MARMARA UNIVERSITY

EUROPEAN COMMUNITY INSTITUTE

MIGRATION FLOWS WITHIN EUROPEAN UNION AND THE IMPACT OF THE SCHENGEN CONVENTION

Thesis Submitted in Partial Fulfillment

of the Requirements for the Degree in

MASTER of ARTS

A. MAYA ARAKON

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INTRODUCTION

"The migratory movement is at once perpetual, partial and universal. It never ceases, it affects every people...(and although) at a given moment it sets in motion only a small number of each population...in fact there is never a moment of immobility for any people, because no migration remains isolated"[1] Eugene Kulischer wrote these words in 1943 when Europe was still suffering the ravages of war and a massive dislocation of millions of people across the whole continent. By that time, Europe had experienced virtually every kind of international migration discernible in the world today -forced and voluntary, economic and political, seasonal and permanent, regional and transcontinental, bonded and free. Moreover, Europe was not the only continent of the world to have experienced massive population movements, nor, indeed, were population movements in Europe isolated from developments elsewhere in the world. And now, in what is a world more interdependent than at any previous time in history, these words are as true as they have ever been.

The international migrations of people have always been complex, The worldwide picture today reveals millions of people displaced by war and conflict and persecution - some within countries, others across borders, some with assistance, others with none, some crossing land borders, some by air. Millions more are displaced by desertification and other kinds of ecological degradation and disaster - some natural, some man-made. Incalculable numbers of people move periodically across borders, as seasonal or frontier workers or as transient traders. More and more businessmen and professionals move from one country to another, sometimes for short periods, sometimes for years. And as international communications develop further and the mobility of and contacts between individuals of different countries and continents increase and multiply, so more and more people migrate as foreign spouses and foreign-born children of 'indigenous' residents. As always, there is the international migration of labor -some permanent, some temporary, some legal, some illegal, some skilled, some unskilled, some headed for agriculture, some headed for

[1] Eugene Kulischer, *Europe on the Move. War and Population Changes 1917-1947,* Columbia University Press, New York 1943, p.9.

industry; and, as often with the movement of families, some outward, some returning.

International migration affects every person and we should also take into account the other side of the medallion. No one should think that these people are happy to be obliged to move from where they were born. Leaving families, old friends, the custom and traditions of old life behind, should not seem as easy as we first think. Especially for those who leave their hometown in order to look for a better job. As the Universal Declarations of Human Rights states "... the people of the United Nations ...have determined to promote social progress and better standards of life in larger freedom".[2] But sometimes, this freedom of movement in order to look for better standards of living is restricted by some receiving countries which want to prevent further migration into their own territories. Some of the European Union member states are of this kind of countries which limit the migration flows by issuing some international agreements. The Schengen Convention is one of them. And the aim of this study is to take a look at the migration problem facing the world, focusing especially on European countries' position against the human rights law which is, according to the point of view of this study, being violated by some procedures of the Schengen Convention.

[2] See Appendix 1: The Universal Declaration of Human Rights, the Preamble.

I. AN OVERVIEW TO THE INTERNATIONAL MIGRATION

1) Towards a classification of types

International migration is so complex a phenomenon that any attempt to categorize the many different types inevitably proves a reductionist exercise. Nevertheless, for the purposes of discussion and analysis, a degree of classification is called for. An approach which is central to the process of policy formulation is that which distinguishes migrants according to the basic cause and intention of movement. Thus it is common to distinguish between migration which is caused by factors that can be described as being broadly 'political', and that which is caused or motivated by economic factors. It is the distinction, for example, which guides the definitional division between refugees and other kinds of migrants. The distinction between migration which is essentially voluntary in motivation and that which is involuntary is also useful.

Taking the two dimensions together, one can visualize a matrix within which to place the many different migration types. The extremes would be

(1) migration which is strongly economic and voluntary in cause and motivation (e.g. worker migration);

(2) that which is strongly political and voluntary (e.g. migration of Jews to Israel);

(3) that which is strongly political and involuntary (e.g. 'classic' refugee flows); and

(4) that which is strongly economic and involuntary (e.g. refugees from famine and ecological disaster). It should be stressed that such categories are always blurred and that most migration flows fall somewhere between the four extremes. Thus, for example, the expulsion of workers from the Arab Gulf, or the movement of 'distress' migrants in the Horn of Africa would, though for different reasons, fall somewhere between categories (3) and (4). Similarly, the 'economic' and 'voluntary' movement of migrant workers never takes place in a political vacuum, and thus worker migration incorporates elements of category (2). Furthermore, the

fact that many worker migrants move to escape or avoid extreme economic hardship means that category (1) frequently overlaps with category (4).[3]

Although excluded from this matrix, certain factors which may be broadly defined as 'social' and/or 'cultural' usually impact on migration to a very significant degree. Thus the migration of families and dependents may be described as 'socially' determined, although the original migration which gives rise to this movement (and, sometimes, the family migration itself) may be largely economic in motivation. Even worker migration itself is very heavily influenced by the operation of social and cultural factors such as networks of communication between migrant-sending and migrant-receiving countries, or by more general cultural and linguistic links between sending and receiving countries. It is also worth mentioning that the increase in 'South/North' migration witnessed over recent decades has almost certainly been influenced by the spread of Western culture throughout the world.

One can take the categorization a stage further by distinguishing, for example, between the movements of unskilled workers, between documented or undocumented (illegal) movements, and between transient, seasonal, temporary and permanent migrants.[4] All fall within the same broad category by virtue of being 'economic' and 'voluntary' in character, but all are very different in terms of specific causes, motivations and impacts. Each general category includes a myriad of specific types. This diversity is important, and has led some analysts to argue that the causes and consequences of international migration should be evaluated only within the context of specific countries and specific migratory situations[5]. Indeed, even in a specific

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[3] Note also a recent increase in indenture-type labor, including an unknown, but certainly significant, number of foreign domestic servants held in virtual bondage in Britain and other industrialized countries in the West.

[4] See, for example, definitions of different types of 'worker' migration as set out in the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 (reproduced in the United Nations Press Release, Department of public Information, *Resolutions and Decisions Adopted by the General Assembly During the First Part of Its Forty-Fifth Session : From 18 September to 21 December 1990, pp.471-96).* The Convention includes definitions of frontier workers, seasonal workers, seafarers, offshore installation workers, project-tied workers, itinerant workers, specified employment workers, professional, technical and professional workers, and self-employed workers.

[5] See John Salt, 'Contemporary Trends in International Migration Study', *International Migration,* vol.25 (1987), no.3, pp.241-7. See also Charles W. Stahl, 'Overview : Economic Perspectives', in Reginald Appleyard, ed., *The Impact of International Migration on Developing Countries,* OECD,

migratory context, factors determining and arising from migration may be very difficult to identify. It is perhaps this more than anything else that explains why international migration has eluded researchers and policy-makers for so long, and why clear policies are so difficult to formulate and clear conclusions so hard to reach.

2) Global Trends

Like international capital and product flows, the international flow of people has undergone a marked expansion over the past four decades. One estimate puts the number of people currently resident outside their country of citizenship at some 80 million.[6] If account is taken of (1) high numbers of people who are or have become citizens of the receiving country, (2) those who are now outside their country of origin after the collapse of the Soviet Union, and (3) huge numbers of seasonal, frontier and transient migrants worldwide, the figure can be assumed to be much higher (upwards of 100 million).[7] The international significance of the phenomenon is most easily demonstrated in economic terms. Although the total revenue created by international labor flows is impossible to evaluate, crude estimates of the scale of international remittance flows (capital sent by migrants from their country of residence to their country of origin)provide a rough indication :in the late 1980s, the total value of international remittances, put at some US$60.9 billion in 1989, came second only to trade in crude oil. Its value exceeded both global flows of official development aid (US$51 billion in 1988) and the global value of trade in coffee (US$9 billion).[8] Given this scale, it is somewhat surprising that it is only in the past few years that the issue has received the level of international attention that it would seem to deserve.

Paris, 1989, p.362; and Claudio Stern in R. Appleyard, ed., *International Migration Today* (vol.1), UNESCO, 1988.

[6] Jonas Widgren, 'International Migration : New Challenges to Europe', report prepared for the Third Conference of European Ministers Responsible for Migration (Council of Europe), Porto, Portugal, 13-15 May 1987. Reprinted in *Migration News* no.2, International Catholic Migration Commission, Geneva, 1987. This figure includes legally employed foreign workers and their dependents, undocumented workers, and official and unofficial refugees.

[7] Sharon Stanton Russell and Michael S. Teitelbaum, *International Migration and International Trade*, World Bank Discussion Paper, no.160; World Bank, Washington DC, 1992, p.1.

[8] Russell and Teitelbaum note that theirs represent the first, and possibly only, attempt to calculate the total global volume of remittance flows. They draw on IMF balance-of-payments data for 193 countries.

Although migration has affected all regions of the world throughout history, it is only in recent decades that international flows can be said to have become truly global. With the spread and advancement of modern communications, the expansion of the global economy, and the intensification of regional and international economic and demographic disparities, every continent of the world is now touched by the phenomenon. Furthermore, the past few decades have seen a remarkable expansion and diversification in transcontinental flows, such as from Africa and Caribbean to Europe, and from Asia to North America and the Middle East. Much of this migration is driven by economic and political forces - such as world trading patterns and capital flows- which have become increasingly global in their genesis and development. The global causes and impacts of international migration have become increasingly intertwined. Thus, for example, migration flows from Asia to the Middle East have caused both economic and social changes in the sending regions, which in turn have given rise to further migration flows, e.g. migration into areas benefiting from development on the basis of remittances, or out of areas where a migration 'psyche' has developed or where traditional social and economic structures have been eroded by prolonged emigration.

However, while it has become progressively global in scope, the process has also undergone a degree of regionalization. To begin with, certain established patterns of movement between contiguous and proximal states have become entrenched, such as that between Mexico and the United States, or that between states in West Africa. At the same time, a number of new regional patterns have emerged or are expected to develop in conjunction with the strengthening of particular regional economic groupings. For example, the past decade has witnessed a marked diversification and increase in levels of migration between East and Southeast Asian states, and the next few years may witness higher levels of migration within the so-called 'European Economic Area'. As described by one analyst, 'we are observing ...the same phenomenon as in the global product market, namely a combination of globalization

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A figure of $65.6 billion is quoted in the publication cited, but subsequent calculations by the same analysts suggested the figure of $60.9 billion as more accurate.

and regionalization, of outward-orientation and inward-orientation, of free movement and barriers, analogous to the combination of free trade and protectionism'.[9]

In connection with the process of regionalization, it is perhaps most important to note that over the past few decades international migration has become progressively concentrated in just a few areas of the world. Out of the estimated 100 million international migrants worldwide, over a third are in sub-Saharan Africa (at least 35 million), and of the remaining 65 million, most are concentrated in the Middle East and South and Southeast Asia (15 million) and in North America and Western Europe (15 and 13 million respectively).[10] Concentrations are often particularly marked in the case of particular countries. Saudi Arabia, for example, accounted for around 4.5 million of the estimated 6-7 million international migrants in the Arab Gulf prior to the Iraqi invasion of Kuwait; of the total 7 million or so refugees in South Asia, over 6.5 million are concentrated in Pakistan and Iran; of the 17 million or so people in Central and North America who are citizens of a country other than that in which they are resident, over 14 million are in the United States; and of the some 13 million 'foreigners' resident in Western Europe, roughly 8 million[11] are in Germany, France and Britain.[12] Furthermore, many transcontinental migration flows, although indicative of a globalization in migration are, on closer examination highly regionalized in terms of sources as well as destinations. Thus particular sending countries tend to dominate flows to particular receiving countries (e.g. Egypt to Saudi Arabia, Algeria and Morocco to France), and flows out of any one sending country may be dominated by emigration from particular regions of that country (e.g. Kerala in India).

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[9] Louis Emmerij, 'The International Situation, Economic Development and Employment', paper presented at the OECD International Conference on Migration, Rome, March 1991, p.9.

[10] Russell and Teitelbaum, *International Migration and International Trade*, p.9. All are conservative estimates.

[11] Immigrant populations in Europe are difficult to quantify owing in part to the operation of different citizenship and nationality laws in different countries. Both figures should be taken as very professional. The term 'foreigners' is used here in a very loose sense and includes EC nationals living in another Community state and immigrants in Britain who hold British citizenship.

[12] Russell and Teitelbaum, *International Migration and International Trade; World Refugee Survey 1992*, US Committee for Refugees and American Council for Nationalities Service, Washington DC,1992; OECD Continuous Reporting System on Migration (SOPEMI), *Trends in International Migration*, OECD, Paris, 1992; *Demographic Statistics 1992*, Eurostat, Luxembourg, 1991.

3) Trends Affecting Western Europe

Each of the three principal global migration trends outlined above -escalation, globalization and regionalization[13]- have characterized migration to Western Europe over recent decades. However, these trends are not entirely new or clear-cut. For example, inflows of workers from other regions of the world rose at an unprecedented rate during the two to three decades following the Second World War, reflecting both an escalation and a globalization in international movements of migrant labor. But this was not Europe's first experience of large-scale transcontinental labor migration. Indeed, Western Europe had already been directly involved in two of the largest transcontinental migrations to have taken place in history -the Atlantic slave trade and the subsequent population of the New World. Nor did the postwar arrival of foreign workers signify an entirely new phenomenon, since migration patterns in Europe before the two World Wars were characterized by high levels of international labor movement, including that out of areas of Eastern and Central Europe.

International migration, however, is a phenomenon which is simultaneously constant and ever-changing. Although sharing many attributes of earlier flows, recent migration to Western Europe has departed from previous trends in a number of important ways. It was not until the postwar years, for example, that any West European states experienced large-scale inflows of foreign workers from geographically, ethnically and/or culturally 'distant' countries outside Europe. Hence this was the first time that a globalization in migration flows (coupled with regionalization) had come substantially to affect migration patterns *into*, rather than out of, Western Europe. While not signifying the emergence of a new region of immigration, this influx brought about new migration patterns. Poorer Mediterranean countries which were hitherto isolated from the labor markets of Western Europe became linked into the West European migration 'network'. These links subsequently gave rise to new migration patterns, such as flows to Southern Europe from North Africa. And while the overall magnitude of, and the generally negative reaction to, the immigrant populations of the postwar years may not have been substantially different

[13] See also SOPEMI, *Trends in International Migration*, pp.13-15.

from those of earlier years, the implications of migration changed considerably owing to shifting economic, political and social conditions in both sending and receiving areas.

Migration trends have undergone further changes in Western Europe since the period of labor immigration following the Second World War. Although many of the same countries are involved, new players have entered the fray. Eastern Europe, separated from the labor markets of Western Europe from some thirty years, is once again a source of economic migration to Western Europe. At the same time, improved global communications and intensifying migration pressures outside Europe are giving rise to a diversification in flows from more distant regions, such as sub-Saharan Africa, Much of this migration is now directed to Southern Europe -Italy, Spain, Portugal, Greece- which has traditionally sent migrants abroad, rather than receiving them from elsewhere. Moreover, while postwar labor immigration took place at a time of economic boom in the most advanced industrialized countries of Western Europe, the environment today is one of economic recession and rising unemployment. Whereas migration during the postwar years was encouraged, or at least sanctioned, by the receiving states, most of that taking place today is 'unwanted' and, to some extent, uncontrolled by the receivers.

Nevertheless, current migration trends should not be divorced from the patterns of previous periods. First, the fundamental forces shaping migration have remained remarkably similar over decades and centuries. This applies not only to voluntary economic migration, but also to involuntary refugee movements. Second, migration flows and the policies that shape them are frequently linked very directly to previous patterns. One can point, for example, to the importance of Mediterranean migration in current flows to Western Europe -flows which may be attributable as much to past policies of labor recruitment as to current migration pressures operating in the sending regions. Third, a consideration of past trends and policies can prove informative for the formulation of new responses. Reference to the past may not only demonstrate areas in which state policy has had, or could have, a decisive role in shaping migration; it may also reveal areas of convergence and divergence in the

positions of different states -an important consideration at a time when moves are being made to harmonize a wide range of laws and procedures relating to international migration in Western Europe.

II. WESTERN EUROPE IN A WORLD OF INTERNATIONAL MIGRATION

As noted before as well, migration is now a global phenomenon, which affects virtually every country of the world, whether it be the movement of workers, refugees, highly skilled professionals or traders, or other forms of migration. I aim to look a little beyond the confines of Western Europe to consider, on a broad level, to what extent trends today reflect the singular position of the West European region. It concentrates on three main migration categories: documented labor migration, illegal or 'irregular' migration and asylum flows.

