to seek protection.

The right to leave one's country and seek protection is guaranteed by international law. Article 12 (2) of the International Covenant on Civil and Political Rights provides that everyone, including asylum seekers, have the right to leave their own country, and Article 14 (1) of the Universal Declaration of Human Rights provides that "Everyone has the right to seek and to enjoy in other countries asylum from persecution". However, the current array of immigration control measures applied by EU States has significantly curtailed the ability of asylum seekers to exercise their rights.

One weapon employed by the European Union in its 'fight' to control immigration is a joint visa policy. Member States need to urgently reassess the binding EU measures which have been adopted in this area since September 1995. It is a matter of serious concern that the present list of 101 countries, in several cases, ignores UNHCR's repeated

⁵¹ This contribution was published as an article in "The European Union and Refugees"; a special issue of Pakolainen (The Finnish Refugee Magazine) – October 1999 – Page 11

plea for visas not to be imposed on countries in which there are civil wars, generalised violence or widespread human rights violations which produce refugees and displaced persons. A visa policy is a legitimate tool for controlling immigration, but when it is directed against asylum seekers, it is in flagrant contradiction with the principle of asylum and the above-mentioned international human rights instruments. The problem is obvious. Refugees, are, in many cases, unable to apply for a visa without putting themselves at serious risk. Even where they are able to apply, whilst one can apply for a visa for reasons of business, study or tourism, it is a well-known fact that one cannot apply on the ground of a need for protection. Denying asylum seekers the means to enter a country of asylum legally not only logically forces asylum seekers to resort to illegal and clandestine entry, but surely results in a certain number of persons in fear of persecution being contained inside their countries of origin in breach of the Universal Declaration of Human Rights.

Furthermore, European Union Member States have both exported enforcement measures beyond the frontiers of the Union and 'privatised' enforcement through the implementation of carriers' sanctions. Many EU governments currently send immigration officers overseas in order to enforce border controls extra-territorially, for example, through 'gate checks' in foreign airports. Their actions are not held accountable to international law or to democratic scrutiny. Although there are exceptions, most European States do not extend their obligations to refugee protection further than their national frontiers. ECRE would argue that the extension of border control beyond the external borders of the EU should

logically be accompanied by obligations upon Member States and their delegated officials to extra-territorially receive asylum requests and even to offer persons who need to flee without legal documents some assistance with exiting the country or region of origin. Since in practice such assistance is almost impossible to implement, we believe that the issue of externalising and 'exporting' border control requires urgent reconsideration from a legal, democratic and refugee protection perspective.

Refugees attempting to board European-bound flights from known refugee-producing regions of the world will also face checks on their documents and 'passenger profiling' carried out by airline staff trained to detect fraudulent passports and visas. Airlines, together with train, coach and shipping companies (the U.K. is now proposing to extend sanctions to lorry companies) have been forced to take on an immigration role due to the imposition of fines by Member States on carriers transporting passengers who do not possess the necessary documentation for entry. It is impossible to be precise about the number of refugees who are denied escape due to stringent checks by transport companies, but clearly it represents an ever-increasing barrier. As was stated in the 1998 report, *The Cost of Survival – The Trafficking of Refugees to the UK*, everybody loses from the present situation. "The carriers pay liability fines and have to train their own staff as quasi-immigration officers; the government spends many millions of pounds on an international enforcement agenda which cannot (and should not) stop refugees from fleeing persecution; and the refugees pay the highest price of all."

The result of such controls is that refugees are increasingly likely to have to resort to illegal means of entry with the consequent high risks and costs of using traffickers. What appears to have been lost in the debate on illegal migration is the reality which forces refugees to flee in the first place – a reality of persecution from which they are prepared to risk their lives in order to escape. Instead, the response of the European Union to illegal migration has been to expand the enforcement agenda in order to tackle the ‘trafficking problem’ while at the same time further tightening controls on borders.

The 1951 Refugee Convention was drafted in full recognition of the fact that refugees who escaped Nazi persecution had relied on traffickers and illegal routes. The actions of those such as Oskar Schindler and Raoul Wallenberg are well-known, as are their stories of facilitating forged documents and illegal border crossings. Article 31 (1) of the Refugee Convention explicitly recognises that some refugees will have no option but to use illegal means of entry, and provides that States “shall not impose penalties” on refugees on this account. To enter illegally implies nothing about the credibility of an individual’s claim to need asylum, and efforts to assist asylum seekers entering illegally need to co-exist with efforts to control migrant trafficking. Therefore, it is important that any measure taken to combat irregular migration and trafficking in human beings makes a clear distinction between punishing the traffickers and protecting the victims who are often refugees. Also, in accordance with Article 31, detention should never be based solely upon an asylum seeker’s illegal entry or irregular residence on the territory and claims from irregular entrants should never be

classified as ‘manifestly unfounded’ solely for that reason.

In conclusion, the European Union’s current ‘zero immigration’ and ‘zero tolerance’ of illegal entry backed by enforcement controls threaten to undermine its own asylum policy and violate the rights of asylum seekers whose life may depend on finding protection. Restrictive migration control has exacerbated the problem of asylum seekers being forced to rely on traffickers and the use of false documentation in order to exercise their right to seek asylum. It is now critical that the European Union redresses the balance between their obligations to the State (i.e. border enforcement) with those to refugees. This will require the European Union to urgently take proactive initiatives that protect refugees from the insurmountable barriers which are currently being erected in the name of immigration control.

ECRE EU Tampere Summit
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15 October 1999

Kristina Stenman
Director
Finnish Refugee Advice Centre

Founding Principles of a Single European Asylum System

Article 63 of the Amsterdam Treaty sets out an agenda for areas of harmonisation in the field of asylum. These areas include determination of state responsibility for asylum requests, setting up minimum standards for reception of asylum seekers, for definition of the beneficiaries of protection, for asylum

procedures, as well as mechanisms for granting temporary protection and responsibility sharing.

The Tampere Summit can show the political direction for how the harmonisation process of asylum policy will proceed: will Member States only seek to set up minimum standards at the lowest common denominator, or will the European Council charge the Commission and the Council to introduce and implement a truly coherent, protection-oriented asylum policy for the whole Union, where harmonisation at the level of best practice will take place?

During the Maastricht era, the tendency of the European Union has been to seek harmonisation at the level of lowest common denominator, and actions have been far more geared to limiting the number of asylum-seekers than to improving the quality of the asylum regime in Member States. Therefore, the establishment of a Single Asylum System which will improve refugee protection in the Union requires a much more ambitious line of policy, set in a clear human rights and refugee protection framework. It also requires significant reform in many individual Member States, eg. regarding reception conditions, asylum procedures and legal aid.

If the Heads of Member States choose the more ambitious path, the Union may be able to create a common asylum system, and over time, a European Asylum Area may emerge. In order for such a system to be feasible, the beneficiaries of protection, procedures for the granting of protection, the quality of reception and the rights of those benefitting from protection must be defined in a legally binding way and harmonised at the level of best practice.

What should the starting point and founding principles of such a system?

The starting point for a harmonisation process leading up to a single European asylum system must be the **principles of refugee protection** as set out in the 1951 Geneva Convention relating to the Status of Refugees. This means that Member States commit themselves to a correct, full and inclusive application of the refugee definition in the Refugee Convention, thereby following the guidelines and advice of UNHCR. In the drafting process of the Refugee Convention, States have clearly put limits to the application of the Convention, with the careful wording of the refugee definition in Article 1. It is in contradiction with international law for a group of Signatory States to further restrict the scope of its application.

Full respect for the principle of non-refoulement is at the core of the Refugee Convention, and enshrined in the universal human right of seeking and enjoying asylum. Full respect of this principle means that States have to commit themselves to fair and efficient procedures for determining refugee status, and hence, whom is to benefit from non-refoulement and other rights of a refugee. The purpose of the asylum procedure is to establish whether an asylum seeker is in need of protection. Therefore, decision-making bodies should clearly be given this mandate, and they should not be driven by suspiciousness or needs to regulate migration. ECRE firmly believes that building up the capacity of decision-making bodies in the first instance of the asylum procedure will contribute significantly to quicker and more correct decision-making. On the other hand, the asylum procedure must contain appropriate legal remedies and other legal

safeguards, such as access to interpretation and legal assistance.

The principle of non-refoulement also has significance outside the scope of refugee protection, in **general human rights law**. Member States generally do not deport persons who might be subjected to severe human rights abuses even if these persons may not fall under the terms of the Refugee Convention, or who would otherwise face very difficult security dangers or humanitarian problems. The principles for the granting of protection also to such persons is also an important area of harmonisation for the European Union. It is ECRE's belief that the beneficiaries of complementary protection should enjoy equal rights as refugees under the 1951 Convention.

Non-discrimination is a central principle in refugee and human rights law, and clearly laid out in Article 13 of the Amsterdam Treaty. Non-discrimination also involves an active responsibility for Member States to introduce measures which hinder discrimination, eg. by proper integration of refugees. Ensuring asylum-seekers' human rights in a non-discriminatory fashion is an important element of a Europe-wide asylum-system. Therefore, Member States should agree on a legally binding instrument which covers common standards eg. regarding freedom of movement, right to social assistance, employment, education, healthcare, and the treatment of women and children. Here, examples of best practice in various Member States should be used as a basis, not just meeting minimum standards.

Finally, **solidarity** amongst Member States appears to be a necessary political precondition for the setting up of a Single Asylum System. There are great differences amongst Member States concerning the extent to which they have

so far received refugees on their territories. Unless Member States agree on a common approach to mass influx situations, and on a formula for sharing of responsibility in such circumstances, the development of other areas of the Asylum System may be severely hampered. But solidarity also means that Member States, in view of the enlargement of the Union, actively seek to strengthen the capacity of Associated States to also be full participants in the common Asylum System.

The European Union is an important actor in global refugee protection. Therefore, a progressive, protection-based common Asylum System as part of the European Union's human rights and humanitarian policy can form an example of good practice for refugee protection universally. In the short term, the setting up of this system is a huge task for the European Union; in the long term, a functioning, protection-based Single Asylum System can become fairer and more efficient for refugees and Member States alike.

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Katja Syvärinen

Member of the Finnish Parliament

Dear Participants of the Meeting, dear Friends,

The ECRE officials kindly asked for a representative of the Grand Committee of the Finnish Parliament to give a presentation in this meeting. The

Committee chose me to give this presentation. My name is Katja Syvärinen, I am a first term MP and a member of the Grand Committee. I am also a chairperson of the Advisory board for the development issues and also the chairperson of the Parliamentarians for Global Action group in our parliament.

I was asked to give a brief introduction on how the Finnish parliament participates in the national preparation of European Union affairs. I would also like to give you a view on how the Parliament has taken part in the preparation of the Tampere extraordinary meeting of the European Council, especially on the immigration and asylum policy.

There are provisions in the Finnish Constitution concerning the participation of Parliament in the national preparation of decision-making at European level.

The constitution requires the Government to furnish Parliament with information regarding matters within the EU. Government must also hear the views of Parliament regarding matters on the agenda of the Union and must explain and justify the policies which it adopts within the EU on various issues. It is a constitutional requirement that the Government and each individual Minister must enjoy the confidence of Parliament in all of their activities. This principle of accountability to Parliament also applies to the activities of the government within the European Union.

Detailed provisions on the scrutiny system are included in (Chapter 4 a of) the Parliament Act.

The scrutiny of EU-affairs in Parliament has been entrusted to the Parliamentary committees. The view of Parliament concerning the EU-affairs is usually expressed by the grand committee.

However, when the matter concerns the common foreign and security policy of the EU, the view of Parliament is expressed by the Foreign Affairs Committee.

So, the Grand Committee is the principle EU affairs committee. Its primary task is to ensure that Parliament exerts and influence on EU decision-making and that parliamentary supervision is effective therein. The Grand Committee has 25 full members and 13 substitute members. The various political groups in Parliament are represented in proportion to their strength. The current Chairman of the committee is Mr. Esko Aho who is also the leader of the major opposition party.

The Grand Committee considers the so-called "EU-affairs" and expresses the view of Parliament with regard to these. EU-affairs are proposals for measures concerning EU of a kind which concern issues falling within the competence of Parliament. Due to the principle of accountability to Parliament, the view expressed by the Grand committee on a EU-affair is politically binding on the Government.

As already noted, the Grand Committee has the constitutional right to require and receive from the Government any information on the preparation of any issue relating to the European Union. This right forms the legal base both for the hearing of Ministers on EU council meetings and for the provision of EU related reports and documents to the Grand Committee which technically concern questions falling outside the formal competence of Parliament.

The Grand committee has decided that it wants information about every EU Council meeting, both in advance and ex

post. Therefore, the Grand committee convenes – normally on Fridays – to hear Ministers' statements regarding the issues to be decided at the coming week's meetings of the Council and Finland's policy on these issues. The members of Committee are provided in advance with the agenda of the meeting and with memoranda, prepared by the competent ministry, detailing Finland's position on the issues.

After the meeting of the EU Council, the Grand Committee is provided with the report of the meeting and its decisions. This report is put on the agenda of the next meeting of the committee where the same minister participates.

(EU-) affairs are brought up before Parliament by means of a communication sent by the government to the Speaker of Parliament. The proposal for the decision in question is annexed to the communication. On receipt of a communication of this kind, the Speaker sends it to the grand committee for consideration. In addition, the communication is forwarded to one or more specialized committees of Parliament, within the competence of which the matter falls. The task of the specialized committees is to deliver an opinion on the communication to the Grand Committee. After examining the EU decision proposal, the communication of the Government on the proposal and the opinions of the specialised committees, the Grand Committee expresses the view of Parliament regarding the proposal. Before doing so, the Grand Committee may also hear the competent Minister together with the civil servants and other experts who advise the Minister.

This is how the model has to work. As a member of the parliament I find it valuable that we have a system where the

parliament is tightly knit to the decision-making. In practise, however, we often face situations when the communications come so late that it is impossible to express views in time. In those situations the committee of course gives an angry note to the ministry in charge.

And now to the preparations of the Tampere Summit.

In the 5th of August the government brought up before Parliament a principle memorandum on the preparations of the Tampere summit. It was sent to the Grand Committee as well as to the Foreign Affairs Committee and two other specialized committees for information and further activities.

The Tampere Summit has been on the agenda of the Grand committee three times during this autumn. The committee has heard minister of the interior affairs Kari Häkämies, minister of justice Johannes Koskinen and in the meeting last Friday we heard the Prime Minister Paavo Lipponen.

Along with the coming WTO-round the issues concerning the Tampere Summit have had the greatest interest of our Committee.

Immigration and asylum questions have become more significant and apparent. The aim of Tampere Summit, as you know, is to create an integrated and coherent cross-pillar policy for enlarging union.

The Grand Committee has supported a comprehensive approach to migration and asylum policy. We have also stressed that the foundation of a European asylum policy must be the Geneva Refugee Convention and its obligations - in order to secure the rights of the refugees.

The High Level Immigration and Asylum Working Group (HLWG) is a Union – level attempt to apply a comprehensive, cross-pillar approach to a multidimensional problem. With separate programmes on countries of origin and transit countries, the aim is to tackle the reason behind migration and refugee fluxes on all three fronts covered by the EU pillars. All measures, from trade policy to development aid, should be used to help reduce the pressures of emigration. Important components of the approach are also protection of all human rights, support for democratisation and alleviation of poverty.

The Grand committee has found important that special attention is given to the fight against illegal immigration and the rights and responsibilities of legal immigrants. In this connection, however, human rights and the fight against racism and xenophobia play a very important role.

Also the role and the of the UNHCR has been stressed, as well as the need for a more coherent development of cooperation in the international immigration and asylum policies as well as the cooperation with the NGO:s.

In general, the preparation of these matters should be more transparent, and an open dialogue with human rights organisations should be a natural part of preparatory work.

I thank you for this opportunity to speak here on a forum I find the most valuable. I wish the very best and look forward to a fruitful cooperation between the parliaments and the NGOs in these issues.

ECRE EU Tampere Summit
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15 October 1999

Steve Edminster
Senior Policy Analyst
U.S. Committee for Refugees

Dear Friends and Colleagues,

I very much appreciate the chance to talk to you today to relate the views of the U.S. Committee for Refugees (USCR) on what we think the outcome of the Tampere Summit should be. Rather than focusing on the impact of the Tampere Summit on asylum here in Europe, I think it would be more useful for me to use the few minutes that I have to talk about the impact that decisions taken by European Union (EU) heads of state here today are likely to have on the institution of asylum in the rest of the world, particularly in the United States.

First, however, I would like to take a moment to introduce my colleagues from the United States who have also travelled here to attend this shadow summit: Annie Wilson with Lutheran Immigration and Refugee Services (LIRS); Karen Musalo with the American Immigration Lawyers Association (AILA); Carol Wolchok with the American Bar Association (ABA); and Frank Lipiner with the Hebrew Immigrant Aid Society (HIAS).

We all work in different capacities in the asylum and refugee field in the United States. Some of us are practitioners, others of us are involved with issues of asylum and refugee policy. We represent diverse viewpoints and do not always

agree on the issues. In making this statement, I speak only on behalf of the U.S. Committee for Refugees.

But a common concern has brought us together here in Finland today—namely, what happens here in Europe affects refugees and asylum seekers in the United States. What the EU heads of state decide here in Tampere and the future course that they chart in implementing the Amsterdam Treaty are likely to have a significant impact on policy decisions on asylum in the United States and elsewhere.

I can say this with some confidence because the European influence on our approach to asylum issues has certainly been evident thus far in the 1990s. Here are several examples.

In 1996, the United States passed a new law that calls for the expedited removal of insufficiently documented foreigners, including the asylum seekers among them. Before being permitted to enter the U.S. and apply for asylum, insufficiently documented asylum seekers must first demonstrate a credible fear of persecution in their home country in an interview with the U.S. Immigration and Naturalization Service at their port of entry into the U.S. Those who do not pass the so-called credible fear test are subject to deportation. This law was not a U.S. invention. Its precedent can be found in Europe, in European accelerated procedures to remove "manifestly unfounded" asylum claims, which have been in force in many EU countries for some time.

My second example also comes from the same 1996 law that contained the expedited removal procedure. With that legislation, the U.S. also enacted a safe

third country law that is even more far-reaching than many of the safe third country laws on the law books in individual European countries. Fortunately, the law has not yet entered into force because it requires the U.S. government to negotiate readmission agreements to implement it, which the U.S. has yet to do.

Finally, I want to mention the Puebla Process, which was initiated between the U.S. and Central American governments to deal with issues of irregular migration from a regional perspective. Sound familiar? It should. Like the European approach to the Kurds seeking to enter Italy and Greece in early 1998, or Germany's approach in the early 1990s to dealing with transit migration through Poland and the Czech Republic, U.S.-Central American cooperation on migration has focused far more on preventing unauthorized migration than on safeguarding the rights of refugees.

So to answer the question put by the chair on what the outcome of this summit should be, it should be to end the restrictive trend in asylum and reintroduce respect for refugee and human rights principles. However, to echo a previous speaker whose choice of words I cannot improve upon, I remain hopeful but not optimistic.

Thank you very much.

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Areti Sianni

Integration Policy Officer
ECRE

Like with ill health, there are two methods for dealing with refugee exclusion in the European Union: curative and preventive. Policy makers can wait until the disease has struck, until poor reception conditions, prejudice and lack of specialist support have done their work and refugees and their families have been marginalized through long periods of inaction (while waiting for status determination), through unemployment or living on low wages, through poor housing, lack of recognition of skills or social isolation. They can then try to cure the illness or at least combat some of the symptoms through paying benefits for the unemployed, and supporting those on low wages or without an income.

Or policy makers can try to prevent the onset of the malady in the first place. They can ensure that all those in need of international protection are given the opportunity to develop the skills and knowledge to compete effectively in the labour market; see that refugee children have the support necessary for their emotional and intellectual development and well being, and provide a framework for adaptation: refugee adaptation to the lifestyle of the host society without a loss of cultural identity as well as institutional adaptation in individual countries to reflect population changes and the permanent presence of refugees in the midst of European societies.

The Tampere Summit provides a historic opportunity for setting the direction for

the future of not only refugee legal but also social protection in the European Union. If refugee integration is "a matter of utmost importance" as described in the German Presidency's Guidelines for a European migration strategy, if it is a goal we all subscribe to, what are the basic requirements for realising such goal?

It might sound obvious but the first requirement for an effective policy on integration is the acknowledgement of the *presence of refugees*. This is not a truism to the extent that it is not always clear who has a right to integration as a durable solution and who has not. In most EU member states, a limited or even restrictive interpretation of the 1951 Convention has often resulted in low recognition rates and the granting of inferior legal statuses and limited socio-economic rights to people fulfilling the criteria of the refugee Convention. And although the Convention together with other international as well as national legal instruments can and have provided an adequate framework for the integration of recognised refugees, their efficacy has clearly depended upon the proportion of asylum seekers whose refugee status is recognised under the 1951 Convention and to whom asylum is eventually granted.

So, if the first prerequisite for an effective integration policy is the acknowledgement of the presence of refugees then - the first challenge or perhaps challenges for policy makers is how to ensure that a correct interpretation of the refugee definition is consistently implemented and that the question of the status and rights of people with a complementary protection status is addressed as a matter of priority under the Amsterdam Treaty.

The second basic requirement for an integration policy is the recognition of the *permanent and positive character of the refugees' presence* in European societies. Over the last few years, initiatives both at national and EU level have sought to promote the values of cultural plurality, raise awareness of equality issues and promote co-operation in fighting racism and prejudice. Long-term, ongoing work might be necessary however, in order to change public perceptions of refugees and highlight the potential contributions refugees can make to host societies.

And here lies the second challenge. At a time when political leaders are often compelled to demonstrate energy and determination to deal with to what they would perceive to be lenient procedures which render their countries a magnet for foreign influxes, how can we ensure that refugees do not become the scapegoats of public insecurities? How can calls for tolerance, respect for diversity and equality be strengthened in the face of rising asylum arrivals, negative public perceptions and national governments' reluctance to appear generous in dealing with forced migration flows?

The third basic requirement for an effective integration policy is the recognition of the role refugees themselves have in the integration process. The day to day work of ECRE member agencies has often highlighted the importance of enabling refugees to use their own resources and skills to help each other and represent their interests and those of their family and community to decision makers.

At a time when EU institutions are considering future funding structures, a third challenge is how to ensure that ongoing financial support continues

being available for activities which empower refugees as social actors in countries of asylum and enable them to become self-sufficient and independent. Given the impending EU enlargement, this is a question which could not only refer to the EU but relate to potential measures for the development of integration initiatives in Central and Eastern Europe.

Curative approaches to social ills can be politically unpopular. People often suspect that those who contract the disease of exclusion have done so through their own fault. This is in most cases unfair but it does influence how refugees are publicly perceived. Preventive policies are not an easy alternative. The pay off may be a long time in the future. They can be expensive. They also require new ways of working in terms of co-ordination of various actors and development of joint strategies. In addressing issues of refugee protection, the Tampere Summit *does* have the option of being both ambitious and brave. Ambitious in setting high standards of protection which guarantee a humane response to refugee needs and brave in embracing cultural diversity and creating the conditions for a new all-inclusive Union.