The first category is one that dominates the postwar history of migration into Western Europe, but which has come to affect the region less and less in recent years. Despite this decline, Western Europe continues to be seen -at least by many among its own population- as the most important destination for economic migrants in the contemporary world. By focusing on the emergence of new areas of international labor migration elsewhere in the world, the first section challenges this perception, demonstrating that Western Europe and other advanced industrialized countries can no longer claim to be the sole or primary 'honeypots' of international economic migration.

Nevertheless, economic migration into Western Europe continues today. Apart from the (increasing) international movement of highly skilled and professional workers, 'economic' migration to Western Europe now takes place principally through illegal or 'irregular' channels. In addition, escalating inflows of asylum-seekers are perceived as being comprised more and more of economic migrants as opposed to refugees. These two categories have become increasingly important in the European setting over the past decade, and now dominate current concerns over migration in Europe's receiving states. Like the legal movement of labor, illegal migration and asylum/refugee flows are now worldwide phenomena, and thus the challenges they pose for a number of West European states are in many ways not unique. However, the situation in one region can never be compared directly with that

in another. The second and third sections compare some of the particular problems facing Western Europe in connection with illegal and asylum flows with those encountered by receiving countries in other regions in the world.

1) Documented Labor Migration

According to World Bank data, the world's main destination countries for international migrants in the late 1980s, or, more precisely, those countries which experienced the highest rates of net (documented) immigration during this period, were (in descending order) the United States, Australia, Saudi Arabia, Canada and Côte d'Ivoire.[14] This list supports the perception that countries of the industrialized 'North' are a major pole of attraction for international migrants in the contemporary world, but challenges the common impression that these are necessarily today's most important immigration countries.

The level of net migration to the United States during the second half of the 1980s was higher than total net immigration in all other countries of the world combined, reaching 2.9 million during the period 1985 to 1990.[15] Indeed, the United States took in almost the same number of permanent settlers and temporary workers in the 1980s as it did during the first decades of this century (around 7 million compared with 8.8 million in the period 1900-10).[16] But, although standing out in terms of overall numbers, recent migration trends to the US reflect general patterns that are common, to a greater or lesser extent, to all the Western industrialized immigration states. All these countries have introduced policies which leave little room for the legal and independent immigration of most classes of migrant worker. As a result, immigration is now dominated by family (including foreign family-members of 'indigenous' residents) and asylum migration flows. What worker

[14] The World Bank, *World Population Projections, 1989-90 Edition : Short and Long Term Estimates*, The Johns Hopkins University Press, Baltimore and London, pp. XIV-XVI.
[15] Ibid.
[16] OECD Continuous Reporting System on Migration (SOPEMI), *Trends in International Migration*, OECD, Paris, 1992, Tables 34 and 36; and Demetrious Papademetriou, 'International Migration in North America : Issues, Policies and Implications', paper prepared for the UNECE/UNFPA Informal Expert Group Meeting on International Migration, Geneva, July 1991, p.36 (fn.).

migration persists is now largely accounted for by legal movements of highly skilled and professional workers (much of which is temporary or transient), and by illegal and clandestine migration. According to SOPEMI estimates, seven selected West European countries -Belgium, Germany, Luxembourg, the Netherlands, Norway, Sweden and Switzerland- experienced an inflow of nearly 4 million and an outflow of some 2.5 million foreign nationals between 1985 and 1989, indicating a net immigration of around 1.5 million foreigners during that period.[17] Nevertheless, stocks of documented foreign *labor* in Northwestern Europe remained relatively stable during the 1980s, increasing by less than 350.000 between 1980 and 1989 (6% of the total stock of foreign labor at the beginning of the decade).[18]

Although the documented migration of labor from "South" to "North" has declined, this has not implied a worldwide reduction in levels of international labor migration. Indeed, the number of people working outside their country of origin today is likely to be significantly larger than that of twenty years ago. This increase is due less to rising levels of illegal or 'irregular' migration to Western Europe or North America than to the growing importance of so-called "South/South" flows, i.e., labor migration which is not directed to the most advanced Western industrialized countries. Today, the numbers of international migrants in Western Europe and North America represent around 30% of the estimated 100 million international migrants worldwide. Of the remaining 70 million or so, at least half are accounted for by people moving within the Sub-Saharan African region (both 'economic' migrants and refugees), and a quarter by migrants in the Middle East and Southeast Asia.[19] Indeed, contemporary migration patterns suggest that if intensifying pressures to migrate are to translate into an actual increase in migration in the future, labor movement is likely to be characterized more and more by flows within the confines of the "third world". It is worth nothing, for example, that of the total estimated number of sub-Saharan African migrants living and/or working outside their state of origin, less than 1.5% are

[17] SOPEMI, *Trends in International Migration*, Tables 2, 3 and 4, pp.132-3.
[18] Ibid., Table 5, p.133. This figure is based on data provided for Austria, Belgium, France, Germany, Luxembourg, Netherlands, Sweden, Switzerland, United Kingdom.
[19] S. Stanton-Russell, K. Jacobsen and W. D. Stanley, *International Migration and Development in Sub-Saharan Africa, Volume 1*, World Bank Discussion Papers, Africa technical Department Series, no.101, World Bank, Washington DC, 1990, p.1.

currently resident in the European Community.[20] A relative increase in "South/South" migration will be reinforced by the restrictive stance of the industrialized countries on immigration, and by growing economic and demographic disparities between those countries which are collectively defined as "less developed". This was illustrated most graphically by the sudden expansion of the international migrant labor market in the Arab Gulf following the oil crisis of 1973.

The quadrupling of world oil prices in 1973 led to an economic downturn in the industrialized North, but brought unprecedented economic growth to the world's most important oil-producing states. On the basis of an explosion in export revenues, the Middle East oil-producers opted for a rapid development of their physical and socio-economic infrastructures. This necessitated a supply of workers that could not be satisfied by the indigenous labor force, since the affected population were both small (with the exception of Iraq) and unsuited to meet the new demand. [21] Within two years of the oil crisis, huge numbers of foreign workers were flowing into the Gulf and Libya. This influx was initially dominated by flows from other Arab countries (Egypt, South Yemen and Jordan), but these were soon joined by rising levels of migration from Asia (particularly from India and Pakistan and later, from Bangladesh, the Philippines, Sri Lanka, Korea and Thailand). This development accompanied a progressive commercialization of the Middle East labor markets, and reflected the great importance of transcontinental migration flows in the world today. Asian countries were able to complete aggressively with Arab sending countries by providing cheaper and more regulated labor, such that between 1975 and 1985 the proportion of Asian workers in the non-national workforce of the Gulf Cooperation Council states had increased from 20% to around 63%. The overall populations of the

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[20] Eurostat, *Demographic Statistics 1991*, Eurostat (Statistical Office of the European Communities), Official Publications Office of the European Communities, Luxembourg 1991, p.152 (Table H-1). The table provides an aggregate figure for immigrants from African countries, with a breakdown of those from Algeria, Morocco and Tunisia, Subtracting immigrants of North African origin from the total figure for African immigrants leaves roughly 0.5 million. The statistics should be assumed inaccurate.

[21] See, for example, Manolo Abella, 'International Migration in the Middle East: Patterns and Implications for Sending Countries', paper prepared for the UNECE/UNFPA Informal Expert Group Meeting on International Migration, Geneva, July 1992, p.7; see also J.S.Birks and C.A.Sinclair, *International Migration and Development in the Arab Region*, International Labor Office, Geneva, 1980, p.77.

Arab oil-producing states more than doubled between 1975 and 1985 as a result of immigration.[22]

Those sending states which managed to win a share in the Arab Gulf and Libyan labor markets were not the same countries as those which had previously sent migrants to Western Europe (with the partial exceptions of Pakistan, Bangladesh and Turkey). The reasons for this are complex and include the fact that many of the traditional sending countries (including the North African and Caribbean states) were geographically, economically, linguistically and/or politically disadvantaged for competing in the Middle East. The shift from the Arab to Asian labor sources reflected, among other things, the outstanding importance of Asia as a migrant-sending region in the world today. The Philippines, for example, is now the largest labor exporter in the world. In the period between 1975 and 1987, over 3 million Filipinos had worked abroad,[23] a figure equal to 5% of the country's population in 1989.[24]

Although there are small migration flows from Asia to Western Europe, and more substantial flows to North America, the majority of Asian worker migration continues to be that to the Middle East oil-producers. In terms of immigration pressures, the position of Asia's most developed economies is in many respects more extreme that that of Western Europe's receivers. In common with the West European immigration countries, the Asian receiving states share a generally negative and restrictive stance towards most kinds of immigration, irrespective of patterns of labor demand. Japan, for example, is experiencing shortages at both ends of the labor spectrum, but, although relatively open to the immigration of highly skilled workers and professionals, the government remains committed to keeping its doors shut to other categories of foreign workers. Japan's reasons for preventing the entry of

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[22] Abella, 'International Migration in the Middle East', p.12.

[23] Ibid., p.16; and Asian Regional Program on International Labor Migration, *Statistical Report 1990: International Labor Migration from Asian Labor Sending Countries* (UNDP-ILO Asian Regional Program on International Labor Migration), International Labor Organization, Regional Office for Asia and Pacific, Bangkok, Thailand, 1990. This figure is only a rough estimate. It includes those who left to work as seafarers (630.000) and female domestic workers, but excludes undocumented migration.

[24] World Bank, *World Development Report 1991: The Challenge of Development*, Oxford University Press for World Bank, Washington DC 1991, Table 1 (Basic Indicators), p.204.

unskilled workers reflect a concern to avoid all the problems that are seen to have plagued Western Europe ever since the full-scale recruitment of foreign labor in the 1960s and 1970s. The same official goes on to state that 'if in the future the question of foreign unskilled labor should be considered... most careful consideration would be needed, taking into account...the past experience of other developed countries, to work out measures to avoid the problems that other countries have been experiencing from the introduction of foreign labor.'[25] To meet what is a growing demand for unskilled labor in the Japanese economy, the preferred policy is that of encouraging overseas investment and the transfer of technology to labor-surplus (labor-cheap) countries. This is a preference shared -at least theoretically- by West European states.

In comparison with other receiving countries in the region, Japan's opposition to unskilled worker immigration may be somewhat extreme. However, all the receiving countries in East and Southeast Asia, like those in Western Europe, are firmly committed to preventing unregulated immigration, as illustrated by Singapore's introduction of mandatory corporal punishment for illegal immigrants, their employers and agents.

[25] International Labor Office, *Recent Changes in Immigration Control Act and Recent Developments in the Immigration of Foreign Workers to Japan*, (ILO, Asian Regional Office, Bangkok), pp.5-6.

2) "Irregular" or "Undocumented" Worker Migration

A rise in illegal or "irregular" migration is an issue of growing concern in the advanced industrialized world. More and more migration is classified as illegal because states have opted to control migration by applying increasingly stringent immigration laws. In addition, and contrary to the restrictionist stance of the industrialized receiving states, an intensification of regional and global economic, demographic, political and social disparities has meant that the pressure or potential for international migration is probably greater today than ever before. Although restrictive migration policies mitigate strongly against the direct translation of migration flows, a growth in economic and other inequalities will inevitably give rise to higher migration levels. If there are fewer and fewer opportunities for legal migration, one can expect more and more migration to take place through "irregular" channels.

If, as economistic models would suggest, migration is determined predominantly by conditions of supply and demand, or 'push' and 'pull' factors, then illegal migration probably fits the traditional models more closely than other kinds of (international) migration, [26] representing a very direct response to "push" and "pull" in which competing state interests play little part.[27] However, in conjunction with the worldwide increase in illegal migration, there is a growing perception that international movements are determined increasingly by "push" rather than "pull" factors, [28] a perception which serves to fuel paranoia in Western Europe about the intensification of migration pressures in surrounding sending states. It is a mistake to think that immigration controls in Western Europe and elsewhere are on the verge of collapse, but it is true that, in determining the shape and composition of migration

[26] See, for example, E.G. Ravenstein, "The Laws of Migration", *Journal of the Royal Statistical Society*, no.52, London 1889; Arthur W. Lewis, "Economic Development with Unlimited Supplies of Labor", the Manchester School of Economic and Social Studies, vol.22, Manchester 1954; and Michael Todaro, "A Model of Labor Migration and Urban Unemployment in Less Developed Countries" *American Economic Review*, vol.59, March 1969.

[27] Note that "push-pull" models were originally based on movement within countries, i.e., migration that is not influenced by classic forms of migration control

flows, receiving-state regulation has to some extent been superseded by supply conditions in sending regions. The increasing importance of such conditions, however, may be due less to a decline in demand from receiving areas, than to a change in the intervening mechanisms linking the two factors in the migration process. When receiving states attempt to close off old migration channels or prevent the emergence of new ones without eradicating demand, they relinquish a significant degree of control over the pattern and direction of migration flows, since they are no longer in a position to regulate the satisfaction of demand by choosing who should come and where they should come from. In Western Europe, it is this loss in regulative power that largely accounts for the perception that immigration has been imposed on receiving states by the countries of North Africa or Eastern Europe.[29]

The dynamics shaping irregular migration are extremely complex, however, and there is considerable evidence that illegal immigration flows themselves generate certain patterns of demand which in turn stimulate further immigration. It is this argument which underpins the view that irregular migration has a distorting effect on receiving labor markets because employers in certain sectors come to rely increasingly on sources of cheap, flexible and exploitable labor which are not available in the national labor supply. This does not necessarily imply a damaging effect on the receiving economy, since many enterprises which depend on irregular labor supplies, particularly those in certain labor-sensitive sectors, would not exist in the absence of illegal immigration flows -a point which counters the view that illegal immigration necessarily displaces indigenous workers. The fact that the United States and some Western European states have at times turned a blind eye to illegal immigration pays heed to an implicit recognition of the economic benefits of undocumented immigration -at least during periods of economic boom.

Nevertheless, undocumented or illegal immigration is generally viewed negatively in the West, reflecting concerns which may have little to do with the objective economic costs or benefits of the phenomenon. Since it reflects a lack of

[28] See, for example, John Salt, "A Comparative Overview of International Trends and Types, 1950-1980", *International Migration Review*, vol.23, no.3, 1989.

control on the part of the state, anxiety over illegal immigration is often particularly pronounced at a time when a country's sovereignty seems challenged in wider terms.

Although a general feeling of vulnerability may provide an atmosphere conducive to a fear of immigration (legal and illegal), the concrete basis of concern is usually expressed in more tangible terms, such as worries over the economic and social order or the national identity. Since responses to "unwanted" immigration are not shaped purely by economic considerations, they are to a large extent subjective. They vary considerably from country to country and from region to region, reflecting differing political traditions and immigration histories, and changing perceptions of national, regional and international economic, political and social conditions. This is demonstrated in the context of expulsions. Myron Weiner observes that "any country can expel illegals, but such expulsion is obviously politically easier for authoritarian countries than for democracies".[30] Thus, for example, the Gulf states have scarcely flinched at the prospect of carrying out mass expulsions when political or economic conditions have seemed to demand.

The Western democracies face rather different problems to those of the receiving countries in the Middle East or Africa. These include the fact that governments of the Western liberal democracies cannot endorse policies that sanction the *de facto* formation of an illegal immigrant underclass (whatever the outcome of the policies pursued). Still less could they tolerate policies of out-and-out segregation and periodic mass expulsion comparable with those practiced by the Middle East oil-producing states. Instead -and in common with the Asian receiving states- the Western democracies have looked to enhanced control and enforcement measures to prevent the arrival and settlement of undocumented immigrants: border controls, stricter visa regulations, employer and carrier sanctions[31], stiff penalties for traffickers, etc. But there are limits to how far these states can take such measures without infringing the rights of legal immigrants come, or, indeed, without generating

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[29] A Golini, G. Gerano and F. Heins, "South-North Migration with Special reference to Europe", *International Migration*, June 1991, p.253.
[30] Weiner, "On International Migration and International Relations", p.489.
[31] Penalties for airlines or other carriers transporting passengers lacking necessary documentation or using false documentation.

opposition within certain sectors of the national electorate (such as immigrant-dependent employers). Furthermore, however harsh they may be, enforcement mechanisms are never likely to prove entirely successful as long as employment opportunities exist in the receiving countries. There will always be some migrants able and willing to surmount legal and procedural barriers if opportunities on the other side are markedly better than those at home. In response to the presence of illegal immigrant populations, these states have waivered between practicing small-scale expulsions and deportations, and carrying out occasional large-scale legalizations[32] and other programs designed to integrate (previously) undocumented immigrants into mainstream society.

Western Europe's immigration states face particular problems in comparison with the United States and Asia's receiving states. Like all these countries, receiving states in Western Europe are faced with growing levels of immigration as a function of a variety of economic and demographic pressures. The number of illegally present non-nationals in Western Europe is not known, although some estimates have been put forward that suggest a figure of at least 2.6 million. It is estimated that 1.5 million, or over 50%, of Europe's illegals are in the new immigration countries of Southern Europe, particularly Italy and Spain, [33] and that the greater proportion of this immigration is only a few years old. The undocumented immigrant population of Southern Europe is of very mixed origins, including large numbers from North Africa, sub-Saharan Africa, Asia and the Middle East. Illegal flows often follow the same patterns and directions as current or previous documented flows. Sometimes, however, undocumented flows dominate over and even precede, channels of authorized migration. This is the case with n-most current migration into Southern Europe, although it may be based to some extent on previous flows to other destinations in Western Europe, or shaped considerably by colonial or other historical links with migrant sending countries. As a result, receiving states which have no history of immigration are now faced with changing immigrant communities of a kind that, given a greater degree of control, they would probably choose to avoid -i.e.,

[32] For example, France in 1982, Italy in 1987/1988 and 1989/1990, Spain in 1985 and 1991.

immigrant groups that are perceived to be culturally and ethnically different form receiving populations, and thus considered difficult to integrate.

In contrast to the Asian receivers, the Western European immigration states cannot enforce draconian immigration control measures without risking serious negative repercussions for the integration of existing (legally resident) immigrant populations. On the other hand, the absence of a powerful immigrant lobby in Western Europe might seem to imply that European governments have greater room for manoeuvre than the United States. However, unlike North America, Western Europe is currently facing a significant upsurge in xenophobic and anti-immigrant opinion, and this is forcing a number of receiving governments into a corner. Harsh control measures might satisfy certain demands of the extreme right, but they are more likely to fuel anti-immigrant attitudes by drawing attention to the immigrant "problem", and by appearing to endorse anti-immigrant opinion. On the other hand, to allow illegal immigration to continue unchecked will do nothing to help integrate minorities, nor to quell rising national concerns surrounding all aspects of the issue.

It is interesting to note that radical right-wing attitudes are on the rise in the United States as well as in Western Europe. However, while there is strong anti-immigrant sentiment among certain sectors of American society, this movement has not as yet taken a significant hold in US public opinion. Right-wing support for immigration in the US stems primarily from an ideology which endorses every aspect of the free market, including that of labor, but it also reflects a belief in the fundamental value of immigration which is still widespread in the USA. This attitude has never taken a significant hold in Western Europe, even in those states with a relatively long history of immigration. If one can speak of a nation's self-image, that of the United States is based on the idea of a country built on immigration. Those of the West European immigration states are not, despite the fact that Western Europe now hosts a higher proportion of foreign-born to indigenous population that does the

[33] See John Salt, "Current and Future International Migration trends Affecting Europe", paper presented at the 4th Conference of European Ministers Responsible for Migration Affairs, Council of Europe, Luxembourg, 1991.

United States.[34] Thus both the United States and Western Europe may be considered "honeypots" in the contemporary world of international migration, but although this position is on the whole perceived positively in the United States, it is generally perceived negatively in Western Europe. It is perhaps for this reason as much as any other that the fear of an impending immigration "crisis" -so widespread in Western Europe- is largely absent in the United States.

It is already clear, however, that migration-related pressures currently experienced by Europe's migrant-receiving states cannot be directly compared with those acting on the United States. In addition to differences in the "immigration heritage" of the two regions, account must be taken of the particular position of Western Europe in relation to the former communist states of Eastern and Central Europe and the ex-Soviet Union. The sudden economic, political and social dislocations that have taken place on the European continent since 1989 have served to heighten anxiety among the general public over Western Europe's perceived vulnerability to all potentially adverse developments in the East, including migration. Anxiety about developments in Eastern and Central Europe and the former Soviet Union has, moreover, introduced an additional element of urgency to what was already brewing as a major political concern from the mid-1980s onwards, that being a dramatic increase in asylum applications and levels of illegal immigration from the South, particularly, in respect of the latter, into countries with no significant prior history of immigration.

Indeed, the unique situation in Europe today indicates that the challenges brought about by migration (actual or potential) differ so much between regions as to render many global or cross-regional comparisons at least partially redundant. This applies as much in relation to flows of asylum-seekers and refugees as it does to those of illegal immigrants.

[34] Observation made at the Aspen Institute/refugee Policy group Conference, "East-West Migration: Addressing the Root Causes", Berlin, June 1992.

3) Asylum Flows[35]

It is important to keep in mind the fundamental definitional distinction between asylum-seekers and refugees. In popular usage, the term "refugee" has a broad meaning, signifying someone in flight from conditions such as war, famine, natural disaster, oppression or persecution. In the context of international law, however, the content of the term is considerably more limited. Although the definitions in force within different national and international jurisdictions are varied, most are based on those adopted by the United Nations in 1950, 1951 and 1967,[36] which identify the refugee as someone who has crossed an international frontier because of a well-founded fear of persecution by reason of his or her race, religion, nationality, political opinion or membership of a social group. Any person arriving in an asylum state claiming to be a refugee can expect to have his or her case examined so as to determine whether he or she fits the accepted refugee definition and therefore deserves the protection attached to that status.[37] Thus, in practice, refugees are not classed as such until their status has been officially recognized by the receiving country. The term "asylum-seeker", on the other hand, refers to any person seeking asylum on the basis of a claim to being a refugee, irrespective of whether that person's claim is valid or not. Therefore, "asylum-seekers", as a category, includes refugees prior to recognition of their status, and others whose claim to refugee status may be refused.

The number of people seeking asylum in Western Europe has risen dramatically since the mid-1980s, increasing from 134.000 in 1985 to over 400.000 in 1991 (aggregate figures for EC12).[38] It is commonly assumed that this increase owes less to rising levels of refugee arrivals than it does to increasing numbers of

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[35] See Appendix 3: The Schengen Convention, Title II: Abolition of Checks at Internal Borders and Free Movement of Persons, Chapter 7: Responsibility for the Processing of Applications for Asylum.

[36] The Statute of the United Nations High Commissioner for Refugees (1950); the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol. The 1967 Protocol removed the temporal limitation included in the 1951 Convention which limits application to refugees who acquired their status as a result of events occurring before 1 January 1951. Over one hundred states have acceded to the 1951 Convention and 1967 Protocol.

[37] This is also one of the main items of the Universal Declaration of Human Rights which gave source to most of the following Acts and Conventions about human rights. See Appendix 1 for more details.

[38] UNHCR, 1992.

"economic" migrants seeking to use asylum as a means for migration in the absence of other legal channels. The fact that recognition rates are low, and have fallen in relation to the numbers applying, would seem to support this view. It is largely because of the growing perception that asylum flows are dominated by economic migrants that asylum issues have become increasingly entangled with broader immigration questions in recent policy debates. The situation is not straightforward, however, since the refugee definition as used in Western Europe has always had its problems as regards application. It is both open to subjective interpretation, and highly restrictive in its field of application. Thus, low rates of recognition within any group of asylum-seekers cannot be taken *prima facie* to imply that all those refused refugee status are automatically "voluntary" and "economic" migrants.

To a great extent, the 1950/51 UN definition reflects the cold-war conditions in which it was formulated. Despite the widespread and large-scale displacement of population in Europe during the Second World War, the refugee definition adopted by the United Nations was one applicable to individuals rather than to groups, and one tied to a rather restrictive and subjective idea of persecution. Refugee status became, in essence, a status resulting from a discord between an individual's personal convictions and the tenets of the ruling political system in his or her country of origin -a status which, during the cold war, provided a certain political advantage for Western receiving states when it could be accorded to refugees from the Eastern bloc. Since the early 1950s, however, changing social and political conditions throughout the world have given rise to refugee flows of a rather different nature. Nevertheless, the legal definition applied in Western Europe has remained largely unchanged.

The fact that the 1950/51 UN definition is unsuited to many of today's refugee flows is reflected in the wider and more pragmatic definitions adopted, for example, by the Organization for African Unity (OAU) in 1969. The Convention was designed to facilitate flexible, humanitarian and pragmatic responses to a wide variety of refugee movements. Such responses became increasingly important over the following decade, which witnessed more and more complex refugee problems in Africa and throughout the Third World. The numbers involved were significantly

larger than previously, and because many movements were caused by repression, poverty and conflict within newly independent states, prospects for the causes of flight to diminish in the short term were not favorable. As today, refugee movements were largely confined to the "third world". The only substantial numbers to reach the West were certain groups of Latin American and Indo-Chinese refugees resettled from countries of first asylum.

During the 1980s, the problem changed slightly as growing numbers of asylum-seekers began to flee direct to the West from their countries and regions of origin, owing, perhaps, in part to improvements in air transport services. "Spontaneously" arrivals of asylum-seekers in Western Europe had, in fact, been rising steadily since the early 1970s, but it was not until the mid-1980s that numbers began escalating substantially. According to UNHCR data, the numbers increased from around 70.500 in 1983 to 290.650 in 1988. Most of those arriving in Western Europe during the late 1980s came from countries such as Turkey, Sri Lanka, Somalia, Iran, Ethiopia and Lebanon. These are not necessarily the poorest countries of the world but all are associated with civil conflict and/or poor protection of human rights. Many arriving from these states have been in need of protection despite an inability to demonstrate a well-founded and/or personalized fear of persecution. Nevertheless, because the countries of origin are without exception economically poor in relation to the receiving countries of Western Europe, politicians and immigration authorities have been able to justify restrictive measures by arguing that the majority of the asylum-seekers are "economic migrants" or "bogus refugees" seeking a better standard of living in the West.[39]

[39] In connection, for example, with efforts to introduce a new Asylum Bill in the United Kingdom in 1991 and 1992. See House of Commons debates (I) 13 November 1991 (567-617 CD3/2-3/52); (ii) 2 November 1992, issue no:1598, vol.213 (21-120).

III. IMMIGRATION POLICY IN POSTWAR EUROPE

The implementation of the postwar Marshall Plan for Europe was followed by rapid economic recovery and over two decades of sustained economic growth in all the most industrialized states of Northwestern Europe. This paved the way for a transformation in the structure of interregional and international migration patterns as these states progressively extended the scope of their labor markets to fuel economic reconstruction and development. The pattern of international labor migration that arose in Europe during the 1950s and 1960s can be seen in some respects as a revival and expansion of pre-First World War labor migration patterns. Yet whereas European labor migration flows of the late nineteenth and twentieth centuries were largely restricted to localized regions and to movements between neighboring countries, those of the postwar era took place within increasingly broader zones -from contiguous labor pools on to more distant countries, such as those bordering the Mediterranean and the former colonies.[40]

1) Open Doors? 1945-1973

Although the underlying factors generating high levels of immigration were on the whole similar for all Europe's receiving states during the period 1945-1973, it was perhaps at this time that the particular policies pursued by each country manifested the greatest diversity. What states shared in common was a demand for manpower, initially connected with the drive for economic recovery in the years immediately following the war, and subsequently linked to sectoral labor shortages caused by rapid economic growth. As the economies of Northwest Europe revived and expanded, employers in certain sectors of heavy industry, in the new and growing service sectors, and -in the cases of France and West Germany- in agriculture, found it increasingly difficult to attract indigenous labor. Explicit recognition of this demand by governments and states authorities in France and in West Germany resulted in state

[40] Note that colonial ties had already given rise to small numbers of migrants moving from Algeria to France, from the Caribbean to Britain and from Indonesia to the Netherlands during the 1930s.

policies designed to facilitate and encourage in-migration of workers from less-developed countries with a surplus of manpower.

The large numbers of displaced persons requiring resettlement in the years immediately following the war was seen by some as a potentially useful labor pool. Indeed, West Germany felt no need to look abroad for labor when faced with the task of settling millions of German refugees and expellees from East and Central Europe. Furthermore, migration from east to West Germany served as a major source of manpower up until the erection of the Berlin Wall in 1961. Although the French Government was reluctant to authorize any immigration from Germany, agreements were reached with the International Refugee Organization on resettlement of refugees, and an accord was signed in 1947 with the allies which foresaw the possibility of turning German prisoners of war into free workers. In the same year the UK government passed the 1947 Polish Resettlement Act providing for a coordinated effort to integrate over 100.000 Poles who had served in the Allied Forces. This was followed shortly after by the promotion of European Voluntary Worker schemes, aimed at recruiting displaced persons and prisoners of war from the continent for one-year contracts to work in, for example, hospitals, agriculture, coal mining, textiles and construction where labor shortages were already being felt. [41] Yet for France and the UK, projects of this sort proved relatively unsuccessful, since the numbers of workers that had been hoped for never materialized.

It was also in 1947 that France redefined Algeria's status as a colony with the "statut organique de l'Algérie" (organic status of Algeria), which conferred French citizenship on all Algerians and confirmed the principle of free movement between Algeria and the metropole. In 1947, roughly 65.000 Algerians migrated to France and by 1949 the figure had reached 265.000.

[41] Over 100.000 "volunteered" under this scheme, most notably Lithuanians, Ukrainians, Latvians and Yugoslavs. See J. Tannahill, *European Voluntary Workers in Britain*, Manchester University Press, Manchester, 1958.

Table 3.1 Stock of foreign population for selected nationalities, 1990 ('000s)

Country of	Country of Origin			
Immigration	Algeria	Morocco	Tunisia	Turkey
Belgium	10.7	141.6	6.3	84.9
France	619.9	584.7	207.5	201.5
Germany	6.7	67.5	25.9	1675.0
Netherlands	-	156.9	2.6	203.5

Britain having traditionally favored free movement of capital and labor within the empire, and being anxious to maintain close links with the "Old" and expanding "New" Commonwealth (note Britain's withdrawal from India in 1947) passed a Nationality Act in 1948 which reaffirmed the principle of free movement within the Empire and Commonwealth by stating that all colonial and Commonwealth citizens were British subjects. As such, they were free to hold a British passport and could enter Britain to find work, to settle and to bring families without being subject to immigration controls. Once here, Commonwealth immigrants could exercise full citizenship rights, including the right to vote. Although the primary rationale behind the Nationality Act was one of foreign policy (maintaining influence in the Empire and the Commonwealth) rather than labor market considerations, the same year saw the government's establishment of a working party on Employment in the United Kingdom of Surplus Colonial Labor, which was charged with investigating the "possibilities of employing in the United Kingdom surplus manpower of certain colonial territories in order to assist the manpower situation in this country and to relieve unemployment in these colonial territories".[42] In fact the working party concluded that, in view of the probable discrimination which would be directed towards "colored" workers, large-scale immigration from the colonies should be discouraged. The following year the royal Commission on Population published a report which stated that : "A systematic immigration policy could only be welcomed without reserve if the migrants were of good human stock and not prevented by religion or race from intermarrying with the host population and becoming merged with it."

[42] Layton-Henry, "British Immigration Policy", pp.61-62.

Despite these misgivings, colonial immigration was already underway with the first arrivals from the West Indies in 1948.[43] Although Britain never formulated an explicit labor recruitment policy, labor shortages did appear over the next decade,

particularly in regions with expanding industries and in sectors where working conditions were unattractive to the indigenous labor force.[44] These labor demands were not being met by Irish immigration and since no other European labor pool was easily accessible by Britain,[45] significant flows from the colonies and the Commonwealth soon developed which were fueled by "push" factors in the sending regions (relative poverty, unemployment, etc.) as well as by the "pull" of labor demand in Britain.

Whereas immigration flows into the UK developed outside any system of state control because no such system had been implemented, immigration into France took on an increasingly anarchic character because the state structures established to regulate flows proved too rigid to respond to the growing demand for labor. Moreover, as in Britain, colonial immigration did not fall within the mandate of state regulatory institutions. Immigration into France was at that time dominated by flows from Italy and -subsequently- from the Iberian peninsula (and in the North, from Belgium), much of which was seasonal, serving manpower needs in agriculture

[43] These arrivals were not, in fact, strictly the first immigration flows from the British colonies. By the mid-eighteenth century, several black communities had been established in Britain as a result of the slave trade. During the First World War, 15.000 troops were recruited in the Caribbean, and many other West Indians joined the merchant marine. Many of these settled in existing black communities in Britain or began new settlement in ports such as Cardiff and Liverpool. These ports were the scenes of racial violence in 1919. During the Second World War, over 7.000 West Indians volunteered for the Royal Air Force, factory work, and the merchant marine. Many settled, and many of those who returned to the West Indies subsequently remigrated to the United Kingdom. According to Stuart Hall, the return migration to the West Indies played an important part in triggering new migration to the United Kingdom beginning in 1948. See Stuart Hall, "Migration from the English Speaking Caribbean to the United Kingdom, 1950-1980" in Charles W. Stahl, ed. *International Migration Today, Vol.2; Emerging Issues*, UNESCO, Paris, 1988.