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Hannu Kyröläinen

Deputy Director-General for
Political Affairs of the
Finnish Ministry
for Foreign Affairs

Let me at the outset thank the organizers of this event for inviting me to make a presentation on the work of the High Level Working Group on Asylum and Migration. The issues to be dealt with here in Tampere deserve public debate. The results of the work of the European Council should be tangible for those who live in the area of the European Union.

The General Affairs Council set up the Working Group in December 1998 and approved its mandate in January this year. The mandate includes the drawing up of action plans for six countries. The plans were to cover some dozen items from analysis of the political and human rights situation in a country to indicating the possibilities for cooperation with inter-governmental, governmental and non-governmental organisations in the country in question.

There are some important premises for the HLWG. Though not written in the mandate, they are reflected in the report of the Working Group.

The first, and to my mind the most important premise, is that the institution of asylum be respected. This should be and is self-evident, not least because the commitment of the European Union to the Geneva Convention is written in the Amsterdam Treaty.

Secondly, it has been recognized by the Group that asylum and migration are different from the legal point of view, but they are interrelated in the country of origin as well as in the country of destination. Deficiencies in living conditions, be they lack of security or lack of respect for human rights or unemployment, make people leave their homes. But asylum seekers and migrants have something in common in their country of destination as well. The status in the Union area of third country citizens is of importance for both a refugee and an immigrant. Here I wish to refer, in particular, to the need to intensify the fight against racism, xenophobia and discrimination.

In a strict sense it was not in the Group's mandate to recommend measures to be taken in the EU area, but some of the measures proposed reflect an idea that the development of the countries of origin can also be promoted through the voluntary return of well educated immigrants and that it is in our interest to provide education and training .

Thirdly, it was understood in the HLWG that migration has both positive and negative sides.

The High Level Working Group's practical task was to establish a common, integrated, cross-pillar approach targeted at the situation in the most important countries of origin of asylum-seekers and migrants.

The integrated, cross-pillar approach applied by the HLWG contrasts with a pure control approach. What are the novelties of the approach?

First, through this cross-pillar approach the Union and its Member States are

trying to address the root causes of migration and flight, and not only their consequences. The root causes vary from direct physical threat to personal security and abuse of human rights to extreme poverty that denies any positive perspective on life.

Second, by this approach the Union and its Member States are making an effort to help people to stay in their homelands through improving their living conditions. Of course, this can not become an overriding objective of the Union. It does not mean, for example, re-directing the Union's development policies. But it does mean recognizing and acting upon the link between development and migration.

Third, it is an aim of the Union to use its instruments in a coherent way. Coherence is something very much emphasized by the Amsterdam Treaty, and coherent cross-pillar action fits very well in asylum and migration issues. Coherent use of cross-pillar instruments does not imply that the Member States give up such measures as readmission or repatriation, the fight against illegal immigration or trafficking in human beings. They continue to have their place in the approach.

The work of the HLWG is also a test of the Union in the application of the Amsterdam Treaty, which specifically calls for greater consistency and coherence.

The fourth element that I would like to mention here is cooperation. The Union wishes to implement the Action Plans as much as possible in cooperation and dialogue with the countries concerned. The Action Plans are not something to be imposed on countries. Of course, when looking at the list of the countries

selected, one has to admit that cooperation may have its limits, because all countries do not have a functioning central government or a government which can extend its control over the national territory.

In the work of the HLWG there has been a fruitful dialogue between the Union and the UNHCR. And the UNHCR has not been the only partner in dialogue. The IOM, the ICRC, Amnesty International, the ECRE and others have been informed of the work. They have been given an opportunity to express themselves on the issues dealt with in the Group. The Working Group has greatly benefited from this dialogue, and I believe that also the Action Plans have benefited from it.

It may be needless to say, but the intention of the Union has not been and is not to try to commit these organizations to the results and recommendations. I believe that it is in the Union's interest to respect their independent role and their right also to criticize our work when they so wish.

I am well aware that in this field, too, accepting basic principles is not enough, but the devil lies in details. That is why I hope that the cooperation and dialogue between the Union and the UNHCR and other institutions will continue when the implementation of the measures in the Action Plans are elaborated.

Let me now briefly describe the main results of the efforts of the HLWG. The preparation of action plans is not yet a result. The real test comes with implementation.

The General Affairs Council confirmed the selection of Afghanistan, Albania, Morocco, Somalia and Sri Lanka as countries for which the Action Plans

were to be prepared. The selection of what the mandate called "most important countries of origin" was not done on a statistical basis only. The Member States were invited to present their views on the countries and, as always, the result was some kind of compromise.

The selected countries present different types of political situation: in some of them the central government is either not in full control or does not exist at all, while some others are stable. For some countries immigration is the central feature, for others the search for protection.

The Working Group decided to follow a uniform pattern in dealing with the country situations. As mandated, the Group describes the political, economic and human rights situation in each country, reviews the relevant statistics and proposes an analysis of the causes of migration and flight. As a basis for its recommendations the Group has also gone through existing Community and bilateral actions and measures, as well as measures of the UNHCR, IOM, ICRC and other inter-governmental organisations.

At the end of each Plan come the recommended measures in three categories: (a) foreign policy, (b) development and economic cooperation and (c) migration. The HLWG has put forward also its view on the preferred target date for initiating implementation and well as on which institution the responsibility for implementation lies. There are altogether 114 measures in the Action Plans. Although the structure of the reports is uniform, in the recommendations the specificity of the situation in each of the countries has been taken into account. The Plans are not an application of a Procrustean bed.

The report of the HLWG, together with the Action Plans, was approved by the General Affairs Council on 11 October. The Council instructed the Group, in close association with the Commission, to go further to implement the plans and, as a next step after that, to consider proposals on drawing up new action plans.

In the Working Group there also was a widely shared opinion that there is a need to specify and elaborate the implementation of the measures as well as to clarify their financing. These go hand in hand. In principle the implementation must be allocated to the Commission, the Council or the Member States or any combination of these. Respectively, the Community budget and the national budgets of the Member States are possible sources of finance.

It is thus obvious that the implementation of the measures will take various paths. Consequently, it is important that the implementation be monitored and evaluated by one organ in order to obtain a comprehensive picture of the results and usefulness of the Action Plans and the whole approach. Indeed, the Council requested the HLWG to carry out an evaluation of the implementation.

As I said, the test of the Union's integrated, cross-pillar approach to asylum and migration is not the drawing up of action plans but implementing them properly. Results can not be expected to appear quickly. The approach has to be maintained over a sufficiently long period of time.

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Alex Parisel

Director
MSF Belgian Section

Mr Chairman, dear Colleagues,

It is an honour for Médecins sans Frontières (MSF) to be given the floor today and I wish to thank the European Council on Refugees and (ECRE) for giving us this opportunity. I would like to express some views on root causes of forced migration and reflect briefly upon the final report of the High Level Working Group on Asylum and Migration (HLWG) containing action plans for five selected countries of origin and transit of asylum seekers and migrants.

MSF is an international, independent, neutral and impartial organisation, mainly dedicated to medical emergencies and rehabilitation issues. We are a field organisation, operational in more than 70 countries worldwide, including countries including countries within our own European Union such as France, Belgium, Italy or Spain.

When MSF first started working 28 years ago, we were mainly involved with refugee crisis situations, bringing humanitarian aid to refugee camps, as we did this year during the Kosovo crisis. These kinds of interventions continue to be a key component of our work in the field today. We are working on a daily basis with refugees and the internally displaced fleeing their homes because of war, violent armed conflicts, oppression or massive human rights violations. Our

work also brings us into contact with other realities: people facing famine and the harsh living conditions that often go hand in hand with deadly diseases, and entire populations deprived of access to basic health care or education.

MSF understands humanitarian aid as a balance between assistance and protection. It is on the basis of our experience in trying to maintain this balance that we wish, on this occasion, to address three specific issues:

- the need for a fully comprehensive approach towards asylum and migration;
- the final report of the HLWG;
- our hopes for the future.

1. **The need for a fully comprehensive approach towards asylum and migration**

Working “here” and “there”, teaches us that certain *push factors* tend to act as the major trigger for migration and the search for asylum in Europe. This is nothing new. As early as 1992 the International Organisation for Migration (IOM) stated that the *push factors* in the countries of origin have more weight than the *pull factors* in the receiving countries⁵². A combination of violent conflict, poverty, increasingly extreme inequalities between countries, the degradation of the environment and world population growth are all factors that encourage migration. Between 1989 and 1998 there were 61 major armed conflicts, more than one billion people are presently living in extreme poverty and the income gap between the richest 20% of the world’s population and the poorest 20% has more

⁵² IOM, Migration and Development: **Report on the Tenth IOM Seminar on Migration**, 5-7, September 1992, Geneva.

than doubled. There are no indications whatsoever that migration pressures will diminish in the coming years. On the contrary, present economic structures will even reinforce the existing shocking disparities between north and south and push people to leave their countries.

It is not a secret that the gap between those who “have” and those who “have not” is growing every day. What I mean is that while we take for granted access to health care or education, this is not the case for the people of Somalia, Afghanistan, Iraq or Guinea, Sierra Leone or Congo. For example, AIDS, which is causing 2.5 million deaths a year, is an epidemic mainly affecting poor people in the south: 95% of all HIV-infected people live in developing countries. In the west, thanks to the availability of advanced medical treatment, AIDS is becoming a disease with which an HIV-positive person will have to learn to live. In Africa the HIV-positive man or woman will continue to die as a result.

It is encouraging to see that Member States wish to develop an area of freedom, security and justice within the European Union. At the same time it is striking to note that it is precisely the lack of freedom, security and justice beyond the EU’s borders that push people deprived of their basic rights to migrate towards unfamiliar places. In fact, most of them would prefer - if they could - to remain at home and enjoy freedom, security and justice there.

We feel that an area of freedom, security and justice within the EU can only be realised if serious attention is paid to encouraging and assisting the development of these conditions in the asylum seekers’ and migrants’ countries of origin of. Tackling the root causes of

migration will have a positive impact on the destiny of large numbers of people and on migration flows themselves. This means concentrating on concrete issues such as fighting against the production and use of small arms and land-mines, encouraging the development of international criminal law as well as the International Criminal Court (ICC). It also means a stronger commitment to conflict prevention and field diplomacy. This more global and realistic approach means moving far beyond the present “Fortress Europe” defensive approach of controlled borders against asylum seekers and migrants.

Adopting a comprehensive approach towards asylum and migration has to be done in a very concrete way in order to reinforce the protection of local populations within their own borders. It will also have a much more positive influence and benefit in the long term than the elaboration of a concept focusing exclusively on containment. Consideration of such a comprehensive approach brings us straight to foreign policy, development co-operation, humanitarian aid and economics. Developing an effective asylum and migration policy based on human dignity and humanitarian principles is a complex task. It calls for other present realities to be examined and their causes tackled. It is clear that this goes far beyond the opposing images of open or closed borders, multi-cultural idealism or xenophobic clichés.

2. The High Level Working Group on Asylum and Migration

Along with many other organisations and individuals, we welcome the establishment of the HLWG, and recognise that it has a real potential for

developing a comprehensive, cross-pillar approach towards migration and asylum.