[44] Note also emigration of British population to the "old" Commonwealth" at this time. In the late 1940s and 1950s, emigration from Europe overseas accounted for a net loss of 3 million people for the whole of Europe. See Stephen Castles, Heather Booth and Tina Wallace, *Here for Good: Western Europe's New Ethnic Minorities*, Pluto, London, 1984, p.1.

[45] It is worth noting that as a result of past British colonial policies, many Commonwealth immigrants had a good knowledge of the English language, which served as a facilitating factor both in the migration process itself, and in the ease with which immigrants could fill gaps in the labor market.

brought about by large-scale rural to urban migration of the French population. Whether migration was temporary or more permanent, it suited employers and migrants to by-pass the heavily bureaucratic states mechanisms which had been designed to regulate and channel flows. In this respect, economic necessity began to take precedence over demographic concerns, resulting in an increasing perception of migrants as an economic commodity and a progressive abandonment of the original aim to ensure "permanent settlement and integration of the foreigners in the French society".

West Germany only began to experience labor shortages in the mid-to late 1950s. Following consultations among the Federal government, the Federal Employment Agency, employers and labor unions, the Federal Republic reached a bilateral labor recruitment agreement with Italy in 1955. This was to serve as a precedent for a series of later agreements reached during the 1960s with less-developed states in Europe and further afield. In 1960 similar agreements were reached with Greece and Spain. By 1968 Germany had established extensive labor recruitment programs not only with Italy, Spain and Greece, but also with Morocco, Turkey, Portugal, Tunisia and Yugoslavia.[46] The intention was to regulate flows in such a way that would benefit employers at the same time as protecting the German labor market. Similar agreements were reached between France and some sending countries such as Morocco, Tunisia and Portugal in 1963 and Yugoslavia and Turkey in 1965.

By the early 1970s, the situations in which France, Germany and Britain, and indeed all the labor-importing countries of Northwestern Europe, found themselves vis-à-vis immigration were very similar despite having implemented different immigration policies over the preceding two decades. All had experienced large-scale migration inflows over which direct government control had been limited. All were having to face up to the fact that the majority of immigrants -particularly those from outside Europe- were not destined to return to their countries of origin when and if

[46] Note the Association Agreement concluded between the EC and Turkey in 1963 involving an agreement to step-by-step measures towards freedom of movement between Turkey and the EC to be completed by 1 December 1986. This regulation did not enter into force in 1986.

demand for their labor declined. In this respect, postwar immigration had not been a temporary economic phenomenon, but was permanent, structural and socially and politically significant.

2) Closing Doors? The 1970s and 1980s

The oil crisis of 1973 marked a turning point in postwar immigration policies in Europe. As economic recession set in, European labor-importing states one by one[47] introduced measures designed to close their doors to any further influx of workers from outside their regional economic groupings (European Economic Community, European Free Trade Area). By this time, foreigners constituted at least 16% of the total population of Switzerland, 5% in the Federal Republic of Germany, 6.5% in France, 7.5% in Britain (foreign-born including Irish), 7% in Belgium and 2% in the Netherlands.[48] In every case a significant proportion of these foreign populations had migrated from outside Europe.

In the United Kingdom it would have been difficult to claim that restrictive measures had been introduced for any other than social and political reasons. Having never couched immigration policy in terms of economic necessity, British leaders had tended to be rather reticent on the subject of immigrants' economic contribution to the country[49], and discussion on immigration has been dominated by anxiety about the social repercussions of "colored" immigration since the first arrivals from the colonies.[50] Preoccupation with the social and political costs of Commonwealth immigration led to comparatively early moves towards the introduction of legislative immigration controls. Whereas other countries were able to implement a halt on labor recruitment as a measure to restrict immigration, in Britain immigrants were on the

[47] Including the UK, the federal Republic of Germany, France, Belgium, the Netherlands, Luxembourg, Austria, Switzerland, Denmark, Norway and Sweden.
[48] Percentages are quoted for 1970. Percentages as a proportion of the working population would have been higher in every country.
[49] Note that economic growth during the 1950s and 1960s had been slower in Britain than in other Northwest European state.
[50] Roughly 500.000 New Commonwealth citizens settled in Britain between 1955 and 1962. See Layton-Henry, "British Immigration Policy", p.69.

whole British subjects exercising their citizenship rights, and thus, if immigration was to be controlled, the government was bound to introduce legislation involving a redefinition of these rights. Thus the Commonwealth Immigrants Act came into force in 1968. By restricting right of entry into Britain to passport holders who could claim a close connection with the UK, the Act effectively extended immigration controls both to this group and to all non-patrial UK passport holders. The Immigration Act of 1971 replaced all previous immigration legislation with a single statute introducing provisions for control of admission and stay of Commonwealth citizens and foreign nationals. Free movement for Irish nationals and the 1968 distinction between patrials and non-patrials were preserved. Provisions were also included for the introduction of visa requirements for nationals of particular foreign or Commonwealth countries as might be required.

Table 3.2 Stock of foreign population, 1980 and 1990

Country	% Foreign 1980	% Foreign 1990	Foreign Population 1990 ('000s)
Austria	3.7	5.3	413.4
Belgium	-	9.1	904.5
Denmark	2.0	3.1	160.6
Finland	0.3	0.5	26.3
France	-	6.4	3607.6
Germany	7.2	8.2	5241.8
Italy	0.5	1.4	781.1
Luxembourg	25.8	27.5	104.0
Netherlands	3.7	4.6	692.4
Norway	2.0	3.4	143.3
Sweden	5.1	5.6	483.7
Switzerland	14.1	16.3	1100.3
United Kingdom	-	3.3	1875.0

It was not until the late 1960s that concern over the social impacts of immigration began to figure prominently in French political discourse. By the early 1970s, however, the question of integration of foreigners was coming to the fore.

Anxiety began to be expressed over a range of issues including immigrants' housing and working conditions, the risks of xenophobic reactions among host communities and the possibility that immigrants were a drain on public spending, hindering modernization of industrial structures and damaging general working conditions. The summer of 1973 witnessed an explosion of racial tension in Marseilles directed primarily against Algerian immigrants, prompting the Algerian government to announce its intention to suspend all further emigration to France.

Concern over the social aspects of immigration and a reordering of priorities in favor of integration of foreigners and away from recruitment was also evident in West Germany at the very beginning of the 1970s. By 1971, the German Federal government had already begun restricting entry of workers to those processed by the German Commissions stationed in the sending countries, and in June 1973 the government published a new "Action Program on Employment of Foreigners" which indicated a new awareness of the integration problem. Anxious to cut down foreign worker inflows, but not wanting to abrogate the agreements entered into force with the sending countries, the government introduced domestic measures designed to discourage employers from seeking to take on any more foreigners, including stricter supervision of housing supplied by employers, higher fees to be paid for each recruited worker and penalties for employment of illegal immigrants. Only a few months after announcing this policy, the government decided that it was necessary to implement a complete stop on all further recruitment activities form non-EC states.[51]

Despite continuing family immigration, migration inflows during the 1970s and into the 1980s did not lead to a marked increase in total stocks of foreign population in Europe's main receiving countries, in-migration being balanced by voluntary return migration, particularly to the European sending states. The changes that took place over the decade after 1973 were more structural than numerical. Thus, although the total legally resident alien population of Germany increased by only 5.7% between 1974 and 1984, the proportion of immigrants of non-European origin was increasing while that of southern Europeans was declining. There was a

significant feminization of immigrant populations as well as a decrease in the average age. These changes created the impression that immigration levels were increasing at a much higher rate than they actually were.

The 1970s and 1980s witnessed an overall convergence in the immigration policies of West European states, following the rather disparate approaches of the preceding two decades, all professing a commitment to strict controls on primary immigration from outside the EC (/EFTA) and regulated family immigration in the interests of the integration of foreign populations. By the late 1970s, the preoccupation of receiving states with finding solutions to the "immigration problem" was extending beyond simple immigration control to an increasing interest in positive encouragement of return migration. By the late 1980s, the new immigration states of Southern Europe were becoming seriously concerned about rising levels of unwanted immigration. Italy, for example, passed its first immigration legislation in December 1986, which included a legalization program for clandestine workers and set out general principles for the regulation of the conditions of non-EC workers.

The three main areas of concern of the early 1980s -illegal immigration, asylum inflows and immigrant and minority integration- largely remain those of the 1990s, and although a new urgency has entered the policy debate in more recent years, the primary reliance on the direct control measures that emerged after the brake was put on immigration on 1973/74 has remained intact. For over a decade, the main problem areas as identified by the OECD's Continuos Reporting System on Migration in 1984 -"problems of insertion into the social fabric, of education of young people, of the harmonization of different cultural traditions, of naturalization... illegal immigration in its many aspects, the growth in the number of asylum-seekers, and more generally, the results of a migratory pressure ... originating in the less-developed countries'- have remained essentially the same.

[51] 23 November 1973. This was followed a year later with a restriction on granting of work permits for first employment to aliens residing in the Federal Republic of Germany (13 November 1974).

Table 3.3 General economic characteristics of East European and European Union Countries

Country	GDP per capita 1991	Real GDP per capita 1989	Life expectancy at birth 1991	Human Development Index 1990	Maternal mortality rate (per 100.000 live births) 1990	Unemploy-ment rate 1992
Albania	800		72.2	0.791	100	
Bulgaria	1840		72	0.865	40	16.0
Former Czechoslovakia	2470		72	0.897	14	
Czech Republic						3.2
Slovak Rep.						12.1
Hungary	2720	6245	70	0.893	21	11.6
Poland	1790	4770	71	0.874	15	13.3
Romania	1390		70	0.733	210	5.5
Former Yugoslavia	3060	5095	73	0.857	11	
Former USSR	3518		70.6	0.873	45	
Belgium	18 950	13 313	76	0.950	4	10.3
Denmark	23 700	13 751	75	0.953	4	11.1
France	20 380	17 164	77	0.969	13	10.2
Germany	23 650	14 507	76	0.955	8	7.7
Greece	6340		77	0.901	7	9.2
Ireland	11 120	7481	75	0.921	3	17.2
Italy	18 520	13 608	77	0.922	6	10.7
Luxembourg	24 980	16 537	74.9	0.929	2	1.5
Netherlands	18 780	13 351	77	0.968	14	6.8
Spain	12 450	8723	77	0.916	7	22.5
U. Kingdom	16 550	14 610	75	0.962	11	10.1
Portugal	5930	6259	74	0.850	14	4.0
Eastern Europe and USSR	2469		71		48	
E. Community	15 495	12 860	75.9		11	10.1

IV. THE EVOLUTION OF SOME INTRA-EUROPEAN MIGRATION FLOWS DURING THE 1980s

Are intra-European migration flows stable or have they undergone changes in recent years? A precise analysis is unfortunately not possible except between countries which give annual statistics for immigration and emigration. Therefore we will look at Belgium, Denmark, Italy, the Netherlands and the United Kingdom, with some reservations about this last country, given the great variability of published figures from year to year. It will not be possible to see for certain whether Ireland, Portugal and Greece have always registered a deficit compared with other EU countries or if Luxembourg as always been attractive. However, we can highlight two clear trends:

1. First, the Italian situation in relation to Germany, Belgium and Denmark shows a decrease in favorable flows to Italy, suggesting people returning. This decrease, associated with the maintaining, albeit rather weakly, of Italy's emigration flows, leads to an inversion of the migratory balance, an inversion which appears in 1985 in the Netherlands, and in 1988 in Belgium and Denmark. In Germany the inversion is not complete since the negative migratory balance is reabsorbed but does not become positive: the net flow has been almost nil since 1986.
2. The migratory exchanges between Germany, Belgium, Denmark and the Netherlands globally show an increase in migratory exchanges between these four countries particularly in 1990 and 1991. In other respects, a certain hierarchy appears, more clearly in 1990 and 1991. Belgium has favorable flows from the Netherlands and Denmark whereas between Belgium and Germany a balance is achieved after a long period where the situation has favored Germany. Exchanges between Germany and the Netherlands stay balanced during this period, while the exchanges between these two countries and Denmark are unfavorable to Denmark.

Unfortunately, the poor quality of available statistical data prevents the extension of this approach to all intra-European migratory exchanges.

This current analysis of migration flows between the 12 EU countries should be looked at through a wider lens, of time as well as space. First of all, attention is limited to the postwar period; the current situation is a continuation of two distinct phases.

1. The first, prior to 1973, which is characterized by massive migration of workers from countries supplying labor and situated in the south of the EU towards the countries of the northwest which demanded labor.

2. The second, following this, with much weaker intra-community migration, as much because of a disappearance of demand and the adoption of more restrictive immigration policies by north-west European countries as because of economic development which progressively affected all the southern countries. In so far as the partial statistical data used are a reflection of the whole of intra-community migration, the global level of this mobility decreased up to the beginning of the 1990si reaching a minimum between 1985 and 1989. Following this, more recently, a slight rise is beginning which leads us to believe that a new form of intra-community mobility is emerging, in a context where the restrictive constraints have disappeared as well as the economic incentives linked to the clear-cut imbalances between the socio-economic situations of member states. The trend is increasingly for "inter-regional" migration like that between the American states, which involves two types of people: highly qualified people for whom the EU represents, socio-economically speaking, a unified area without barriers of qualification, language or competence; retired people who are attracted by the sunny South, particularly Spain, Portugal and Greece. These two groups of migrants, although relatively few among the 600.000 annual migrants, are particularly important because they indicate the probable future evolution of migration patterns, and they consist of imbalanced and almost unidirectional movement.

A synthesis of the current situation of migratory movements among the 12 EU countries concerned can be attempted as follows:

1. The center of Europe, because of the central character of European institutions and also the economic activity linked to European development, has attracted "technocrats" and other highly qualified people who bring in their wake a whole group of people connected with the services they require. This "centripetal" force works to the detriment of countries situated on the edges of Europe, in particular Ireland, Denmark, Portugal and Greece. This centripetal mechanism has been particularly in evidence since 1990 and could be the result of an accelerated process of European construction.

2. the countries of the South, specifically Italy and Spain, which were for decades countries of emigration, experienced much return migration which petered out during the early 1980s. Since then, they have reverted to the migratory trends of the other EU countries and are part of the centripetal mechanism discussed above. Portugal and Greece are still countries of emigration but recent observations lead us to predict a rapid reduction in this emigration followed by flows of returning emigrants in the near future.

3. These same southern countries -Spain, Portugal, Greece and to a lesser extent Italy- with the asset of their climate, attract retired people from the North. This type of mobility appears to have reached maximum levels between 1986 and 1989 when the global level of intra-community mobility was at its lowest.

But we must not forget that this intra-community mobility has an importance which quickly becomes blurred in the face of the outstanding traits which characterize mobility in the whole of Europe in the world arena. Maintenance of pressure for emigration in the countries of the South, which is being extended further and further, and the appearance of potential emigration on the EU's eastern border have highlighted the importance of European migration data.

V. MIGRATION FLOWS BETWEEN EUROPEAN UNION COUNTRIES IN 1990

First of all, some comments are necessary about the global level of intra-Community mobility. In 1990, 600.000 people migrated between two EU countries this represents about one person in 500. This is a relatively small number, if you consider that among 600.000 migrations, more than a third are between adjacent countries and a significant proportion of these are of short distance and do not coincide with what we think of as international migration.

The first statistical approach consists of studying the margins of the matrix shown in **Table 5.1,** i.e. the total number of intra-European entries and departures by country. From these entries and departures from or to other EU member states, the migratory volume or total migration is calculated, in **Table 5.2** by adding the entries and departures, and the migratory balance or net migration is calculated by subtraction. By relating each of these figures to the size of population of each of the countries in question, you can determine the corresponding rate per 10.000 inhabitants.

The rate of total mobility shows clearly two effects:

1. This rate increases as the size of the country's population decreases. The relationship is easily explained because we know that the rate of mobility across zone boundaries decreases as and when the size of the zone increases and becomes nothing at planet level, when there is only one zone. Since the population of a country correlates broadly with its area, the least populated countries have the highest levels of international mobility.

2. The countries at the edges of the EU have the smallest values for mobility since there are also migratory exchanges with neighboring non-EU countries. This is particularly the case with Denmark, which has links with the other Scandinavian countries.

Bearing in mind these two facts, it can be established that the mobility of Germany, the United Kingdom, Belgium, Ireland and France appears higher than average whereas Spain, Italy and Portugal tend to have lower mobility.