The concern we wish to address is whether this potential will really develop into a “root causes” approach or whether it will fade away into nothing more than a window-dressing exercise in placatory European politics. On the basis of the draft action plans and other available documents, we fear the latter is more likely. I would like to give some explanations about our doubts and will illustrate them by focusing on the action plan for Somalia, a country in which we have been present for nearly ten years.

First of all, the HLWG’s method of selecting countries raises questions in itself. Why did the HLWG not consider elaborating an action plan for a poor country such as Guinea where 55% of the population has no access to health-care services and 62% are illiterate, and which hosts 400.000 refugees from Sierra Leone and Liberia? It seems that the selection of the countries is based on rather Euro-centric motives, which is regrettable. But as was said before, this is just a beginning...

As regards the situation in Somalia, we have to say that the action plan gives a good analysis, although the information sources are not indicated and we regret that the HLWG seems not to have made a field visit. Furthermore, some elements of the situation that we consider to be of crucial importance are not addressed.

One oversight is that neither the impact of the spill-over of the Eritrea-Ethiopia war into Somalia nor the alarming signs of a forthcoming famine seem not to have been taken into consideration. In July 1999 the Somalia Aid Co-ordinating Body (SACB), composed of donors, UN agencies and various NGOs, issued a

drought and food emergency alert for central and south Somalia where it estimates that one million people are at risk. The Somalia action plan does not sufficiently stress the importance of these indications of a potential humanitarian drama.

Another issue is the fast-changing situation in Somalia. This Somalia action plan does not sufficiently emphasise the fragility of the existing social dynamics. MSF experienced this fragility lately in Kismayo, where we have been working in the city hospital for several years and succeeded in gaining the confidence of the local authorities. In June this year, after two years of stability, the city changed hands within the space of two hours. Medical staff and the local population group belonging to the former clan in charge have been under heavy pressure ever since. After putting years of effort into confidence building, the events of June illustrate how quickly everything can fall apart. It inevitably raises questions about the capacity of the HLWG for making adequate country analyses and effective consequent recommendations.

There is a lot to be said about the recommendations formulated in the Somalia action plan. We have to point out that the action plan is not a real mini-Marshall Plan as was hoped for. In fact, the recommendations contained in its conclusions are comprised of a list of ongoing possibilities varying from vague political measures that are difficult to implement to concrete border-control measures that are certainly much easier to enforce. There are no indications whatsoever as to which approach will be given priority. Is there not a risk that European Member States will pick up on the containment recommendations first and leave aside those dealing with the

real root causes of migration, which are much more difficult to implement?

A second element concerns the proposal to make agreements or even, as it is stated, “arrangements” with the “de facto leaders” in different regions of Somalia without, however, recognising these regions. These arrangements would aim to facilitate the return of unsuccessful asylum seekers or illegal immigrants. MSF wonders whether this proposal has taken into account the concerns expressed in the UN Secretary-General’s latest report on the situation in Somalia. In his report of 16 August 1999, Kofi Annan warns that: *“Somali faction leaders or warlords have not been ready to give up their personal interests for the sake of national reconciliation. The perpetuation of the status quo had been more profitable for them. External actors have involved themselves in initiatives that run counter to the peace process undertaken by the Intergovernmental Authority on Development (IGAD). The proliferation of initiatives has encouraged the Somali faction leaders to continue to play an external actor against the order in order to ensure that the status quo is maintained in the country.”*⁵³

In this respect, we must express our concern at the risk of the peace process being undermined if the EU does indeed conclude such “arrangements” with de facto leaders. Is the “return approach” more valid, even if it reinforces the power of local forces, than building a “one voice” approach aimed at encouraging the capacity of the state in a more general sense?

The practicality of some recommendations may also be questioned. “Measures to address the

reception and protection capacities of countries in the African region” focus on the concept of re-admission and regional containment. But there is no analysis of that regional environment. What about Kenya’s policy towards Somali refugees? We should not forget that the Kenyan authorities closed their borders with Somalia last summer to avoid a new influx of refugees. What kind of agreement has Kenya signed at the international level? Do we have guarantees that the rights of refugees as formulated in international instruments will be respected? Will we react as we did in Albania, where the huge influx of refugees brought the risk that the existing State and economy would be completely destabilised? It seems to us that there is a need for caution in regard to any implementation of the measures envisaging the reception of returnees and we must keep in mind the real problems in the region.

3. Hopes for the future

We are comfortable with some of the measures proposed in HLWG action plans and would wish to fully support them. I am referring to the arms embargo on Somalia, the continuation of efforts in regard to mine awareness and surveys, and the reinforcement of efforts aimed at peace-building measures and the reduction of conflict. We are also in favour of the measures aimed at bringing to trial the perpetrators of serious violations of international humanitarian law and of crimes against humanity, and we support for the work carried out by the UN High Commissioner for Human Rights.

But why should the EU limit its efforts to measures linking five specific countries? Apart from the country-by-country approach adopted by the HLWG, MSF

⁵³ Report of the Secretary-General on the situation in Somalia, S/1999/882, August 16, 1999.

believes that EU Member States should make more effort to address the global issues that are related to the root causes of migration. Here, we think of concerns such as combating the production and use of small arms and landmines, the development of International criminal law and access to drugs worldwide. There are presently several international initiatives that deserve stronger support from all EU Member States. These are concrete initiatives that already exist and were usually launched or backed up by members of the EU. I will limit myself to four of them.

- The anti-personnel mine campaign has gained strength, but decisive steps remain to be taken. The presence of mines in countries of origin is not a good incentive to stay or return;
- The International Criminal Court has been established and could become a major tool for putting an end to impunity, and a major focus in terms of the “freedom, security and justice” issues that would allow people to remain at home;
- Regulating the export of weapons could drastically diminish levels of violence throughout the world and this should be seen in the light of the “small arm campaign” supported by the UN and EU countries such as Belgium;
- Access to health and education could be encouraged by increasing to 0.7% the share of Member States’ GDP allocated for countries outside “our borders”.

If we want to be serious about root causes and not just “pretend” to be interested, there are real concrete initiatives that could be taken. However, addressing the root causes does not absolve states of their

responsibility to make efforts towards developing a protection-oriented asylum policy within the EU. This should be a broadly inclusive and gender-sensitive interpretation of the 1951 Refugee Convention, an alternative protection status for people in need of international protection. It should make provision for a decent reception system based on humanitarian values and human dignity.

Thank you.

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Maria Teresa Gil-Bazo

Executive Officer of Amnesty
International-EU Association

HLWG Action Plans: Assessment of the Human Rights Dimension

Good afternoon. Amnesty International has been asked to present to you an assessment of the human rights dimension of the Action Plans prepared by the HLWG, which are today discussed by the extraordinary European Summit in Tampere.

When the HLWG was created in December 1998, it was given the mandate to elaborate Action Plans to address the root causes of migration from 6 particular countries of origin of special concern for the EU, adopting for that purpose a comprehensive, inter-pillar approach. In the minutes that will follow, we shall try to raise some the most relevant issues relating to the human rights dimension in

the Action Plans, with the goal to introduce some elements for discussion. We shall first explain why a comprehensive approach to asylum issues is needed and why it is essential that it includes a strategy to enhance human rights protection. We shall then assess whether the Action Plans do or do not provide for such a strategy and why so, and we shall elaborate on ways to improve the deficiencies.

It is common knowledge that one of the main causes for migration worldwide is the violation of human rights, which leads to flight and to the request for asylum in safe countries. It is necessary to state that, as the HLWG itself recognised in its final report, asylum is a separate subject to migration, based on international obligations (4). In this regard, refugee issues must be given separate consideration when establishing a plan to address the root causes of migration, in order to ensure that adequate protection for those who flee human rights abuses is guaranteed. A comprehensive approach to the subject will therefore have to address and provide for solutions to human rights violations in countries of origin.

The Action Plans have undertaken an analysis of the human rights situation in countries of origin. Such analysis may be defined as generally accurate, notwithstanding the shortcomings that a detailed critique would show, and which cannot be developed at this moment, as it would exceed the scope of our presentation today. In fact, the Action Plan on Afghanistan states that the human right situation in the country is “extremely poor” (40) with serious human rights violations being committed by both parties in the conflict, which include extrajudicial killings, and a widespread use of the death penalty

throughout the country (41). The Action Plan on Iraq states that despite the fact that Iraq is a party to international human rights treaties, the “human rights situation is alarming” and that basic human rights standards are not applied (13). It continues to say that the regime has “effectively eliminated the civil rights to life, liberty and physical integrity”, *inter alia*. The Action Plan on Sri Lanka goes further, as it states that the human rights situation is a cause for concern, and that the internal conflict leading to human rights abuses and flight may “constitute a valid claim for asylum” (27). Such assessment is consistent with the human rights reports on the targeted countries elaborated by both UN bodies and international organisations, such as Amnesty International.

However, despite the above referred analysis and the expressed wish to provide for a comprehensive approach, in our view, the Plans do not provide for a strategy to address effectively such human rights abuses. In fact, the measures proposed are clearly imbalanced, with a strong weight given to measures devoted to prevent migration into EU Member States. On the contrary, measures devoted to enhance human rights respect are unrealistic, and therefore their implementation, as they stand today, is not feasible, since they do not include a detailed, concrete proposal to address human rights abuses and prevent further human rights violations.

Two major shortcomings can be pointed out:

1. The lack of effective dialogue with the countries tackled.
2. The vagueness of the measures proposed, in terms of content, timing and financial implications.

The HLWG states in its final report that essential instruments of a coherent approach are dialogue and cooperation between the EU and the countries of origin (11). However, such dialogue and cooperation does not seem to be in place with the majority of the countries addressed. In fact, no EU Member States recognises the Taliban Government, which controls 90% of Afghan territory (84). In addition, all EC financed activities in Kabul were suspended on 18 July 1998 (6) and UN personnel, which was evacuated in 1998 has not yet returned (124). In the case of Somalia, diplomatic relations by Member States broke off when the central government fell in 1991 and have still not been re-established (46). In the absence of such necessary dialogue, it is difficult to see how the EU can influence an improvement in the internal situation of those countries. Even more, in the case of countries that hold good relations with the EU, an effective action to address human rights violations must not necessarily be taken for granted. For instance, the Action Plan on Sri Lanka states that the six EU Member States that have missions in Sri Lanka “enjoy an excellent working relationship” (17). However, it also states that “the Sri Lankan Government has made it clear that it is not prepared to accept third party mediation as part of any attempt to resolve the conflict” (25).

It is therefore clear that a first step towards an effective implementation of a comprehensive approach to address the root causes of migration, and particularly human rights abuses, must be the establishment of an effective dialogue aimed at cooperating with the country concerned in the development of an strategy to improve human rights respect.

But let us move further in our analysis: even in the presence of a constructive dialogue with countries of origin, would the measures proposed by the Action Plans be suitable to produce the desired outcome?.

The measures proposed to address human rights violations remain vague: they do not include a detailed list of specific activities to be undertaken; often they do not have real deadlines; and finally, the exact financial implications of their implementation remain unclear.

In relation to the content, most of the measures are not concrete enough to allow for their proper implementation. The 2 measures that the Action Plan on Iraq proposes for Iraq as a whole in the field of foreign policy are “continue to discuss the situation in Iraq and the possibility of EU initiative”, and “encourage contacts with the Iraqi elites in the academic and cultural spheres and cooperation between universities”. The Action Plan on Afghanistan includes measures such as stressing “the importance of compliance with the human rights treaties to which Afghanistan is a signatory State” or to urge “the parties in Afghanistan to strictly observe their amnesty declarations”. These can hardly be considered “actions” on the part of the EU. More geared at improving the human rights situation are the measures contained in the Action Plan on Somalia, which proposes actions such as “continue to assist and facilitate conflict resolution and the peace process” (95 a); “continue to look for ways to find a political solution in areas with unresolved conflicts” (95. b); to “monitor and prevent human rights violations”; as well as the adoption of “measures to promote tolerance and the protection of minority rights” (95 k). Some of the measures

contained in the Sri Lanka Action Plan include “continue to look for ways to find a political solution”, or “continue to raise human rights issues with the Sri Lankan Government and through the appropriate channels, with the LTTE”.