Table 5.1 Estimation of the migration exchanges between the countries of the European Union

1990 Origin	B	DK	D	GR	SP	F	IRL	I	L	NL	P	UK	**Total**
Belgium		338	4476	730	1993	12589	153	2172	2344	5516	947	5227	**36 755**
Denmark	484		3109	240	687	1268	127	543	220	474	112	3731	**10 994**
F.R. Germany	4411	2066		15766	10575	15085	2655	34737	996	9787	3922	17287	**117 287**
Greece	1132	202	29227		53	2064	40	1707	151	924	35	1553	**37 118**
Spain	2463	736	8558	233		3477	564	2534	225	2413	1168	13367	**35 738**
France	12599	839	18208	2860	14160		1500	10817	3207	3084	1529	20334	**89 137**
Ireland	437	136	4115	314	176	3517		459	119	612	97	35000	**44 982**
Italy	2866	483	38873	1127	1585	11441	93		2482	1549	301	3185	**63 985**
Luxembourg	1560	109	1133	67	165	1852	65	562		200	2323	408	**8444**
Netherlands	7134	439	9752	557	2314	3136	469	1136	322		684	4517	**30 460**
Portugal	2636	109	8282	142	2443	11543	30	581	9632	921		736	**37 055**
United Kingdom	5083	2828	19452	508	8694	19701	19628	3791	961	6868	1306		**88 819**
Total	**40 805**	**8285**	**145 235**	**22 544**	**42 845**	**85 943**	**25 324**	**59 038**	**20 659**	**32 347**	**12 424**	**105 325**	**599 204**

Table 5.2 Mobility rate, volume and net migration for each member state of the EU in 1990

Origins	Migration Numbers			Population	
	Entries	Departures	Total	Net	(in '000s)
Belgium	40805	36755	77650	4050	9947
Denmark	8285	10994	19279	-2709	5135
F.R. Germany	145235	117287	262522	27948	62514
Greece	22544	37078	59622	-14534	10120
Spain	42845	35738	78583	7107	38924
France	85943	87637	173580	-1694	56652
Ireland	23754	44982	68736	-21228	3503
Italy	59038	63985	123023	-4947	57285
Luxembourg	20659	8444	29103	12215	388
Netherlands	32347	30460	62807	1887	14892
Portugal	12424	37025	49449	-24601	9871
United Kingdom	105325	88819	194144	16506	56548
Total	599204	599204		0	325779

Origin	Migration rates (per 10000)			
	In	Out	Total	Net
Belgium	41	37	78	4
Denmark	16	21	38	-5
F.R. Germany	23	19	42	4
Greece	22	37	59	-14
Spain	11	9	20	2
France	15	15	31	0
Ireland	68	128	196	-61
Italy	10	11	21	-1
Luxembourg	532	218	750	315
Netherlands	22	20	42	1
Portugal	13	38	50	-25
U. K.	19	16	34	3
Total	18	18	37	0

The comparison of immigration and emigration rates, from **Table 5.2**, shows more obvious differences. Luxembourg is undeniably the biggest beneficiary of intra-Community migratory exchanges. Other countries show positive balances, but they are of a relatively small net size. These countries are Belgium, Germany, the United Kingdom, Spain and the Netherlands. The other six countries show negative balances, very small in France, Italy and Denmark, greater for Greece, Portugal and Ireland. The position of these three countries in the bottom three places and Luxembourg, Germany and Belgium in the top three places clearly shows the centralizing character of migration among EU member states. Countries situated at the center of the Union attract more migrants than those on the outer margins. This trend is a general one and should be understood, reading between the lines, as a consequence of the central location of the governing institutions of the Community.

A first finding is easily explained: flows between neighboring and contiguous countries are, in the majority of cases, higher than the expected values. This is the case principally between Belgium, Luxembourg, the Netherlands and France. Despite the contiguity between Germany and the above four countries, the flows between these countries and Germany are comparatively less important.

Except for the effect of spatial contiguity, the exchanges between Portugal and Luxembourg clearly outweigh the others, as do those between the United Kingdom and Ireland. In the latter case, there is obviously spatial contiguity between the Republic of Ireland and Northern Ireland but not with Great Britain. But estimates indicate that most of the exchanges between the United Kingdom and the republic of Ireland take place with England. Exchanges between Greece and Germany, France and Portugal and Luxembourg and Italy are also greater that the expectation based on the standard of reference.

Among the flows which are somewhat weaker than expected are exchanges between Italy and Spain and between the United Kingdom and Italy.

VI. MIGRATION and POLICY IN THE EUROPEAN UNION

There is an ineluctable relationship between the existence of migration movements and the resulting policies which are adopted by the authorities of the area concerned towards encouraging these movements, or, more commonly, towards attempting to control or to reduce them.

The most important milestone of policy in recent time has been the **Treaty of Maastricht**. The fully ratified treaty on European Union, with associated protocols, finally came into force on 1 November 1993 and with it a range of agreed provisions which will affect migration behavior and migration policy in the European area for some time to come. The Treaty opens by stating categorically that *"every person holding the nationality of a member state shall be a citizen of the Union"*, and that among the rights and privileges which this incurs is the right that every such citizen is free to move and reside freely within the territory of the member states, with the Council of European Union empowered to take the necessary steps to allow this to happen[52]. In many ways, the Maastricht arrangements build upon the provisions allowing for free movement of labor which formed part of the original Treaty of Rome in 1957. This apparently clear situation has, however, been rendered rather more complex by the existence of the apparently somewhat parallel ***Schengen*** open frontier agreements, which have been entered into at various stages since 1985 by all the original 12 member states other than Denmark, Ireland and the United Kingdom.[53] **The Schengen Accords** finally came into being formally on 26 March 1995 for seven of the 15 EU member states (Belgium, France, Germany, Luxembourg, the Netherlands, Portugal and Spain),[54] even though Germany, the Benelux countries and Spain had been ready to implement Schengen in full on 1 February 1994. France had also intended to do so on that date but was delayed subject to final internal agreement on the effect of Schengen on the French constitution. Italy, Portugal and Greece,

[52] European Commission 1992a.
[53] Le Monde 1993.
[54] See Appendix 3: the Schengen Accords.

having previously assented to the Schengen Accord, had agreed that they would fully implement Schengen as soon as certain technical difficulties had been resolved. However, problems connected with the final commissioning of the **Schengen Information System** (SIS) -the main police intelligence network to accompany the Accords-[55] led to considerable delays to this target date. Belgium and the Netherlands had their SIS links in place and France was close to linking up. Germany and the other Schengen countries were not ready, leading to the final delayed implementation in March 1995[56]. Certain of the mechanisms by which "free movement of persons" will operate remain to be worked out in detail, taking account, for example, of the fact that a large proportion of migrants moving within the European area are not formal citizens of the EU and are therefor normally subject to different rules.

The situation was further seriously complicated on 29 June 1995, when France announced that it had decided to maintain its frontier controls with its Schengen neighbors for the present, quoting difficulties in controlling illegal immigration and the movement of drugs, especially at its Benelux borders. This was followed, on 8 July, with an agreement between France and Spain to reinforce their common border, on this occasion quoting terrorist activity in the Basque provinces. However, the other six Schengen states have decided to continue and in addition, the newer EU member states, Austria, Sweden and Finland are negotiating to join. Even Norway and Iceland, not member states of the EU, have opened talks about joining Schengen, in order to allow them to maintain their 40-year old passport union within the Nordic group of countries.

In accordance with the Maastricht Treaty's concept of ***subsidiarity***, the field of immigration form non-member states, together with the associated fields of justice and home affairs, remains what is known as an *inter-governmental pillar* of the Treaty, that is to say, the business of individual sovereign member governments working together, although the European Commission is to be associated with decision making and has some limited powers of initiative. The Commission has recently exercised these powers of initiative in producing a major Communication on

[55] See Appendix 3: The Schengen Convention, Title IV: The Schengen Information System.

the question of immigration and asylum.[57] In the areas of immigration, joint positions and joint action may be taken by the Council of Ministers, which can decide that certain measures may be adopted by a qualified majority, though only member states themselves will have powers of initiative in criminal matters. Immigration has effectively been singled out for a "twin-track" approach, with the Council of Ministers having to decide by unanimous vote on any proposal coming from the Commission concerning which third countries' citizens will require a visa for entry to the EU area, though qualified majority voting might apply after 1 January 1996. On the other hand, those areas identified as being of "common interest" to all member governments include the rules about crossing the Union's external borders and the conditions of movement and residence for immigrants. The Single European Act states that:

governments agree to cooperate, without prejudice to the powers of the Community, in particular as regards the entry, movement and residence of nationals of third countries, (and that) nothing in the provisions (of the Single European Act) shall affect the right of member states to take such measures as they consider necessary for the purpose of controlling immigration from third countries, and to combat crime, traffic in drugs and illicit trading in works of art and antiques.[58]

The question arises, of course, about how much of this proposed cooperation among member states should actually take place. It may be argued that there should be a growth in the willingness of states to cooperate, given the trans-frontier nature of the act of migrating. On the other hand, the concept of subsidiarity in this field implies that it must be proven in what way and to what degree a given migration situation will have an effect on the EU as a whole, thereby allowing for joint action. It will not be difficult for a member state which is so inclined to argue that a given migration problem is something which affects itself primarily and therefore to take, or seek to take, direct action. Examples of this kind of action are to be seen in the British refusal to join in the Schengen Accord, citing the maximization of a "unique island

[56] Le Monde 1993 and Cane 1994.
[57] Commission of the European Communities 1994).
[58] European Communities 1989.

situation" as a reason, or the French delay in ratifying Schengen, quoting difficulties in relation to the French constitution; although the French National Assembly had enthusiastically endorsed French adherence to the Schengen Accord in 1989, the question of the relationship which the Accord should have to the French constitution had not been fully resolved, mainly over the question of rights of asylum. Spanish immigration rules clearly distinguish between entry from other member states of the Eu and entry from elsewhere, especially from North Africa. On the other hand, a combined effort, such as the development of the Union-wide system of police information exchange (the so-called Europol), is a case where member states clearly feel it is worth working together as a whole.[59]

There may seem to be some degree of anomaly over an apparent overlap between the rules for movement agreed under the Maastricht Treaty and those under the Schengen Accord, as both are seeking to increase the freedom of movement between member states. Schengen probably has its origins in the Fontainebleau Council of the European Communities[60] in June 1984, which adopted the principle of abolishing police and customs formalities at the interior frontiers of the Community area. At the same time, the Single European Act of 1986, in Article 8A, also establishes: *"an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured"*.

There are, therefore, two fairly parallel policy initiatives aimed at increasing the freedom of movement between member states which might seem unnecessary. However, it is probably true to say that the advent of Schengen lay in the need felt by the original five signatories to press on with all possible speed towards the freeing of frontiers, a mood which was then reflected in the decisions agreed for the Single European Act. On the other hand, if both routes towards the same goal are implemented to the letter, a formally illegal internal EU boundary will arise, one which separates Denmark, Ireland and the United Kingdom from the rest. While the Schengen countries clearly have no intention of stopping inward movements from the other three members of the Union, they are committed to border controls which

[59] European Commission 1992a.

emulate those being retained by the other three. There also remain many anomalies and variations in the ways in which individual states are putting these rules into practice. For example, the Belgian Euroinfo[61] reported under "Libre circulation, oui mais..!" that for the Brussels-London return air journey, it was in Brussels airport that the strict controls were to be found, while in London the controls were described as non-existent, perhaps the opposite of what might be expected under Schengen! Such situations may therefore become, in due course, a matter for the European Court to disentangle.

So far as policy towards the question of migration is concerned therefore, it is possible to see two main parallel trends. Policy towards internal EU migration is becoming increasingly liberal in line with the provisions of the Maastricht and Schengen arrangements, though it is important to point out that the question of non-EU citizens moving between member states has not yet been fully resolved, and it has been estimated that these movers number at least eight million.[62] At the same time, policy towards non-EU citizens crossing the external boundaries of the Union becomes increasingly controlled, fuelled perhaps by the increasing severity of certain national policies towards immigrants which in turn may be being pushed by the recent rising levels of xenophobia, if not by extreme nationalism.

[60] See Preamble of Appendix 3: The Schengen Agreement
[61] No.173, March 1993.
[62] Brochmann 1992.

VII. EUROPEAN MIGRATION POLICY WITHIN THE SCHENGEN AGREEMENTS STRUCTURE

Shifting from one category of migrants to another requires an authorization from the receiving countries. In fact, the right to admit or not to admit migrants on to the territory of a given state is considered to be one of the main features of state sovereignty and therefore is a very sensitive issue. From the point of view of international migration policy, each state controls a number of "gates" which regulate the process of inflow and of settlement of foreigners and which protect against the inflow of unauthorized aliens. These "gates" are as follows:

1. entry visa requirements
2. border external controls
3. long-term work and residence permits
4. internal controls
5. permanent residence permits and regularization systems, and
6. naturalization (granting citizenship)

States can to a large extent control the circulation of foreigners by opening or closing some of these gates. Migration policies differ according to the origin of the migrants. Within the EU, three categories of aliens are recognized:

a) citizens of other EU countries,
b) citizens of the remaining EFTA countries (these two categories together from a category of citizens of the European Economic Area), and
c) citizens of third countries.

Each category has a different and unequal legal position when passing through the "gates".

1) Schengen Agreement and Immigration Policy

a) A View To Schengen

Schengen is a village in Luxembourg, where on 14 June 1985 the three Benelux countries, France and the Federal Republic of Germany signed an agreement "on the gradual abolition of controls at the common frontiers".

The 33 Articles of the Agreement are divided into short-term measures (abolition of systematic checks, easing of formalities, approximation of visa regulations, closer cooperation between border police, etc.) and long-term measures (strengthening the external frontiers, harmonization of value-added tax (VAT), excise duties, duty-free allowances, etc.).[63] The Agreement was followed by a "Convention on the Application of the Agreement", signed in Schengen on 19 June 1990. The Convention, composed of 142 articles, sets out in details exactly how the Agreement should be applied, how disputes should be resolved, and a series of provisions on complex and sensitive questions, such as extradition, the transmission of personal data, control of drugs and firearms, and asylum.

The Schengen Agreement and the Convention were widely regarded as models of how frontier controls could be eased or abolished as part of creating the Single Market (they do not apply to the overseas countries and territories of France and the Netherlands). At the same time they were criticized for their essentially intergovernmental character (the Community institutions were not involved in the negotiations) and by upholders of civil liberties for the fact that so many questions with a direct bearing on the rights of the individual had been agreed between governments without any parliamentary approval or consultation.

After many delays, the Schengen Convention entered into force in March 1995 in the original five signatory states, together with Portugal and Spain. Italy and Greece are due to follow suit, and Austria has also ratified the Convention. Denmark, Finland

[63] See Appendix 3: The Schengen Agreement

and Sweden are also interested in joining the Schengen group: the three countries are already linked to Iceland and Norway in a passport union.

b) A "Fortress Europe"

The core of the Schengen Agreement is the abolition of checks at the internal borders. The agreement should eventually lead to a "fortress Europe" with a uniformly high wall, common visa policies or rules for entry, and freedom of movement within the contracting parties' territories. But it was noted that the EU has had great difficulties to deal with the rights of non-EU nationals settled in one of the EU countries when these are willing to move within the EU countries' territories.

Among the Schengen contracting parties, cooperation in the area of asylum and immigration began between all the member states of the European Union and led to the drawing up of the Dublin and External Borders Conventions which contain similar provisions to those in the Schengen Implementation Agreement.

The priority of Community law and other form of decision-making at the level of Twelve has been expressed in various ways throughout the Implementing Convention. First, by restricting the definition of the term "alien", to persons who are not nationals of a EU member state, it was recognized that the regulation of the law on free movement of persons is a matter of Community law in so far as nationals of Eu member states are concerned and should not be affected by "Schengen Law".

2) Entry Visa Requirements

Citizens of EU member states need no visas to enter another EU country. Citizens of EFTA and most OECD countries enjoy the same privileged position. However, there are a number of non-EU countries' citizens who need to apply for visas even for transit. They need to be able to justify their reason for travel, and they

are normally supposed to present appropriate documents, such as a bank statement which proves that they are in possession of a required amount of money per day for their intended stay, and references obtained from the country of destination, insurance policies, return tickets and the like. Table 3 shows the conditions one needs to meet in order to enter, obtain asylum, reunite a family, get a temporary stay permit, regularize illegal stay/work and obtain citizenship in France, Italy, the Netherlands and Germany. We should note that, except in Italy, conditions for the issue of visas varied very much, depending upon the country of origin of the applicant.[64] It is quite common that, apart from the official restrictions, consular services are able to call upon a whole range of unofficial deterring methods, ranging from abrupt or even rude staff, or only accepting a limited number of application daily (e.g., the Italian Embassy in London will accept no more than 100 per day, and none by post)[65], up to the use of very long and protracted procedures. In some cases a high visa fee ,s collected before the application is even considered, and the fee is then not refundable in the case of refusal. In many cases, visa fees are set at a level which is reasonable in the country of destination but is excessive in comparison to the average income of the country of origin. However, the fee level is in many cases based on reciprocal arrangements and may not be a part of migration policy. Citizens of certain countries are subject to detailed scrutiny: for example, the Italian Embassy in London declares that it issues tourist visas on the same day but citizens of Afghanistan, Albania, Bulgaria, Cambodia, China, Chad, Cuba, Iran, Iraq, Jordan, Libya, Mongolia, Nigeria, Romania, Syria, Sri Lanka, USSR (sic), Vietnam, and Yemen are advised that they should apply well in advance. Another element of the policy of closed doors for selected nationals is to impose fines on the carrier which brings in a passenger without valid travel documents. The UK, for example, charges £2000 and France up to FF10.000.[66] This practice is intended to make it difficult for asylum seekers to arrive to the country of destination. In fact, it actually abuses the Convention on Asylum of 1951, as it transfers the decision of whether a person will have the chance to apply for asylum to the clerks of a commercial carrier company. The convention which will implement the Schengen Accord specifies that commercial carriers are

[64] Costa-Lascoux, 1990
[65] Italian Embassy 1993.
[66] SOPEMI 1992.

obliged to check the validity of travel documents of aliens, and in the case of a subsequent refusal to admit an alien to a "Schengen" country, it is the commercial carrier's responsibility to take him/her back.

Within the EU, admission policies differ from one member country to another. For example, all EU countries require visas from citizens of all states of the CIS, Romania and Bulgaria, but citizens of Visehrad countries are much less restricted: Polish subjects, who are the most limited in their freedom to travel, need visas only when traveling to the peripheries of the EU-Portugal, Greece and Ireland. The arrangements are under close scrutiny of the governments involved and change very rapidly.

There is, however, a recognition of the need to develop a common visa policy. At the moment, one of the most important results of these deliberations is a list of countries whose citizens will need visas in order to enter any of the EU member states. It is an important measure as it is intended to prevent "shopping" for visas from the most "liberal" country of the 12. At the same time, to some extent it may of course protect the most liberal countries against an excessive inflow of aliens. It is easy to agree the idea of a common list of countries whose citizens will be allowed into EU without visas. Reaching an agreement on the contents of the list will not be as simple. The United Kingdom, for example, wishes to grant visa-free access for short visits to the citizens of Commonwealth countries, a policy which is fiercely opposed by other EU member countries. France will also have to loosen her traditional links with Maghreb countries.

A rapid reduction in the number of countries whose citizens were required to apply for visas in order to be admitted to EU countries occurred in 1990 and 1991, mainly because of the abolition of visa requirements for Central Europeans. From 1992, however, more restrictions have been introduced, partly because some of the arrangements with Romania and Bulgaria were canceled and partly because new restrictions have been placed upon citizens of selected Third World countries.

It should be noted that governments of Western European countries were reluctant to open borders for citizens of Central European countries and the former USSR. The fear was that such an opening might result in an overflow in Western Europe of unwanted aliens from the East. This policy was in sharp contrast with the Western democracies' criticism of the policies of "closed doors" implemented by communist governments until 1989 and had to be abolished rather quickly. Consequently, 1990 and 1991 witnessed the reluctant opening of Western Europe, in particular for Czechoslovaks and Hungarians. Poland, despite its leading role in the process of dismantling communism, was treated with more hesitation, both due to the size of its population and to sizeable legal and illegal emigration in previous decades. Citizens of the Commonwealth of Independent States could not and still cannot travel without visas, and their applications are subject to detailed scrutiny. Lifting restrictions on the admission, without visa, of citizens of Central Europe countries to Western European countries and vice versa was in most cases accompanied by bilateral agreements on readmission of those who were abusing the system. Two or three years ago, these agreements were deemed to be necessary security measures. They are also important for the future as precedents and extremely useful experiences in the negotiation of the membership of Central European states into the EU.

A much more consistent policy has been elaborated by the Schengen "group" of countries. They agree that all EU citizens will not be considered to be aliens. They will therefore enjoy a freedom of movement restricted solely by EU legislation. The members of the group had difficulty in establishing a full list of third (non-EU) countries whose citizens do not need to apply for visas. The negotiations may be less difficult than in the case of parallel negotiations run by the EU as the number of members of the Schengen group is smaller, and the United Kingdom, proud of her "opt-out" and particularly restrictive migration policies, is not a part of the Schengen process. It should be noted that, in the case of persons form countries whose citizens require a visa in order to be admitted on to the territory of one Schengen state, agreement has been reached to issue a visa which will then be valid in all Schengen member countries. This is a very realistic solution and is similar to the one adopted by the Benelux countries a long time ago. Such a visa would be valid for a period of up

to three months, and would allow the alien concerned to circulate freely within each of the Schengen states.

The problem of aliens residing in one of the signatory countries based on a residence permit has been resolved in a similar way. These are allowed to circulate freely within other Schengen countries, provided that the total length of their residence does not exceed three months. They also have to report their presence to relevant authorities within three days of arrival.[67]

There is little doubt that the Schengen "group" is setting standards for European migration policy. It is likely it will be followed by the other EU member countries, despite the fact that diverse economic and historical links, in particular former colonial ties, make the establishment of common policy quite difficult for some of these countries to accept.

3) External Border Control

In 1960, the Benelux countries abolished border controls at their national boundaries. It then took more than 30 years to extend this practice into other countries. Preparations began some decades ago and the first formal documents were signed in 1985. The countries concerned then proceeded further in two streams - within the Schengen Group and within the EU.

The negotiation of the Schengen Accord has been conducted without the preparation of non-governmental or international organizations, and this has been widely criticized. The original agreement did not entirely abolish the border check but relaxed it. It also had set the long term target of abolishing the control altogether by

[67] See Appendix 3: The Schengen Convention.

1990. This deadline was, of course, not met. However, the negotiations continued and a **Convention Implementing the Schengen Agreement** was eventually signed.[68]

The abolition of border checks clearly reduced the control of states over their territory and puts criminals of various categories in a more favorable situation. The Convention adopted a number of measures to avoid uncontrolled illegal migration, the international trade in arms or drugs trafficking, and at the same time to improve communication, the flow of information, judicial cooperation and to introduce more efficient transborder policing. One of these measures is the creation of the **Schengen Information System** (SIS)[69], an on-line data base holding information on persons and goods wanted for one reason or another by the police of member countries. This data base also holds a blacklist of all those who are not welcome on the territory of the Schengen countries. This development is particularly worrying because it will mean that all aliens, as foreigners, will not be protected by local laws on privacy of data; they will be unable to check the contents of information stored in the computers and will therefore be unable to request correction of this information if it is incorrect. The EU is going to create a similar system, the so called European Information System, which will hold some 800.000-1.000.000 entries on unwanted foreigners.

The EU, and Western Europe in general, faces a growing number of illegal immigrants who are trying to cross their borders, usually with the mirage of lucrative employment in mind. It seems at the moments that there are two main borders under siege: The Spanish Mediterranean coast, with a new generation of boat people coming from Africa, and the eastern border of Western Europe, with Romanians, Bulgarians and citizens of the former USSR trying to get into Germany and Austria especially. In order to give an idea of the volume of these migrations, it is relevant to acknowledge that at present, some 300.000 illegal African immigrants are estimated to be working in Spain.

[68] See Appendix 3: The Schengen Convention.
[69] See Appendix 3, Title IV: The Schengen Information System

4) Long Term Residence Permits

Citizens of the EU do not need work permits to get a job in another member state. The freedom to move within the Union means that they may settle and take paid employment anywhere within the member states. However, there are some limitations. Initially, this freedom has been given only in relation to those who were taking employment, but no other category other than employees has so far been mentioned.[70] EC legislation extended this right to the employees' families and to those who reached retirement age in a country different from their own. They are allowed to stay in the country in which they have been recently employed. The right to refuse admission was restricted only to cases where public policy, security or health was threatened in the receiving country.

Meanwhile, citizens of third countries are left behind more or less closed "gates". These citizens are usually required to apply for entry visas; they have relatively slimmer chances of getting employment and have many more difficulties in regularizing their stay and eventually of naturalization. As a result, a third country national residing in a EU member state has neither the right to resettle in another member country, nor even the right to travel freely within the Union. The abolition of internal boundaries will make the implementation of the limitations to freedom of traveling rather more difficult to impose, and during the Maastricht Summit Conference a proposal was put forward to change this legislation and to allow third party nationals residing temporarily within one of the country of the Union to travel freely (but not settle or take employment) within the whole of the Union. This would be in line with the Schengen Agreements.

Association agreements made between the EC and other countries usually varied in the way they made concessions regarding the freedom of movement of people. In this respect, agreements signed in the past with Turkey, Yugoslavia

[70] EEC Treaty, Art.48

(suspended since 1991), Algeria, Morocco and Tunisia mentioned that there would be no discrimination with regard to employment, social security and social benefits for workers from the countries mentioned above. These agreements were more liberal than those signed more recently with the Czech Republic, Slovakia, Hungary and Poland, where no provision for protection or non-discrimination of workers has been agreed at all. A similar solution has been adopted in recently signed agreements with Romania and Bulgaria. None of this agreements allows for the freedom of movement of people, and all the more specific regulations have been left for bilateral negotiations to resolve.

Temporary work and residence permits are normally issued for a specific period of time, in the first instance usually for one year, with the possibility of renewal (France, Germany, the Netherlands and Italy).(Table 4) The Main conditions for obtaining a residence permit is stable employment (in Italy at least 24 hours per week). As the length of residence increases, the assurances given to a migrant tend to grow. For example, France offers privileged residence permits for 10 years for those who have legally spent three years in France or for spouses and families of French citizens. Special arrangements have been made for Algerian citizens. In Germany, after 5 years of uninterrupted residence, an alien may apply for an unlimited residence permit. After another three years (eight altogether) one may acquire the assured residence permit, on the condition that he/she has satisfactory command of German, has adequate housing, sends children to school and adheres to German laws. In the Netherlands, unlimited residence permits may be issued to those who have been there for at least five years, who have had regular employment over this period and who have the prospect of employment for at least one year with a salary at least equal to the minimum salary for a 23-year old and who have adequate housing conditions. In all cases, the protection of national labor markets is the focus of the implementation of such policies, and with the growing number of migrants, the protracted recession and mounting political pressure, these policies may easily become much more restrictive.

5) Internal Controls

Probably the most important role of internal controls is to protect the internal labor market against the illegal employment of a foreign labor-force. Various countries operate their own policies and little or no international cooperation may be expected in this field. In Germany, in political turmoil because of the increasing influence of the extreme right, a stringent system has been introduced which requires all workers to possess a social security identification card, to be produced on request by the appropriate authorities, as well as in Social Security Offices. Employers hiring foreign labor have to report this to social security officials. These measures are supported by extensive policing, sometimes accompanied by violation of international agreements and basic civil rights.[71]

It is usual that employers hiring illegal foreign labor are subject to forms of liability. In the Netherlands, employers have to cover the cost of any expulsion; in France they have to return all taxes and fees as well as paying fines. If such employers are unable to cover their liabilities, they may even face forfeiture of their assets.[72] It is quite characteristic that legislation tightening control in these fields has mainly been passed in these countries relatively recently, in 1991 and 1992.

In many countries, the police arrest and deport illegal migrants; for example the UK expelled 4300 migrants in 1992, of whom more than half were illegal. However, the problem of what to do with illegal immigrants frequently remains unresolved. Large-scale deportations are expensive and are often criticized, as has happened with the forced deportation of illegal Romanian migrants from Germany.

[71] Markiewicz, 1992b.
[72] Hopkinson 1991.

Table 7.1 Conditions for the issuing of work permits and residence permits for non-EU citizens residing in selected EU member states

Member State	Initial conditions and period for which work permit or residence permit is issued	Conditions for the extension of the work permit or residence permit	Conditions for the issuing of permanent work permit or residence permit
France	Initially for one year. Offer of employment confirmed by the Office of Immigration of proof of own resources required.	Extension granted annually.	Work permit valid for 10 years may be issued after three years of residence.
Italy	At the discretion of local authorities (offer of employment of at least 24 hours per week required).	Extension granted annually.	
Germany	Residence and work permits valid for one year.	After the first year, extension of the residence permit granted twice for two years. Extension of work permit possible for two years.	After five years, unlimited residence permit. After eight years of residence, "special status" on condition of economic self-support, knowledge of German language, children sent to schools, adequate housing and observation of German legislation. Work permit either for five years or unlimited for those who have acquired "special status".
Netherlands	Initially for one year.	Extension granted annually.	Unlimited residence permit after five years for those in regular employment, with prospects for further employment for at least another year, with salary at the minimum level for a 23-year old and adequate housing.
United Kingdom	At the discretion of Department of Employment on the condition that the applicant has been offered an employment.	Extension granted at the discretion of Department of Employment on the expiry of previous work permit.	Permanent residence and work permits after four years of uninterrupted employment.

VIII. THE CONTRADICTION OF SCHENGEN AGREEMENTS TO THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

The arrangements made between the European Union member states and third countries bring the possibility to build up some new parallel legal systems between each Contracting Party. The rules and judicial decisions took within the framework of these arrangements and agreements are of crucial effect on the judicial systems of the countries which take part in the said agreements. The Schengen Convention is also one of these agreements which legally bind down the Contracting Parties.

The Executive Center of the Schengen Group is the Secretary of the Benelux Economic Union. The Commission of the European Union is to be present as supervisor within the group.

The relationship between the Schengen countries and those which are not members of the European Union has a very particular structure. This relationship, called "Bilateral Reacceptance Agreement" brings, in practice, the result of sending the refugees or the migrants coming from third countries back to their country of origin.

The Schengen Executive Committee, by a decision of 22 December 1994, has declared the "irreversible" coming into force of the Schengen Convention by 26 March 1995. They also have declared that a period of three months would be available for those who cannot fulfill the requirements by that time.

1) Schengen: The Convention of Barriers

The Schengen Convention has a restrictive character which is quite overwhelmed by a matter of security. A person who is not the citizen of a European Union member state, a national of third country will have to face many barriers constituted both by the legal systems of all the Schengen countries and by every rule of the judicial systems of each member state.

The law of aliens is, as everybody knows, composed of three main parts: The right of entry, the right of residence and the right of establishment. The Schengen Convention gives the biggest importance to the right of entry. Apart from this, the right of establishment and the right of residence will be stated according to the national laws. Since the concept of "entry into the Schengen territory" will be taken into account while crossing the border of a Schengen country, the legal system which will apply to those who cross the border will be the rule of "entering the national territory". With this respect, the Schengen Convention is in fact, mostly restrictive than encouraging the free movement of persons.

a) The Schengen Convention and Human Rights

Article 25 of the Schengen Convention[73] related to the Schengen Information System which is found upon "declaration of figures and descriptions in order to prevent the entry of a person into Schengen territories", and especially Article 96 which regulates the entry and the circulation of aliens by very restrictive and control aimed measures show the intention of the Contracting Parties to limit the free movement of third countries' nationals within their frontiers. According to Article 96, " decisions may be based on a threat to public order or national security and safety which the presence of an alien in national territory may pose", which means that a person, whose entry in a Schengen country is found objectionable or inconvenient in the respect of public safety or national security, can be subject to the "declaration of figures and descriptions" by the Schengen Information System and as a result, the said

[73] See Appendix 3: the Schengen Convention

person can no longer enter the territory of any Schengen country because of being in the blacklist of the Schengen Information System. The person who is unable to claim the correction of this decision, nor to be judged by the international rules of human rights law, will be officially set out from these territories.

According to Article 25, "Where a Contracting Party considers issuing a residence permit to an alien who has been reported as a person not to be permitted entry it shall first consult the reporting Contracting Party and shall take account of its interests...". As we see here, the interest of another Contracting Party prevails in a case where the freedom of travel of a third country national is the question. This situation is quite contradictory to the fundamental freedoms stated in the universal declaration of human rights.

Taking into account the relationship between some of the countries which signed the Convention and the third countries having intense connections and relations with the European Union member states, and taking again into account the foreign policy concept of the Contracting Parties towards third states and especially their "national security" concept which is in force for the latter, one can obviously see that the rules of the Schengen Convention have many disadvantages for Turkish nationals.