In addition to the content, the financial side of the actions remains most confusing. The proposed measures only state whether there will or won't be financial implications for their implementation, but no assessment of the amount required is made. In some cases, the action is said to have financial implications but no budget line is identified; therefore no source for the required funds has been allocated yet. One of the actions proposed by the Action Plan on Iraq is the stimulation of the democratic process. The financial implication section in such action says : “yes/no”. It is hard to see how a measure can have financial implications and at the same time, not to have them, unless of course it may depend on the concrete activities undertaken in the framework of the action, and such activities are absent in the Plan. Another example of the point that we are addressing is the proposed measure in the Sri Lanka Action Plan to finance appropriately the Human Rights Commission established in the country in 1997. Although the aim of the action is to provide for a proper funding of the Human Rights Commission, it is stated that there are no financial implications.

These examples show that an effective strategy to address human rights violations is not yet in place. The measures proposed seem to be more guidelines than concrete “plans of action”. As guidelines, they provide for a positive starting point. However, it is necessary that a “plan of action” is developed. Such strategy requires a detailed description of the steps to be taken and in which order; it must also

give concrete deadlines, since stating that actions are “ongoing” is not sufficient, and it must determine clearly which bodies are responsible for developing the strategy: to allocate responsibility within the EU institutions and/or Member States is not sufficient.

A last point to make is the relation between human rights measures and immigration measures. Amnesty International is concerned that the implementation of the measures aimed at controlling migration in absence of an improvement in the human rights situation of the countries of origin, not only ignores the specific protection needs of refugees and asylum seekers, but may also constitute a breach of International Law in certain circumstances. Therefore, a continuing assessment of the implementation of the Action Plans needs to be undertaken in order to ensure that the rights of refugees and asylum seekers are adequately protected.

Thank you very much for your attention.

ECRE EU Tampere Summit
Parallel Meeting
15 October 1999

Fatima Galani

Peace Activist

Why being a woman is enough reason for asylum status.

Women's situation in Afghanistan

It has been years since the world talked about the appalling situation of the female Afghan population, which

incidentally makes up more than 60% of the country. All that has been done is giving strong verbal opposition. However, very little pressure has been put on the parties concerned that could have changed the situation.

The tireless campaign of Afghan and non-Afghan women's organisations succeeded in making the issue a world publicised plight, but I cannot see any action being taken by the UN or the Western powers. Above all, no forceful condemnation whether by word or action has come from the Muslim world.

An Afghan woman without husband, father or brother is no better than a person who has been buried alive. She doesn't have to be politically active to have problems with the authorities. Her mere movement such as grocery shopping, being ill and seeking medical attention or getting out of the house on any kind of errand could result in her imprisonment or severe punishment. This is clearly a violation of basic human rights.

Women, whether they are doctors, trained nurses, teachers or housewives would be treated in the same way. Most of them will not have any kind of financial support.

They have only one option and that is to get out of Afghanistan in the hope of a better life in Pakistan, Iran or other neighbouring countries.

One woman was stoned to death for trying to leave the country with a man that was not her relative. Others live in fear of their lives for what could be construed as misbehaviour at the slightest pretext. Because they cannot work, those without male relatives or husbands are

either starving to death or begging on the street, even if they hold Ph.D.'s.

Women's situation in Pakistan

Life is no better in Pakistan, Iran or other neighbouring countries. This is because most humanitarian organisations that generously looked after Afghan refugees during the war against the Soviet Union, cannot recognise or cope with new arrivals. The Afghan woman has to find shelter, a job or perhaps schooling for her children if she is a mother. You tell me, for a woman with no male support are any of these essential steps easy? Of course not. Those people living in Pakistan for years and years have problems in keeping their jobs or finding new employment. So, what opportunities does a new arrival have, especially if she happens to be a woman?

There is not enough time here to talk about the most unfortunate girls and women who have ended up in houses of ill repute. There are many tragic stories of these women who, in the hope of finding a way of obtaining asylum in Western countries, were deceived by or lost what little money they had to people called "Asylum Brokers" who charge exorbitant fees for their services.

So you can see, their lives whether in Afghanistan or in neighbouring countries such as Iran and Pakistan are not very different. A single woman or a woman responsible for her family needs special consideration in order to have a chance of proving themselves worthy of a decent, normal life that is taken for granted by many of us.

It is important to know that many Pakistanis and some other people from neighbouring countries would pay a lot of money and assume Afghan identity so that they may have a better chance in

settling in the West. It is because they have the means to pay off the "Asylum Brokers" that more of them could find their way into the West where they would settle. This shameful deception uses up the asylum quotas for Afghans. It makes it extremely difficult for genuine Afghans to obtain asylum in western countries.

People are coming anyway, paying as much as 100% interest on the loan they take to pay the "Asylum Brokers" who charge not less than US\$12,000 to get people to the West. It is an astronomical sum for any Afghan man, let alone woman. In order to raise this money, or indeed repay it, Afghans might be forced to engage in illegal and often dangerous activities like drug smuggling and prostitution.

This is indeed crippling for anyone with little money. This is why it is vital to make it legal and safe for those for whom taking asylum is really only a matter of having a decent life or living a slow humiliating death. If only being a woman is enough reason for being granted asylum many lives could be saved.

ECRE EU Tampere Summit
Parallel Meeting
15 October 1999
Protection Not Control
Press Release

- **300 representatives of civil society met today to say protection not control.**
- **International trafficking racket is a Frankenstein created by governments.**
- **Governments have the power to make harmonisation work in a positive way.**

Over 300 representatives of refugee assisting NGOs from throughout Europe, refugees themselves, politicians, civil servants, the international press and other members of civic society, came together to express their concern at the erosion of the human rights framework within which refugee protection has been traditionally developed. Practical alternatives were put forward for the development of a fair and human asylum policy for Europe, which took into account the root causes of asylum.

Mrs Tarja Halonen, the Finnish Foreign Affairs Minister, was present to receive the Conference Statement. She thanked ECRE for their important input in promoting a humane and fair asylum policy. 'NGOs are the nearest eyes and ears of human beings,' she said.

Peer Baneke, Chief Executive of ECRE said: 'It's about protection not control. European governments have the power to make harmonisation work in a positive way.'

Nick Hardwick, Chair of ECRE, pointed out that 'The international trafficking racket is a Frankenstein monster created by governments. The more controls they set up, the more energy they pump into the monster.'

Refugees were present to participate in the debate and reminded the conference that asylum policy was not just about statistics and control but affected real people.

Introduction

This chapter includes the Presidency Conclusions⁵⁴ of the Special Meeting of the European Council on the Establishment of an Area of Freedom, Security and Justice, 15/16 October 1999, Tampere, Finland, as well as the Observations⁵⁵ by the European Council on Refugees and Exiles on the Presidency Conclusions of the Tampere European Council. These two documents should be read in conjunction, as the ECRE Observations follow the order in which the Presidency Conclusions were written, rather than attempt a thematic approach. Moreover, some cross-referencing between paragraphs has been necessary in order to deduce their meaning. Finally, also included in this third chapter, are the Observations⁵⁶ by the United Nations High Commission for Refugees on the Presidency Conclusions of the Tampere European Council.

⁵⁴ “*The Presidency Conclusions, Tampere European Council, 15 and 16 October 1999*”, is included on pages 65-77 of this Dossier.

⁵⁵ “*Observations by the European Council on Refugees and Exiles on the Presidency Conclusions of the Tampere European Council, 15 and 16 October 1999*” (October 1999), is included on pages 78-81 of this Dossier.

⁵⁶ “*The Tampere Summit Conclusions : UNHCR’s Observations*”, is included on pages 82-84 of this Dossier.

**Presidency Conclusions,
Tampere European Council****15 and 16 October 1999**

The European Council held a special meeting on 15 and 16 October 1999 in Tampere on the creation of an area of freedom, security and justice in the European Union. At the start of proceedings an exchange of views was conducted with the President of the European Parliament, Mrs Nicole Fontaine, on the main topics of discussion.

The European Council is determined to develop the Union as an area of freedom, security and justice by making full use of the possibilities offered by the Treaty of Amsterdam. The European Council sends a strong political message to reaffirm the importance of this objective and has agreed on a number of policy orientations and priorities which will speedily make this area a reality.

The European Council will place and maintain this objective at the very top of the political agenda. It will keep under constant review progress made towards implementing the necessary measures and meeting the deadlines set by the Treaty of Amsterdam, the Vienna Action Plan and the present conclusions. The Commission is invited to make a proposal for an appropriate scoreboard to that end. The European Council underlines the importance of ensuring the necessary transparency and of keeping the European Parliament regularly informed. It will hold a full debate

assessing progress at its December meeting in 2001.

In close connection with the area of freedom, security and justice, the European Council has agreed on the composition, method of work and practical arrangements (attached in the annex) for the body entrusted with drawing up a draft Charter of fundamental rights of the European Union. It invites all parties involved to ensure that work on the Charter can begin rapidly.

The European Council expresses its gratitude for the work of the outgoing Secretary-General of the Council, Mr. Jürgen Trumpf, and in particular for his contribution to the development of the Union following the entry into force of the Treaty of Amsterdam.

Given that one of the focal points of the Union's work in the years ahead will be to strengthen the common foreign and security policy, including developing a European security and defence policy, the European Council expects the new Secretary-General of the Council and High Representative for the CFSP, Mr. Javier Solana, to make a key contribution to this objective. Mr. Solana will be able to rely on the full backing of the European Council in exercising his powers according to Article 18(3) of the Treaty so he can do full justice to his tasks. His responsibilities will include co-operating with the Presidency to ensure that deliberations and action in foreign and security policy matters are efficiently conducted with the aim of fostering continuity and consistency of policy on the basis of the common interests of the Union.

**TOWARDS A UNION OF
FREEDOM, SECURITY AND
JUSTICE:****THE TAMPERE MILESTONES**

1. From its very beginning European integration has been firmly rooted in a shared commitment to freedom based on human rights, democratic institutions and the rule of law. These common values have proved necessary for securing peace and developing prosperity in the European Union. They will also serve as a cornerstone for the enlarging Union.
2. The European Union has already put in place for its citizens the major ingredients of a shared area of prosperity and peace: a single market, economic and monetary union, and the capacity to take on global political and economic challenges. The challenge of the Amsterdam Treaty is now to ensure that freedom, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice accessible to all. It is a project which responds to the frequently expressed concerns of citizens and has a direct bearing on their daily lives.
3. This freedom should not, however, be regarded as the exclusive preserve of the Union's own citizens. Its very existence acts as a draw to many others world-wide who cannot enjoy the freedom Union citizens take for granted. It would be in contradiction with Europe's traditions to deny such freedom to those whose circumstances lead them justifiably to seek access to our territory. This in turn requires the Union to develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders to stop illegal immigration and to combat those who organise it and commit related international crimes. These common policies must be based on principles which are both clear to our own citizens and also offer guarantees to those who seek protection in or access to the European Union.
4. The aim is an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity. A common approach must also be developed to ensure the integration into our societies of those third country nationals who are lawfully resident in the Union.
5. The enjoyment of freedom requires a genuine area of justice, where people can approach courts and authorities in any Member State as easily as in their own. Criminals must find no ways of exploiting differences in the judicial systems of Member States. Judgements and decisions should be respected and enforced throughout the Union, while safeguarding the basic legal certainty of people and economic operators. Better compatibility and more convergence between the legal systems of Member States must be achieved.
6. People have the right to expect the Union to address the threat to their freedom and legal rights posed by serious crime. To counter these threats a common effort is needed to

prevent and fight crime and criminal organisations throughout the Union. The joint mobilisation of police and judicial resources is needed to guarantee that there is no hiding place for criminals or the proceeds of crime within the Union.