Beside all these, the Schengen Convention does not bring privileges, nor new rights regarding free movement of persons to the nationals of third countries residing in one of the European Union member states. Although Article 21 of the Convention states that "An alien holding a residence permit issued by one of the Contracting Parties may, under cover of that permit and of a travel document, both documents still being valid, move freely for up to three months within the territories of the other Contracting Parties..."[74], the said travel depends mainly on the willingness of that Contracting Party which can easily raise preconditions in order to prevent the travel. The conditions which are to be fulfilled regarding the travel are set by the Article 5 paragraph (a), (c) and (e) which state the must of "a valid document or documents

[74] Ibid.

permitting (them) to cross border, as determined by the Executive Committee" "...documents substantiating the purpose and the conditions of the planned visit and (has) sufficient means of support both for the period of planned visit and to return to their country of origin or to travel in transit to a Third State, into which their admission is guaranteed" and the said person must be "...not considered to be a threat to public policy, national security or the international relations of any of the Contracting Parties".

b) Barriers to the Right of Travel

The right to travel without a visa stated in the Schengen Convention brings some obstacles against the very natural right of travel. The nationals of Third Countries will have no right to work, to found a business, to look for a job, nor the right to have educational training.

Although the right to travel without a visa within the Schengen territories brings some prerogatives regarding some of the administrative issues to Turkish nationals and Maghrebians, Article 22 of the Convention puts forward some other obligations: "An alien who has legally entered the territory of one of the Contracting Parties shall be obliged to declare himself ... to the competent authorities of the Contracting Party the territory of which he enters", "An alien resident within the territory of one of the Contracting Parties who enters the territory of another Contracting Party shall be subject to the obligation to declare himself (referred to in paragraph 1)".[75]

To give a summary of the situation, we can say that :

- The borders and border checks for Turkish nationals will still be effected and in force after the Schengen Convention.

[75] Ibid.

- Taking into account the intensification of the internal controls with respect to an interstate aspect and within the European Union, even the travels with familial reasons or with an aim of tourism (whether there is a residence permit or not) are and will be much more difficult for Turkish nationals.

2) The Schengen Convention and the European Union

With the entry into force of the Maastricht Treaty "the European citizenship" has become valid and the restriction of the rights of a citizen of a European Union member state residing in another member state, which was called "inter-migration" has principally been abolished. Thus, the European Union, where "the free movement of persons" had at least effectiveness, could be considered as having taken a step forward regarding the above mentioned issue.

At this stage, the attitude towards the nationals of a Third state, who have unlimited and permanent residence permits but do not have the same rights or the right of free movement that the European Union citizens possess, appears as a discriminative application of growing importance. For example, whereas a Turkish national who has been residing in Germany for decades cannot even work at a certain job situated at the next corner of where he has been living, cannot look for another job, nor travel for educational training without facing some restrictions and very strict control mechanisms, a Portuguese who lives miles away from that same region and who sees Germany for the first time in his life can easily get access to the same area with broad possibilities of using maximum rights to free movement that he has been accorded. This aspect of the situation gives both the very impression of a "patrician" Europe, and the foundation of a Europe of 10 millions slaves. The problem is how long this dual Europe can go on while there are so many Turkish migrants who have been living there for more than 30 years.

3) The Schengen Convention and the Treaty of Ankara (Association Agreements)

The Treaty of Ankara (the Association Agreements) which was signed in 1963 between the European Economic Community and Turkey and came into force in 1964, had set forth rules towards providing the gradual attribution of the right to free movement within the European Community for the workers of Turkish nationality. The European Court of Justice has stated that for all of the issues covered by Article 238 of the Treaty of Rome, the responsibilities towards Third countries would be fulfilled by the European Community. For this reason, for the issues related to the Treaty of Ankara, the responsibility belongs to the European Court of Justice. As a result, and especially after that the Customs Union agreement has entered into force on the 1st of January 1996, the right to free movement of persons should have been accorded not only to the Turkish nationals residing in one of the European Union member states, but also to those residing in the Turkish Republic territories. The European Court of Justice is the main authority in both social issues and the right to residence permit.

As the European Court of Justice states, the treaties with social quality stay theoretical if they do not bring to the European Union the obligation to issue residence permit along with the work permit. In this respect, the Treaty of Ankara (the Association Agreement) should have put into force the rights and obligations accorded by each of the European countries at least for the established Turkish nationals who have permanent work permit, by taking into account the wish of the member states (except the United Kingdom) to realize a Single Market set forth by the Maastricht Treaty, as well. While the Schengen Convention does not give importance to these points, it also brings a perspective to draw back the rights and the position of Turkish nationals established and residing in the Schengen territories for more than 30 years. In this respect, the Schengen Convention does not take into account the agreements signed between Turkey and the European Union.

The Contracting Parties of the Schengen Convention are all members of the European Union. The aliens who are established in these countries are mostly (70%) of origin of countries which signed association or cooperation agreements with the European Union. The closing of the doors of the Schengen countries while moving freely within their frontier raises serious doubts about the situation of these aliens. Those who are not European Union nationals, but who have been living there for decades and contributed largely to the increase of today's wealth of the European states and thus helped them to get in better economic and social conditions especially after the Second World War, are now in a very dangerous position because the European Union countries are going very fast towards the increase of the discrimination between those of their nationality and those who are not. And the Schengen Convention is an epitome of this situation.

4) The Contradiction of Schengen to the Common Law

a) The accordance of the Schengen Convention to the Common Law is to be questioned because the negotiations leading to the Convention have been made concealed and third parties concerned under the Convention, the parliaments of the Contracting Parties, the European Union institutions and international institutions for human rights have been put apart while decision making. They have not been consulted during the negotiations nor kept informed of what has been going on. As a mater of fact, the French League of Human Rights had sent a letter to their deputies, asking not to ratify the Schengen Convention and saying: "The Schengen Convention has the intention to present Europe as a castle surrounded by the aliens (the enemies) which is to be defended in every aspect".[76]

b) As the Schengen Convention has an interstate status but has not been taken up inside the European Union, the entry into Schengen territories of a third country national will have to be subject to public laws of different countries which are in

[76] Le Monde, 5/5/91.

contradiction to each other. Thus the concept of "public order" or "national security" will have to depend to the sum of various indeterminate rules.

Besides, the differences and the variations between the concepts of "national security" of the Schengen countries are of crucial importance. For example, while an Algerian organization, called "Islamic Front of Salvation" (Front Islamique du Salut) is being investigated in France as a clandestine organization involved in some criminal events, the same organization has its legal center in Germany and thus it continues its activity legally in German territories.

c) The Contracting Parties have not built up any legal institution to interpret the procedures of the Convention or to be consulted in any case of objection to a decision. Thus, the security of law has been put into suspicion.

d) The Executive Committee put forward in the Convention has been set out of the democratic control mechanisms:
   - It is not subject to the controls of the parliaments of the Contracting Parties.
   - The obligations arisen from the Universal Declaration of Human Rights have not been subject to a protection.

e) The Convention has not set out a right to objection or to defend in a case of the refuse of the entry of an alien or in the case of a report by the Schengen Information System. This situation is contradictory to the principles of common law. Besides, the Article 10 of the Universal Declaration of Human Rights states that "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".[77]

f) The Schengen Information System has not been carrying the obligatory guarantees regarding the protection of the private life.

[77] See Appendix 1: The Universal Declaration of Human Rights.

g) The unclear and indeterminate character of the Convention might give source to some contradictions between national and associate arrangements of the Contracting Parties.

CONCLUSION

Migration has always played an important part in the economic, political and social development of European society, and it is a process which, on balance, has proved enriching. For countries such as France, the United Kingdom and what was West Germany, the immigration of foreign workers form the 1950s to 1970s constituted a key element in the postwar economic boom, and the migrants contributed in many important and positive ways to the cultural and social life of the countries in which they settled. Indeed, one may reflect that, if international migration could not prove a positive economic, social and political force, the Single European Act would have been unlikely to call for the free movement of persons within the European Community after January 1993. This is certainly true from an economic point of view: immigrants have been found to cause an expansion of markets as consumers, to encourage investment, and to contribute to technological progress and entrepreneurial activity. Even if migration into Western Europe is to escalate in the years to come, it is not at all clear that the effects will be overwhelmingly damaging for receiving states -particularly given that movements of "economic" migrants will be affected not only by growing "push" factors in regions of origin, but also by "pull" or demand, in receiving countries.

This said, there is also a question of xenophobia within Europe, especially in the course of recent years. Unfortunately, this has taken a very concrete dimension during the second half of the nineties. The xenophobic events especially in Germany and others all over Europe, show us a very deep problem towards aliens which has to be taken into consideration very seriously. And now, especially with the Schengen Convention, this approach is gaining an international aspect. But the saddest side of this is that some of the European institutions consider the Convention as the rehearsal, the first step towards a Europe where the free movement of goods will be achieved. This means that, according to the European Union member states, the success ratio of the Schengen Convention will be that of the principle of free movement of goods. In this respect, it is possible to say that the Schengen Convention

is somehow supported by the European Union member states. Such a support can be qualified as the stones of a way which leads Europe towards an idea of "Pan-Europe". This point of the situation can be considered as the mark of a very dangerous future where xenophobia will threaten the European countries, and where the aliens will have no guarantee of life nor social security.

Whereas Article 13 of the Universal Declaration of Human Rights states that "Everyone has the right to freedom of movement and residence within the borders of each State" the Schengen Convention, with its restrictive role, has a limiting character regarding the rights of the aliens accorded with the above mentioned Declaration and signed by each of the European countries as a member of the United Nations. In this respect, the Schengen Convention can be considered as the epitome of a contradiction between itself and the international law agreed by all of the European states.

Moreover, the Schengen Convention has caused some contradiction between the Contracting Parties, as well. For example, the conflict which occurred last year between France and the Netherlands regarding the free movement of persons, is still remembered. France, which refuses to abolish the border controls for people coming from the Netherlands where taking soft drugs is legal, has been in serious conflict with the latter, and the negotiations for a "Drug Summit" which were supposed to take place in March 1996 among five states, had to be delayed because of the interminable opposition between these states.

Besides, the problem of "guerrilla" between Belgium and Spain has taken much time to be solved last year. When the persons who are accepted as "illegal militants" within the territory of a Schengen state are free to move legally within the territory of another, this puts out a question mark regarding the will of judicial cooperation and harmonization of the European Union member states.

In spite of the contradictions and conflicts among themselves, the easy taken decisions of the European Union member states towards the nationals of third countries by signing the Schengen Convention, might be the foresight of an intention

to ignore human rights and the xenophobia which is being formed within Europe. The European Union member states which are on the way to realize the idea of a "Pan-Europe" are revealing, by the entry into force of the Schengen Convention which is contradictory to the Universal Declaration of Human Rights and which does not possess a judicial statute, that they ignore the agreements they have made with the Third countries.

Under these conditions, talking about the right to free movement and residence of persons remains theoretical and only a written "good will" on paper. Taking into consideration the will of the European Union member states and some other countries which are not member states to join this restrictive Convention, the view which is emerging does not seem too encouraging and pleasant regarding the free movement of persons, the human rights and the so called European democracies.

APPENDIX 1

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the

equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas the Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right of equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of

unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born ,nor out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

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APPENDIX 2

CHRONOLOGICAL CHART FROM 1985-1995 SHOWING IMMIGRATION AND ASYLUM DEVELOPMENTS IN THE EUROPEAN UNION AND SCHENGEN GROUP

European Union

1985 June White Paper "Program 1992", to establish internal market abolishing internal borders

1986 Dec Establishment of the Ad-Hoc Group of Immigration by Ministers responsible for immigration in London to work out compensatory measures

1987 Feb Single European Act amending the EC Treaty Art. 8A for Freedom of Movement of Goods, Services, Capital and Persons

1988 Dec Establishment of Group of Coordinators Free Circulation of Persons Rhodes

1989 June Rapport de Palma on measures to establish free circulation of persons

1990 June Dublin Convention determining the State responsibility for examining applications for asylum lodged in one of the Member States of the EC signed by 11 followed 1 year later by Denmark

1991 July Draft Ext. Border Convention, but still unsigned. 1991 Dec. Working Program WGI 930, called "Maastricht Program". 1991 Dec. treaty on European Union, 3 Pillars:

1) EC competence (with Art.100C: Visa Policy)

2) Foreign and Security Policy

3) Cooperation on Justice and Home Affairs with Art. K(1-9) and

Asylum declaration in the Annex of the Treaty

1992 June Adoption on Decision on Clearing House by Ministers responsible for Immigration Center of Information Asylum (CIREA)

1992 Dec London Resolutions: 1) Manifestly unfounded;
2) Third Country;
3) Safe Country of Origin;
4) CIREA;
5) Yugoslavia

1992 Dec Declaration on external aspects of migration of the European Council

1993 June Resolutions: 1) Yugoslavia, 2) Family Reunion

1993 Nov Entry into force of Treaty on European Union Establishment of K.4 Committee (growing out of previous group coordinators; Free Circulation of Persons) and 3 steering groups on:
1) Immigration/Asylum
2) Police Cooperation
3) Judicial Cooperation

1993 Nov Council of Justice and Internal Affairs (JAI), Brussels (First Meeting)

1994 Jan Commission Proposal for the External Borders Convention
Commission Proposal for a regulation determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States

1994 Feb Commission Communication to the Council and the Parliament on Immigration and Asylum

1994 June Council of Justice and Internal Affairs (JAI), Luxembourg (Second Meeting)

Schengen Group

1985 June Schengen Agreement for the gradual abolition of internal borders, signed by France, Germany and the Benelux countries

1986	Elaboration of Implementation Agreement
1987	Elaboration of Implementation Agreement
1988	Elaboration of Implementation Agreement
1989 Dec	Signature of Implementation Agreement was foreseen due to, opening of German borders. Germany requested postponement.
1990 June	Signature of Implementation Agreement containing 142 Articles, the first 30 Articles relating to the Movement of Persons
1990 Dec	Adhesion Italy. 1991 March, Agreement between the Schengen Countries and the Republic of Poland
1991 June	Adhesion Spain, Portugal
1992 Sep	Decision of Central Group that harmonization of asylum to be undertaken by the Twelve, not at Schengen level
1992 Nov	Adhesion Greece
1993 Jan	Establishment of Meetings at Central Group level UNHCR 1 semestrial at presidency level
1993 Sep	Implementation of Agreement (Enter into force after deposit of last ratification instrument by the five founding states)
1993 Oct	First Schengen Executive Committee Meeting. Nov, Second Schengen Executive Committee Meeting
1993 Dec	Third Schengen Executive Committee Meeting
1994 Feb	Entry into force of the Schengen Agreement postpones "sine die" due to not yet operational SIS
1994 Apr	Fourth Schengen Executive Committee Meeting. All political and legal conditions for the coming into force of the Schengen Convention are fulfilled. SIS not yet operational.
1994 June	Fifth Schengen Executive Committee Meeting.
1994 Oct	Planned application of the Schengen Agreement among the five original founding members.

APPENDIX 3

THE SCHENGEN AGREEMENT

of 14 June 1985

Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of controls at the common frontiers. (Extracts)

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The Governments of the Kingdom of Belgium, the federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, hereinafter referred to as the Parties,

Aware that the increasingly closer union of the peoples of the Member States of the European Communities should be manifested through freedom to cross internal frontiers for all nationals of the Member States and in the free movement of goods and services,

Anxious to affirm the solidarity between their peoples by removing the obstacles to free movement at the common frontiers between the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic,

Considering the progress already achieved within the European Communities with a view to ensuring the free movement of persons, goods and services,

Prompted by the will to succeed in abolishing controls at the common frontiers in the movement of nationals of the Member States of the European Communities and to facilitate the movement of goods and services,

Considering that application of this Agreement may require legislative measures which will have to be submitted to the national Parliaments in accordance with the constitutions of the signatory States,

Having regard to the Declaration of the Fontainebleu European Council of 25 and 26 June 1984 on the abolition at the internal frontiers of police and customs formalities in the movement of persons and goods,

Having regard to the Agreement concluded at Saarbrücken on 13 July 1984 between the Federal Republic of Germany and the French republic,

Having regard to the conclusions adopted on 31 May 1984 following the meeting at Neustadt / Aisch of the Ministers for Transport of the Benelux States and the Federal Republic of Germany,

Having regard to the memorandum of the Governments of the Benelux Economic Union of 12 December 1984 forwarded to the Governments of the Federal Republic of Germany and the French Republic,

Have agreed as follows:

Title I

Measures applicable in the short term

Article 1

As soon as this Agreement enters into force and until all controls are abolished completely, the formalities at the common frontiers between the States of the Benelux Economic Union, the Federal republic of Germany and the French republic shall be completed, for the nationals of the Member States of the European Communities, in accordance with the conditions laid down below.

Article 2

In regard to the movement of persons, from 15 June 1985 the police and customs authorities shall as a general rule carry out a simple visual check on private vehicles crossing the common frontier at a reduced speed, without requiring such vehicles to stop.