7. The area of freedom, security and justice should be based on the principles of transparency and democratic control. We must develop an open dialogue with civil society on the aims and principles of this area in order to strengthen citizens' acceptance and support. In order to maintain confidence in authorities, common standards on the integrity of authorities should be developed.
8. The European Council considers it essential that in these areas the Union should also develop a capacity to act and be regarded as a significant partner on the international scene. This requires close co-operation with partner countries and international organisations, in particular the Council of Europe, OSCE, OECD and the United Nations.
9. The European Council invites the Council and the Commission, in close co-operation with the European Parliament, to promote the full and immediate implementation of the Treaty of Amsterdam on the basis of the Vienna Action Plan and of the following political guidelines and concrete objectives agreed here in Tampere.

A. A COMMON EU ASYLUM AND MIGRATION POLICY

10. The separate but closely related issues of asylum and migration call

for the development of a common EU policy to include the following elements.

I. Partnership with countries of origin

11. The European Union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human rights, in particular rights of minorities, women and children. To that end, the Union as well as Member States are invited to contribute, within their respective competence under the Treaties, to a greater coherence of internal and external policies of the Union. Partnership with third countries concerned will also be a key element for the success of such a policy, with a view to promoting co-development.
12. In this context, the European Council welcomes the report of the High Level Working Group on Asylum and Migration set up by the Council, and agrees on the continuation of its mandate and on the drawing up of further Action Plans. It considers as a useful contribution the first action plans drawn up by that Working Group, and approved by the Council, and invites the Council and the Commission to report back on their implementation to the European Council in December 2000.

II. A Common European Asylum System

13. The European Council reaffirms the importance the Union and Member States attach to absolute respect of the right to seek asylum. It has agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement.
14. This System should include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection. To that end, the Council is urged to adopt, on the basis of Commission proposals, the necessary decisions according to the timetable set in the Treaty of Amsterdam and the Vienna Action Plan. The European Council stresses the importance of consulting UNHCR and other international organisations.
15. In the longer term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union. The Commission is asked to prepare

within one year a communication on this matter.

16. The European Council urges the Council to step up its efforts to reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between Member States. The European Council believes that consideration should be given to making some form of financial reserve available in situations of mass influx of refugees for temporary protection. The Commission is invited to explore the possibilities for this.
17. The European Council urges the Council to finalise promptly its work on the system for the identification of asylum seekers (Eurodac).

III. Fair treatment of third country nationals

18. The European Union must ensure fair treatment of third country nationals who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia.
19. Building on the Commission Communication on an Action Plan against Racism, the European Council calls for the fight against racism and xenophobia to be stepped up. The Member States will draw on best practices and experiences. Co-operation with the European Monitoring Centre on Racism and Xenophobia and the Council of

Europe will be further strengthened. Moreover, the Commission is invited to come forward as soon as possible with proposals implementing Article 13 of the EC Treaty on the fight against racism and xenophobia. To fight against discrimination more generally the Member States are encouraged to draw up national programmes.

20. The European Council acknowledges the need for approximation of national legislations on the conditions for admission and residence of third country nationals, based on a shared assessment of the economic and demographic developments within the Union, as well as the situation in the countries of origin. It requests to this end rapid decisions by the Council, on the basis of proposals by the Commission. These decisions should take into account not only the reception capacity of each Member State, but also their historical and cultural links with the countries of origin.
21. The legal status of third country nationals should be approximated to that of Member States' nationals. A person, who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit, should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by EU citizens; e.g. the right to reside, receive education, and work as an employee or self-employed person, as well as the principle of non-discrimination vis-à-vis the citizens of the State of residence. The European Council endorses the objective that long-term legally

resident third country nationals be offered the opportunity to obtain the nationality of the Member State in which they are resident.

IV. Management of migration flows

22. The European Council stresses the need for more efficient management of migration flows at all their stages. It calls for the development, in close co-operation with countries of origin and transit, of information campaigns on the actual possibilities for legal immigration, and for the prevention of all forms of trafficking in human beings. A common active policy on visas and false documents should be further developed, including closer co-operation between EU consulates in third countries and, where necessary, the establishment of common EU visa issuing offices.
23. The European Council is determined to tackle at its source illegal immigration, especially by combating those who engage in trafficking in human beings and economic exploitation of migrants. It urges the adoption of legislation foreseeing severe sanctions against this serious crime. The Council is invited to adopt by the end of 2000, on the basis of a proposal by the Commission, legislation to this end. Member States, together with Europol, should direct their efforts to detecting and dismantling the criminal networks involved. The rights of the victims of such activities shall be secured with special emphasis on the problems of women and children.
24. The European Council calls for closer co-operation and mutual technical assistance between the Member

States' border control services, such as exchange programmes and technology transfer, especially on maritime borders, and for the rapid inclusion of the applicant States in this co-operation. In this context, the Council welcomes the memorandum of understanding between Italy and Greece to enhance co-operation between the two countries in the Adriatic and Ionian seas in combating organised crime, smuggling and trafficking of persons.

25. As a consequence of the integration of the Schengen acquis into the Union, the candidate countries must accept in full that acquis and further measures building upon it. The European Council stresses the importance of the effective control of the Union's future external borders by specialised trained professionals.
26. The European Council calls for assistance to countries of origin and transit to be developed in order to promote voluntary return as well as to help the authorities of those countries to strengthen their ability to combat effectively trafficking in human beings and to cope with their readmission obligations towards the Union and the Member States.
27. The Amsterdam Treaty conferred powers on the Community in the field of readmission. The European Council invites the Council to conclude readmission agreements or to include standard clauses in other agreements between the European Community and relevant third countries or groups of countries. Consideration should also be given to rules on internal readmission.

B. A GENUINE EUROPEAN AREA OF JUSTICE

28. In a genuine European Area of Justice individuals and businesses should not be prevented or discouraged from exercising their rights by the incompatibility or complexity of legal and administrative systems in the Member States.

V. Better access to justice in Europe

29. In order to facilitate access to justice the European Council invites the Commission, in co-operation with other relevant fora, such as the Council of Europe, to launch an information campaign and to publish appropriate "user guides" on judicial co-operation within the Union and on the legal systems of the Member States. It also calls for the establishment of an easily accessible information system to be maintained and up-dated by a network of competent national authorities.
30. The European Council invites the Council, on the basis of proposals by the Commission, to establish minimum standards ensuring an adequate level of legal aid in cross-border cases throughout the Union as well as special common procedural rules for simplified and accelerated cross-border litigation on small consumer and commercial claims, as well as maintenance claims, and on uncontested claims. Alternative, extra-judicial procedures should also be created by Member States.
31. Common minimum standards should be set for multilingual forms or documents to be used in cross-border court cases throughout the Union.

Such documents or forms should then be accepted mutually as valid documents in all legal proceedings in the Union.

32. Having regard to the Commission's communication, minimum standards should be drawn up on the protection of the victims of crime, in particular on crime victims' access to justice and on their rights to compensation for damages, including legal costs. In addition, national programmes should be set up to finance measures, public and non-governmental, for assistance to and protection of victims.

VI. Mutual recognition of judicial decisions

33. Enhanced mutual recognition of judicial decisions and judgements and the necessary approximation of legislation would facilitate co-operation between authorities and the judicial protection of individual rights. The European Council therefore endorses the principle of mutual recognition which, in its view, should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union. The principle should apply both to judgements and to other decisions of judicial authorities.
34. In civil matters the European Council calls upon the Commission to make a proposal for further reduction of the intermediate measures which are still required to enable the recognition and enforcement of a decision or judgement in the requested State. As a first step these intermediate procedures should be abolished for titles in respect of small consumer or commercial claims and for certain

judgements in the field of family litigation (e.g. on maintenance claims and visiting rights). Such decisions would be automatically recognised throughout the Union without any intermediate proceedings or grounds for refusal of enforcement. This could be accompanied by the setting of minimum standards on specific aspects of civil procedural law.

35. With respect to criminal matters, the European Council urges Member States to speedily ratify the 1995 and 1996 EU Conventions on extradition. It considers that the formal extradition procedure should be abolished among the Member States as far as persons are concerned who are fleeing from justice after having been finally sentenced, and replaced by a simple transfer of such persons, in compliance with Article 6 TEU. Consideration should also be given to fast track extradition procedures, without prejudice to the principle of fair trial. The European Council invites the Commission to make proposals on this matter in the light of the Schengen Implementing Agreement.
36. The principle of mutual recognition should also apply to pre-trial orders, in particular to those which would enable competent authorities quickly to secure evidence and to seize assets which are easily movable; evidence lawfully gathered by one Member State's authorities should be admissible before the courts of other Member States, taking into account the standards that apply there.
37. The European Council asks the Council and the Commission to adopt, by December 2000, a

programme of measures to implement the principle of mutual recognition. In this programme, work should also be launched on a European Enforcement Order and on those aspects of procedural law on which common minimum standards are considered necessary in order to facilitate the application of the principle of mutual recognition, respecting the fundamental legal principles of Member States.

VII. Greater convergence in civil law

38. The European Council invites the Council and the Commission to prepare new procedural legislation in cross-border cases, in particular on those elements which are instrumental to smooth judicial co-operation and to enhanced access to law, e.g. provisional measures, taking of evidence, orders for money payment and time limits.
39. As regards substantive law, an overall study is requested on the need to approximate Member States' legislation in civil matters in order to eliminate obstacles to the good functioning of civil proceedings. The Council should report back by 2001.

C. A UNIONWIDE FIGHT AGAINST CRIME

40. The European Council is deeply committed to reinforcing the fight against serious organised and transnational crime. The high level of safety in the area of freedom, security and justice presupposes an efficient and comprehensive approach in the fight against all forms of crime. A balanced development of unionwide measures against crime should be achieved

while protecting the freedom and legal rights of individuals and economic operators.

VIII. Preventing crime at the level of the Union

41. The European Council calls for the integration of crime prevention aspects into actions against crime as well as for the further development of national crime prevention programmes. Common priorities should be developed and identified in crime prevention in the external and internal policy of the Union and be taken into account when preparing new legislation.
42. The exchange of best practices should be developed, the network of competent national authorities for crime prevention and co-operation between national crime prevention organisations should be strengthened and the possibility of a Community funded programme should be explored for these purposes. The first priorities for this co-operation could be juvenile, urban and drug-related crime.

IX. Stepping up co-operation against crime

43. Maximum benefit should be derived from co-operation between Member States' authorities when investigating cross-border crime in any Member State. The European Council calls for joint investigative teams as foreseen in the Treaty to be set up without delay, as a first step, to combat trafficking in drugs and human beings as well as terrorism. The rules to be set up in this respect should allow representatives of Europol to participate, as

- appropriate, in such teams in a support capacity.
44. The European Council calls for the establishment of a European Police Chiefs operational Task Force to exchange, in co-operation with Europol, experience, best practices and information on current trends in cross-border crime and contribute to the planning of operative actions.
45. Europol has a key role in supporting unionwide crime prevention, analyses and investigation. The European Council calls on the Council to provide Europol with the necessary support and resources. In the near future its role should be strengthened by means of receiving operational data from Member States and authorising it to ask Member States to initiate, conduct or coordinate investigations or to create joint investigative teams in certain areas of crime, while respecting systems of judicial control in Member States.
46. To reinforce the fight against serious organised crime, the European Council has agreed that a unit (EUROJUST) should be set up composed of national prosecutors, magistrates, or police officers of equivalent competence, detached from each Member State according to its legal system. EUROJUST should have the task of facilitating the proper coordination of national prosecuting authorities and of supporting criminal investigations in organised crime cases, notably based on Europol's analysis, as well as of co-operating closely with the European Judicial Network, in particular in order to simplify the execution of letters rogatory. The European Council requests the Council to adopt the necessary legal instrument by the end of 2001.
47. A European Police College for the training of senior law enforcement officials should be established. It should start as a network of existing national training institutes. It should also be open to the authorities of candidate countries.
48. Without prejudice to the broader areas envisaged in the Treaty of Amsterdam and in the Vienna Action Plan, the European Council considers that, with regard to national criminal law, efforts to agree on common definitions, incriminations and sanctions should be focused in the first instance on a limited number of sectors of particular relevance, such as financial crime (money laundering, corruption, Euro counterfeiting), drugs trafficking, trafficking in human beings, particularly exploitation of women, sexual exploitation of children, high tech crime and environmental crime.
49. Serious economic crime increasingly has tax and duty aspects. The European Council therefore calls upon Member States to provide full mutual legal assistance in the investigation and prosecution of serious economic crime.
50. The European Council underlines the importance of addressing the drugs problem in a comprehensive manner. It calls on the Council to adopt the 2000-2004 European Strategy against Drugs before the European Council meeting in Helsinki.

X. Special action against money laundering

51. Money laundering is at the very heart of organised crime. It should be rooted out wherever it occurs. The European Council is determined to ensure that concrete steps are taken to trace, freeze, seize and confiscate the proceeds of crime.
52. Member States are urged to implement fully the provisions of the Money Laundering Directive, the 1990 Strasbourg Convention and the Financial Action Task Force recommendations also in all their dependent territories.
53. The European Council calls for the Council and the European Parliament to adopt as soon as possible the draft revised directive on money laundering recently proposed by the Commission.
54. With due regard to data protection, the transparency of financial transactions and ownership of corporate entities should be improved and the exchange of information between the existing financial intelligence units (FIU) regarding suspicious transactions expedited. Regardless of secrecy provisions applicable to banking and other commercial activity, judicial authorities as well as FIUs must be entitled, subject to judicial control, to receive information when such information is necessary to investigate money laundering. The European Council calls on the Council to adopt the necessary provisions to this end.
55. The European Council calls for the approximation of criminal law and

procedures on money laundering (e.g. tracing, freezing and confiscating funds). The scope of criminal activities which constitute predicate offences for money laundering should be uniform and sufficiently broad in all Member States.

56. The European Council invites the Council to extend the competence of Europol to money laundering in general, regardless of the type of offence from which the laundered proceeds originate.
57. Common standards should be developed in order to prevent the use of corporations and entities registered outside the jurisdiction of the Union in the hiding of criminal proceeds and in money laundering. The Union and Member States should make arrangements with third country offshore-centres to ensure efficient and transparent co-operation in mutual legal assistance following the recommendations made in this area by the Financial Action Task Force.
58. The Commission is invited to draw up a report identifying provisions in national banking, financial and corporate legislation which obstruct international co-operation. The Council is invited to draw necessary conclusions on the basis of this report.

D. STRONGER EXTERNAL ACTION

59. The European Council underlines that all competences and instruments at the disposal of the Union, and in particular, in external relations must be used in an integrated and

consistent way to build the area of freedom, security and justice. Justice and Home Affairs concerns must be integrated in the definition and implementation of other Union policies and activities.

60. Full use must be made of the new possibilities offered by the Treaty of Amsterdam for external action and in particular of Common Strategies as well as Community agreements and agreements based on Article 38 TEU.
61. Clear priorities, policy objectives and measures for the Union's external action in Justice and Home Affairs should be defined. Specific recommendations should be drawn up by the Council in close co-operation with the Commission on policy objectives and measures for the Union's external action in Justice and Home Affairs, including questions of working structure, prior to the European Council in June 2000.
62. The European Council expresses its support for regional co-operation against organised crime involving the Member States and third countries bordering on the Union. In this context it notes with satisfaction the concrete and practical results obtained by the surrounding countries in the Baltic Sea region. The European Council attaches particular importance to regional co-operation and development in the Balkan region. The European Union welcomes and intends to participate in a European Conference on Development and Security in the Adriatic and Ionian area, to be organised by the Italian Government in Italy in the first half of the year

2000. This initiative will provide valuable support in the context of the South Eastern Europe Stability Pact.

ANNEX

COMPOSITION METHOD OF WORK AND PRACTICAL ARRANGEMENTS FOR THE BODY TO ELABORATE A DRAFT EU CHARTER OF FUNDAMENTAL RIGHTS, AS SET OUT IN THE COLOGNE CONCLUSIONS

A. COMPOSITION OF THE BODY

- (i) Members
 - (a) Heads of State or Government of Member States

Fifteen representatives of the Heads of State or Government of Member States.
 - (b) Commission

One representative of the President of the European Commission.
 - (c) European Parliament

Sixteen members of the European Parliament to be designated by itself.
 - (d) National Parliaments

Thirty members of national Parliaments (two from each national Parliament) to be designated by national Parliaments themselves.

Members of the Body may be

replaced by alternates in the event of being unable to attend meetings of the Body.

(ii) Chairperson and Vice-Chairpersons of the Body

The Chairperson of the Body shall be elected by the Body. A member of the European Parliament, a member of a national Parliament, and the representative of the President of the European Council if not elected to the Chair, shall act as Vice-Chairpersons of the Body.

The member of the European Parliament acting as Vice-Chairperson shall be elected by the members of the European Parliament serving on the Body. The member of a national Parliament acting as Vice-Chairperson shall be elected by the members of national Parliaments serving on the Body.

(iii) Observers

Two representatives of the Court of Justice of the European Communities to be designated by the Court.

Two representatives of the Council of Europe, including one from the European Court of Human Rights.

(iv) Bodies of the European Union to be invited to give their views

The Economic and Social Committee

The Committee of the Regions

The Ombudsman

(v) Exchange of views with the applicant States

An appropriate exchange of views should be held by the Body or by the Chairperson with the applicant States.

(vi) Other bodies, social groups or experts to be invited to give their views

Other bodies, social groups and experts may be invited by the Body to give their views.

(vii) Secretariat

The General Secretariat of the Council shall provide the Body with secretariat services. To ensure proper coordination, close contacts will be established with the General Secretariat of the European Parliament, with the Commission and, to the extent necessary, with the secretariats of the national Parliaments.

B. WORKING METHODS OF THE BODY

(i) Preparation

The Chairperson of the Body shall, in close concertation with the Vice-Chairpersons, propose a work plan for the Body and perform other appropriate preparatory work.

(ii) Transparency of the proceedings

In principle, hearings held by the Body and documents submitted at such hearings should be public.

(iii) Working groups

The Body may establish ad hoc working groups, which shall be open to all members of the Body.

(iv) Drafting

On the basis of the work plan agreed by the Body, a Drafting Committee composed of the Chairperson, the Vice-Chairpersons and the representative of the Commission and assisted by the General Secretariat of the Council, shall elaborate a preliminary Draft Charter, taking account of drafting proposals submitted by any member of the Body.

Each of the three Vice-Chairpersons shall regularly consult with the respective component part of the Body from which he or she emanates.

(v) Elaboration of the Draft Charter by the Body

When the Chairperson, in close concertation with the Vice-Chairpersons, deems that the text of the draft Charter elaborated by the Body can eventually be subscribed to by all the parties, it shall be forwarded to the European Council through the normal preparatory procedure.

C. PRACTICAL ARRANGEMENTS

The Body shall hold its meetings in Brussels, alternately in the Council and the European Parliament buildings.

A complete language regime shall be applicable for sessions of the Body.

**Observations by the
European Council on
Refugees and Exiles
on the Presidency Conclusions
of the Tampere European
Council
15 and 16 October 1999**

General Remarks

1. The European Council on Refugees and Exiles (ECRE), representing 68 refugee assisting NGOs active in 25 European Countries, broadly welcomes the Conclusions of the Tampere European Council. The organisation is encouraged by the positive commitment of the Council's Conclusions with regard to the right to seek asylum and by the impetus given to the development of harmonised asylum policies with **"guarantees to those who seek protection in or access to the European Union"**. These guarantees are crucial, as the best asylum policy in the world is no use unless refugees can access its protection.
2. ECRE believes that if the Conclusions are implemented in the spirit in which they have been written this would be a step towards a protection-oriented asylum policy. However, ECRE will remain vigilant as the **key is in the implementation of the commitments made in the Conclusions**. In this context ECRE considers that the European Council in December 2001, assessing progress made, will be an important occasion to measure the level of commitment and sincerity of EU Member States in translating into concrete measures the policy

guidelines laid down in the Conclusions.

3. ECRE welcomes the acknowledgement that asylum and migration are two different, but inter-linked, phenomena and should be dealt with separately.
4. The comments below take the order in which they are written in the Conclusions rather than attempt a thematic approach. Some cross-referencing between paragraphs is necessary to deduce their meaning. The comments are drawn from the agreed positions of ECRE and from discussions within the organisation about the Conclusions and more generally.

Towards a Union of Freedom, Security and Justice: The Tampere Milestones

5. Paragraph 1: ECRE is encouraged that the EU sees human rights, democratic institutions and the rule of law as a cornerstone for enlargement of the Union, which has profound implications for the protection of refugees. This perspective on enlargement means that migration policy respects the absolute right to seek asylum and does not only concentrate on strengthening border controls in Central and Eastern Europe. With respect to EU re-admission agreements with countries of transit in Central and Eastern Europe and external controls ECRE sounds a note of warning, see below point 20.
6. Paragraph 2: ECRE agrees that the challenge of the Amsterdam Treaty is to ensure freedom to *all*. The explicit reference to freedom of movement is welcome. Taken with Paragraph 3,

ECRE takes this to include also the freedom of movement of refugees within the Union.

7. Paragraph 3: ECRE agrees that freedom should not be only the preserve of EU citizens and that such freedom should not be denied to those who justifiably seek access to the EU. This means that people in need of international protection should be able to access the territory of the EU and have an opportunity to gain protection. The formulation of this paragraph, in which the requirement to develop common policies on asylum and immigration *follows from* the need to guarantee freedom, is greatly encouraging and has to mean that immigration control measures must be in full compliance with absolute respect of the right to seek asylum.
8. Paragraph 4: Following on from Paragraph 3, ECRE welcomes the aim of the Council to ensure an *open* and secure European Union, fully committed to the obligations of the Refugee Convention. This means that interdiction measures which deny the opportunity to flee persecution, such as carriers' sanctions, visa regimes and gate and pre-boarding checks, must be changed in order to guarantee access to protection. Further deterrent measures, such as detention of asylum-seekers, must also change if the stated aim is to be achieved.
9. Further under Paragraph 4 ECRE welcomes the commitment to other human rights instruments in the protection and reception of refugees. This must include not only the Universal Declaration of Human Rights and the International Bill of Rights, but also regional instruments such as the European Convention on

Human Rights and instruments for the protection of minorities and of women and children.

10. Paragraph 7: ECRE agrees that an area of freedom, security and justice should be transparent and under democratic control. We especially welcome the prospect of an open and informed dialogue with civil society. Taken with Declaration 17 to the Amsterdam Treaty, and Paragraph 8, ECRE takes this as a firm commitment to have timely consultations with UNHCR and other relevant international organisations, like ECRE, on the development of EU asylum policy.

A Common EU Asylum and Migration Policy

11. Paragraph 11: ECRE welcomes a comprehensive approach to migration and the call for a greater coherence of the internal and external policies of the Union. We are encouraged that the Council has asked in Paragraph 12 for a report on implementation of measures on the comprehensive approach after a year. Implementation of *concrete* measures to improve human rights and poverty in countries of origin is crucial to the success of a comprehensive approach. Implementation also requires *transparency and flexibility* in the work of the High Level Working Group on Asylum and Migration (HLWG). We are equally encouraged that transparency and consultation with outside experts is now positively required by Paragraphs 7 and 8 of the Conclusions. In this context ECRE urges the European Union to involve UNHCR and relevant international

non governmental organisations in consultations about the further development of the existing and new Action Plans as soon as possible. The European Union should ensure that the HLWG's Action Plans are not set in stone, but develop according to events.

12. Paragraph 13: ECRE warmly welcomes the Council's reaffirmation of the importance of "**absolute respect of the right to seek asylum**". Such an absolutist approach means that asylum, and access to asylum, can never be subordinated to control measures.
13. ECRE further welcomes the fact that a Common European Asylum System will be based on a '**full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution**'. This means that the Council requires Member States which apply an incorrect interpretation of the Convention, e.g. one which does not cover persecution by non-state agents, to actively change that interpretation. It also means that asylum policy and practice must be gender-sensitive and child-centred. The guidance of UNHCR, as guarantor of the Refugee Convention, should be followed as to the correct interpretation of the Convention.
14. Paragraph 14: ECRE believes that an harmonised interpretation of the Refugee Convention is possibly the single most important factor in the creation of a Common European Asylum System and should be dealt with sooner rather than later. Taken with other commitments, in Paragraph 4 and 13 particularly,

ECRE believes that the EU will have to harmonise interpretation before, for example, revising the Dublin Convention.

15. Paragraph 16: ECRE welcomes the recognition that an instrument on temporary protection in cases of sudden and mass influx is urgently needed. It is positive that subsidiary forms of protection (Paragraph 14) and temporary protection are viewed separately. ECRE agrees that sharing responsibility for protection in cases of sudden and mass influx needs to be developed and is pleased that the Commission is invited to explore the possibility of a financial reserve to support any measures. ECRE emphasises that responsibility sharing, both within Europe and globally, is also important to sustain the overall protection system- not only in cases of mass influx. ECRE is also pleased that subsidiary protection will attract rights appropriate to the status: this means rights at the same level as the Refugee Convention.

Fair treatment of third country nationals

16. Paragraph 18: ECRE welcomes the commitment to a more vigorous policy of integrating third country nationals, including refugees. A vigorous integration policy, by definition, means that refugees should have access to rights comparable to those of EU citizens upon recognition of their status. In line with Paragraph 2 of the Conclusions, this includes the right to free movement within the Union.

Management of migration flows

17. Paragraph 22: Taken with the strong commitments to asylum in Paragraphs 3, 4 and 13 ECRE understands the management of migration flows to also include developing means to allow access to protection in the EU. This means reconsidering visa regimes and other immigration controls from a refugee protection perspective.
18. Paragraph 25: ECRE agrees that border control can only be undertaken by specialised trained professionals. In line with Paragraphs 4 and 13 this means that border police should be trained to identify and deal professionally with asylum applicants, including specialised training on gender and on working with children.
19. Paragraph 26: ECRE is concerned that the European Union may make the (economic) assistance to countries of origin or transit, conditional upon these countries willingness' to take control oriented measures which may not be in line with the "absolute respect of the right to seek asylum". The reference to the principle of voluntary return to countries of origin is welcome. ECRE takes this to mean that, for example, "go-and-see" visits will be allowed so that decisions to return are informed. ECRE sounds a note of warning that also readmission agreements with countries of origin or transit must be in line with the "absolute respect of the right to seek asylum".
20. Paragraph 27: ECRE is concerned that re-admission agreements may be used to return asylum-seekers to

countries of origin or transit without providing sufficient safeguards against *refoulement*. This has been the case to date, and ECRE has been particularly concerned by the inappropriate use of re-admission agreements on a so-called "safe third country" basis. Taken with the strong commitments to asylum in Paragraphs 3, 4 and 13 ECRE believes that readmission agreements (or readmission clauses in other association agreements) must in future provide sufficient safeguards to ensure that this does not remain the case.

The Tampere Summit Conclusions

UNHCR's Observations

ASYLUM AFTER TAMPERE

The EU asylum agenda following the Tampere Summit

The Tampere Summit Conclusions represent an important landmark in the development of a European asylum and migration strategy. The Conclusions in themselves do not prescribe the contents of the future European Union asylum and migration instruments to be developed pursuant to the entry into force of Title IV of the Amsterdam Treaty. Yet they give political impetus to, and set the main orientations for, the future EU policy in the area of asylum and migration.

Asylum vs. Migration

The Conclusions include a reaffirmation of the right to seek asylum and call for the **full and inclusive application of the Geneva Convention**. This is to be welcomed as a positive signal that the future EU asylum system is to be developed on the basis of international protection standards. It is refreshing to see that asylum policy is dealt with up-front in the Conclusions rather than as a final afterthought. Also, protection considerations precede those of border control and measures aimed at stemming illegal immigration.

The separate chapter aimed at improving the integration of third country nationals residing legally on the territory of Member States also includes a number of positive intentions, including efforts to step up the fight against racism and xenophobia. The Conclusions also

underline the need for approximation of national legislations on the conditions for admission and residence of aliens.

The Conclusions refer to **asylum and migration policies as distinct, although inter-related areas**, and contain separate paragraphs on asylum, legal migration, illegal immigration and cooperation with source countries. The Conclusions affirm that asylum is an absolute human right, while migration is seen as being conditioned by socio-economic, demographic, judicial and police cooperation factors. Yet the close relationship between asylum and migration calls for a reflection over the inter-linkage of the various legal instruments and common policies to be developed in these areas, as well as the sequence of their development.

While the Conclusions affirm the need for guarantees for those who seek access to and protection in the EU Member States, they also call for vigorous measures to stem illegal immigration, reinforce border controls and combat trafficking in human beings. The Conclusions do not spell out how to balance guarantees to offer protection to those in need of it with measures to stem illegal immigration. There is, therefore, a **risk that access to territory and to the asylum procedure will be undermined if stringent controls are put in place without sufficient guarantees** addressing the situation of persons seeking protection.

Towards a single or a common asylum system?

The Tampere Conclusions spell out a clear commitment to iron out the differences between the asylum policies and laws of individual EU Member States. The Conclusions establish the main elements of a common European

asylum system, in terms of asylum procedures, reception conditions and, eventually, a uniform refugee status. The intention as expressed in the Conclusions to establish a common asylum system should be taken as a clear signal that **EU Member States want to move beyond minimum levels of harmonisation and approximation of their asylum laws and policies.** Whether this will be realised remains to be seen.

In this context it is important to note that the Summit Conclusions call for a common asylum system, not a single system. This is probably more than merely a semantic issue, since clear differences of opinion on the future of the Union's competence in asylum matters underlie this question. A single, uniform system implies full harmonisation of standards and procedures.

Yet a number of Member States have expressed doubts about the feasibility or desirability of establishing such a system and prefer to identify a set of common standards arising from a comparison of the standards governing their asylum policies and practices. While UNHCR would certainly see advantages in a single system, the key issue for the Office is that the sights of Governments remain firmly fixed on high protection standards.

What level of protection?

Despite their overall positive tone, the Tampere Conclusions do not actually set the detail nor the level of future protection standards for the future common asylum system. While Conclusions of this kind cannot be expected to do so, it is now up to the drafters of the future asylum instruments (the Commission), as well as for those who will have to negotiate their adoption (the Council, and to a certain extent, the

European Parliament) to agree on the contents of the protection offered in the future instruments.

Some Member States have already announced that they will stick to a strict interpretation of the language of the asylum provisions of the Amsterdam Treaty, that is the adoption of minimum standards. This entails the risk that the minimum will develop into the maximum, particularly if the rule of unanimity voting is to be maintained during the next five years of negotiations on draft instruments.

In order to avoid the acceptance of the lowest common denominator, **Member States should be called upon to negotiate a consistent set of common standards for each instrument,** to be developed within a coherent framework, and not by comparing the standards and singularities of their present policies and practices. Moreover, the Commission may need some encouragement to develop comprehensive proposals setting high protection standards, prior to putting these on the negotiating table.

Partnership with countries of origin

The Tampere Conclusions include a brief chapter endorsing a comprehensive approach to migration and asylum addressing political, human rights and development issues in countries and regions of origin and transit, as pioneered recently by the EU High Level Working Group on Migration and Asylum. Partnership with countries of origin and third countries concerned will be a key element for the success of such a policy. The Conclusions call for a continuation of the mandate of the High Level Working Group and the drawing up of further Action Plans following the adoption of a first set of such Plans as elaborated by the Group. UNHCR has

welcomed the establishment of the Group and has provided inputs into the drawing up of the Action Plans.

Now that the implementation phase has begun, **UNHCR will see to it that the protection dimension of the Action Plans receives at least as much attention as the control measures spelled out in the Plans.** Implementing the Action Plans needs to be predicated upon Member States' continued acceptance of asylum-seekers and migrants on their territory, combined with efforts to address effectively the root causes of flight and migration, measures strengthening the reception and protection capacities of countries neighbouring countries of origin, and increased political and financial support for voluntary return programmes, provided the security and political situation in countries of origin allows for sustainable reintegration.

The post-Tampere asylum agenda

Now that the Tampere Summit has promulgated its political guidelines for the EU asylum law-making process, the Commission and Member States are preparing for an intensive period of elaborating and negotiating proposals for Regulations and Directives. The Commission is at present drawing up its "scoreboard" in order to set an agreed agenda and time-table for the introduction and adoption of the various legal instruments. The 1998 Vienna Action Plan of the Council and Commission identified a time-table of two and five years for the adoption of the various asylum and migration instruments, yet this has proven to be too ambitious. A revision of this time-table offers an opportunity to re-think the sequence with which the various asylum instruments can best be prepared and adopted.

UNHCR reiterates its call that the EU Member States and the Commission seize the opportunity to rethink the order of priority for developing the various asylum instruments. **A coherent, protection-based asylum strategy should start with a common understanding of the interpretation and application of the definition of a "refugee" and the content and legal basis of the refugee status. Following agreement on the scope and contents of the refugee status, a common approach to complementary forms of protection can be developed. Simultaneously, the Council and Commission should work towards common standards for asylum procedures. Once these core elements of material and asylum law have been adopted, the Council and Commission can elaborate a common approach to practical devices such as a common temporary protection regime in situations of mass influx, a functioning "Dublin" mechanism regulating allocation of responsibility for examining asylum applications, or a European burden-sharing mechanism. It should be recalled that the Tampere Conclusions contain rather timid language on these subjects.**

It is in the hands of the Council, Commission and the European Parliament to ensure that the asylum-related provisions of the Amsterdam Treaty do not simply reinforce the restrictive trends of the 1990's, but that they place refugee protection on a proper footing in harmony with the aims of freedom, security and justice to which the European Union aspires. **The Tampere Conclusions constitute a positive point of departure towards achieving this end.**

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