However, they may carry out more thorough controls by means of spot checks. These shall be carried out where possible, in special bays in such a way that the movement of other vehicles crossing the frontier is not hampered.

Article 3

To facilitate the visual check, the nationals of the Member States of the European Communities presenting themselves at the common frontier in a motor car may affix to the windscreen of the vehicle a green disc measuring at least 8 centimeters in diameter. This disc shall indicate that they have complied with the rules of the

frontier police, are carrying only goods permitted under the duty-free arrangements and have complied with exchange regulations.

Article 4

The Parties shall endeavour to reduce to a minimum the time spent at the common frontiers on account of the checks on the carriage of persons by road for hire or reward.

The Parties shall seek solutions enabling them to forego, by 1 January 1986, the systematic control at the common frontiers of the passenger waybill and licences for the carriage of persons by road for hire or reward.

Article 5

By 1 January 1986 common control points shall be set up in the adjacent national control offices in so far as that is not already circumstances permit. Consideration shall subsequently be given to the possible introduction of common control points at other frontier posts in the light of local conditions.

Article 6

Without prejudice to the application of more favourable arrangements between the Parties, the latter shall take the measures required to facilitate the movement of nationals of the Member States of the European Communities resident in the municipalities located in the proximity of the common frontiers with a view to allowing them to cross such frontiers outside the approved crossing points and outside the opening times of the control points.

The persons concerned may benefit from these advantages provided that they transport only goods permitted under the duty-free arrangements and comply with exchange regulations.

Article 7

The parties shall endeavour to approximate as soon as possible their visa policies in order to avoid any adverse consequences that may result from the easing of controls at the common frontiers in the field of immigration and security. They shall take, if possible by 1 January 1986, the steps necessary with a view, in applying their procedures for the issue of visas and admission to their territory, to taking into account the need to assure the protection of the entire territory of the five States against illegal immigrants and activities which could jeopardize security.

Article 8

With a view to easing the controls at the common frontiers and in the light of the significant differences in the laws of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, the Parties shall undertake to combat vigorously on their territories illicit drug trafficking and to coordinate effectively their action in this area.

Article 9

The Parties shall reinforce the cooperation between their customs and police authorities, notably in fighting crime, particularly illicit traffic in drugs and arms, the unauthorized entry and residence of persons and customs and tax fraud and smuggling. To that end and in accordance with their national laws, the Parties shall endeavour to improve the exchange of information and to reinforce it where

information likely to be of interest to the other Parties in combating crime is concerned.

The Parties shall reinforce in the context of their national laws mutual assistance in respect of irregular capital movements.

Article 10

With a view to assuring the cooperation provided for in Articles 6, 7, 8 and 9, meetings between the competent authorities of the Parties shall be held at regular intervals.

Title II

Measures applicable in the long term

Article 17

In regard to the movement of persons, the Parties shall endeavour to abolish the controls at the common frontiers and transfer them to their external frontiers. To that end, they shall endeavour to harmonize in advance, where necessary, the laws and administrative provisions concerning the prohibitions and restrictions which form the basis for the controls and to take complementary measures to safeguard security and combat illegal immigration by nationals of States that are not members of the European Communities.

Article 19

The Parties shall seek to harmonize laws and regulations, in particular on:

- drugs,
- arms and explosives,
- registration of travelers in hotels.

Article 20

The Parties shall endeavour to harmonize their visa policies and conditions for entry to their territories. In so far as necessary, they shall also prepare for harmonization of their rules governing certain aspects of the law on aliens in regard to nationals of States that are not members of the European Communities.

Article 30

The measures provided for in this Agreement which are not applicable as soon as it enters into force shall be applied by 1 January 1986 as regards the measures provided for in Title I and if possible by 1 January 1990 as regards the measures provided for in Title II, unless other deadlines are fixed in this Agreement.

Article 31

This Agreement shall apply to the provisions of Article 5 and 6, and 8 to 16 of the Agreement concluded at Saarbrücken on 13 July 1984 between the Federal Republic of Germany and the French Republic.

Article 32

This Agreement shall be signed without being subject to ratification or approval or subject to ratification or approval followed by ratification or approval.

This Agreement shall be applied on a provisional basis from the day following its signature. This Agreement shall enter into force thirty days after deposit of the last instrument of ratification or approval.

Article 33

The Government of the Grand Duchy of Luxembourg shall be depository of this Agreement.

In witness whereof, the representatives of the Governments duly empowered to that effect have signed this Agreement.

Done at Schengen, Grand Duchy of Luxembourg, on 14 June 1985, the German, French and Dutch texts of this Agreement being equally authentic.

CONVENTION

1990

applying the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders

(Extracts)

The Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of Netherlands, hereinafter called the Contracting Parties.

Taking as their basis the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders.

Having decided to implement the intention expressed in that agreement of bringing about the abolition of checks at their common borders on the movement of persons and facilitating the transport and movement of goods.

Whereas the Treaty establishing the European Communities, supplemented by the Single Act, provides that the internal market shall comprise an area without internal frontiers.

Whereas the aim pursued by the Contracting Parties coincides with that objective, without prejudice to the measures to be taken to implement the provisions of the Treaty.

Whereas the implementation of that intention requires a series of appropriate measures and close cooperation between the Contracting Parties.

Have agreed as follows:

Title I

Definitions

Article 1

For the purposes of this Convention:
Internal borders shall mean the common land borders of the Contracting Parties, their airports for internal flights and their sea ports for regular transshipment connections exclusively from or to other ports within the territories of the Contracting Parties not calling at any ports outside those territories;
External borders shall mean the Contracting Parties' land and sea borders and their airports and sea ports, provided they are not internal borders;

Internal flight shall mean any flight exclusively to or from territories of the Contacting Parties not landing within the territory of a Third State;

Third State shall mean any State other than the Contracting Parties;

Alien shall mean any person other than a national of a Member State of the European Communities;

Alien reported as a person not to be permitted entry shall mean any alien listed reported as a person not to be permitted entry in the Schengen Information System in accordance with Article 96;

Border crossing point shall mean any crossing point authorized by the competent authorities for the crossing of external borders;

Border control shall mean a check made at a border in response solely to an intention to cross that border regardless of any other consideration.

Carrier shall mean any natural or legal person whose occupation it is to provide passenger transport by air, sea or land;

Residence permit shall mean an authorization of any type issued by a Contracting Party giving the right of residence within its territory. This definition shall not include temporary admission to residence within the territory of a Contracting Party for the purpose of the processing of an application for asylum or an application for a residence permit;

Application for asylum shall mean any application submitted in writing, orally or otherwise by an alien at an external border or within the territory of a Contracting Party with a view to obtaining recognition as a refugee in accordance with the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967 and as such obtaining the right of residence;

Applicant for asylum shall mean any alien who has submitted an application for asylum within the meaning of this Convention, on which no final decision has been taken;

Processing of an application for asylum shall mean all the procedures for examining and taking a decision on an application for asylum, including measures taken in implementation of a final decision thereon, with the exception of the determination of

the Contracting Party responsible for the processing of an application for asylum under this Convention.

Title II

Abolition of checks at internal borders and movement of persons

Chapter 1

Crossing internal frontiers

Article 2

1. Internal borders may be crossed at any point without any checks on persons being carried out.
2. Where public policy or national security so require, however, a Contracting Party may, after consulting the other Contracting Parties, decide that for a limited period national border checks appropriate to the situation will be carried out at internal borders. If public policy or national security require immediate action, the Contracting Party concerned shall take the necessary measures and shall inform the other Contracting Parties thereof at the earliest opportunity.
3. The abolition of checks on persons at internal borders shall not affect either Article 22 below or the exercise of police powers by the competent authorities under each Contracting Party's legislation throughout its territory, or the obligations to hold, carry and produce permits and documents provided for in its legislation.
4. Checks on goods shall be carried out in accordance with the relevant provisions of this Convention.

Chapter 2

Crossing external borders

Article 3

1. External borders may in principle be crossed only at border crossing points during the fixed opening hours. More detailed provisions, and exceptions and arrangements for minor border traffic, as well as the rules applicable to special categories of maritime traffic such as yachting and coastal fishing, shall be adopted by the Executive Committee.
2. The Contracting Parties undertake to introduce penalties for the unauthorized crossing of external borders at places other than crossing points or at times other than the fixed opening hours.

Article 4

1. The Contracting Parties guarantee that as from 1993 passengers on flights from Third States who board internal flights will first be subject, upon arrival, to personal and hand baggage checks in the airport of arrival of their external flight. Passengers on internal flights who board flights bound for Third States will first be subject, on departure, to personal and hand baggage checks in the airport of departure of their external flight.
2. The Contracting Parties shall take the measures required for checks to be carried out in accordance with paragraph 1.
3. Neither paragraph 1 nor paragraph 2 shall affect checks on registered luggage; such checks shall be carried out either in the airport of final destination or in the airport of initial departure.
4. Until the date laid down in paragraph 1, airports shall, by way of derogation from the definition of internal borders, be considered as external borders for internal flights.

Article 5

1. For visits not exceeding three months entry into the territories of the Contracting Parties may be granted to an alien who fulfills the following conditions:

   (a) in possession of a valid document or documents permitting them to cross the border, as determined by the Executive Committee;
   (b) in possession of a valid visa if required;
   (c) if applicable, submits documents substantiating the purpose and the conditions of the planned visit and has sufficient means of support, both for the period of the planned visit and to return to their country of origin or to travel in transit (to) a Third State, into which their admission is guaranteed, or is in a position to acquire such means legally;
   (d) has not been reported as a person not to be permitted entry;
   (e) is not considered to be a threat to public policy, national security or the international relations of any of the Contracting Parties.

2. Entry to the territories of the Contracting Parties must be refused to any alien who does not fulfill all the above conditions unless a Contracting Party considers it necessary to derogate from that principle on humanitarian grounds or in the national interest or because of international obligations. In such cases permission to enter will be restricted to the territory of the Contracting Party concerned, which must inform the other Contracting Parties accordingly.

These rules shall not preclude the application of special provisions concerning the right of asylum or of the provisions of Article 18.

3. An alien who holds a residence permit or a return visa issued by one of the Contracting Parties or, if required, both documents, shall be permitted to enter in transit, unless their name is on the national list of persons reported as to be refused

entry which is held by the Contracting Party at the external borders of which they arrive.

Article 6

1. Cross-border movement at external borders shall be subject to checks by the competent authorities. Checks shall be made in accordance with uniform principles, within the scope of national powers and national legislation, account being taken of the interests of all Contracting Parties throughout the Contracting Parties' territories.
2. The uniform principles referred to in paragraph 1 shall be as follows:

   (a) Checks on persons shall include not only the verification of travel documents and of the other conditions governing entry, residence, work and exit but also checks to detect and prevent threats to the national security and public policy of the Contracting Parties. Such checks shall also cover vehicles and objects in the possession of persons crossing the border. They shall be carried out by each Contracting Party in accordance with its legislation, in particular as regards searches.

   (b) All persons must be subject to at least one check making it possible to establish their identities on the basis of their presentation of travel documents.

   (c) On entry aliens must be subject to a thorough check as defined in (a)

   (d) On exit checks shall be carried out as required in the interests of all Contracting Parties under the law on aliens in order to detect and prevent threats to the national security and public policy of the Contracting Parties. Such checks shall be made in all cases in respect of aliens.

   (e) If such checks cannot be made because of particular circumstances priorities must be established. In this connection, entry checks shall in principle take priority over exit checks.

3. The competent authorities shall use mobile units to exercise surveillance on external borders between crossing points; the same shall apply to border crossing points outside normal opening hours. This surveillance shall be carried out in such a way as not to encourage people to circumvent the checks at crossing points. The surveillance procedures shall, where appropriate, be fixed by the Executive Committee.
4. The Contracting Parties undertake to deploy through appropriate officers to conduct checks and maintain surveillance along external borders.
5. An equivalent level of control shall be exercised at external frontiers.

Article 7

The Contracting Parties shall assist each other and shall maintain constant, close cooperation with a view to the effective exercise of checks and surveillance. They shall in particular exchange all relevant, important information, with the exception of data relating to named individuals, unless otherwise provided in this Convention, shall as far as possible harmonize the instructions given to the authorities responsible for checks and shall promote the uniform training and retraining of officers manning checkpoints. Such cooperation may take the form of the exchange of liaison officers.

Article 8

The Executive Committee shall take the necessary decisions relating to the practical procedures for implementing border checks and surveillance.

Chapter 3

Visas

Section 1

Visas for short visits

Article 9

1. The Contracting Parties undertake to adopt a common policy on the movement of persons and in particular on the arrangements for visas. They shall give each other assistance to that end. The Contracting Parties undertake to pursue by common agreement the harmonization of their policies on visas.
2. The visa arrangements relating to Third States, the nationals of which are subject to visa arrangements common to all the Contracting Parties at the time when this Convention is signed or later, may be amended only by common agreement of all Contracting Parties. A Contracting Party may exceptionally derogate from the common visa arrangements with respect to a Third State for over-riding reasons of national policy that require an urgent decision. It must first consult the other Contracting Parties and, in its decision, must take account of their interests and of the consequences of that decision.

Article 10

1. A uniform visa valid for the entire territory of the Contracting Parties shall be introduced. This visa, the period of validity of which shall be determined by Article 11, may be issued for visits not exceeding three months.
2. Until this visa is introduced the Contracting Parties shall recognize their respective national visas, insofar as these are issued on the basis of common conditions and criteria determined within the framework of the relevant provisions of this Chapter.

3. By way of derogation from paragraphs 1 and 2 above each Contracting Party shall reserve the right to restrict the territorial validity of the visa in accordance with common arrangements determined in the context of the relevant provisions of this Chapter.

Article 11

1. The visa provided for in Article 10 may be:

   (a) a travel visa valid for one or more entries, provided that neither the length of a continuous visit nor the total length of successive visits may exceed three months in any half year as from the date of first entry;

   (b) a transit visa allowing its holder to pass through the territories of the Contracting Parties once, twice or exceptionally several times en route to the territory of a Third State, provided that no transit shall last longer than five days.

2. Paragraph 1 shall not preclude a Contracting Party from issuing a new visa, the validity of which is limited to its own territory, within the k-half year in question if necessary.

Article 12

1. The uniform visa provided for in Article 10(1) shall be issued by the diplomatic and consular authorities of the Contracting Parties and, where appropriate, by the authorities of the Contracting Parties designated under Article 17.
2. The Contracting Party competent to issue such a visa shall in principle be that of the principle destination. If this cannot be determined the visa shall in principle be issued by the diplomatic or consular post of the Contracting Party of first entry.

3. The Executive Committee shall specify the implementing arrangements and, in particular, the criteria for determining the principal destination.

Article 13

1. No visa shall be apposed on a travel document that has expired.
2. The period of validity of a travel document must be greater than that of the visa, taking account of the period of use of the visa. It must enable an alien to return to his country of origin or to enter a third country.

Article 14

1. No visa may be apposed to a travel document if that travel document is valid for none of the Contracting Parties. If a travel document is valid only for one Contracting Party or for a number of Contracting Parties the visa to be apposed shall be limited to the Contracting Party or Parties in question.
2. If a travel document is not recognized as valid by one or more of the Contracting Parties a visa may be issued in the form of an authorization in place of a visa.

Article 15

In principle the visas referred to in Article 10 may be issued only if an alien fulfills the conditions of entry laid down in Article 5(1) (a), (c), (d) and (e).

Article 16

If a Contracting Party considers it necessary to derogate, on one of the grounds listed in Article 5(2), from the principle enunciated in Article 15 by issuing a visa to an

alien who does not fulfill all the conditions of entry referred to in Article 5(1), the validity of this visa shall be restricted to the territory of that Contracting Party, which must inform the other Contracting Parties accordingly.

Article 17

1. The Executive Committee shall adopt common rules for the examination of applications for a visa, shall ensure their correct implementation and shall adapt them to new situations and circumstances.
2. The Executive Committee shall also specify the cases in which the issue of a visa shall be subject to consultation with the central authority of the Contracting Party to which application is made and, where appropriate, the central authorities of other Contracting Parties.
3. The Executive Committee shall also take the necessary decisions regarding the following points:

    (a) the travel documents to which a visa may be apposed;
    (b) the bodies responsible for the issue of visas;
    (c) the conditions governing the issue of visas at borders;
    (d) the form, content, and period of validity of visas and the charges to be imposed for their issue;
    (e) the conditions for the extension and refusal of the visas referred to in (c) and (d) above, in accordance with the interests of all the Contracting Parties;
    (f) the procedures for the limitation of the territorial validity of visas;
    (g) the principles governing the preparation of a common list of aliens reported as not to be permitted entry, without prejudice to Article 96.

Section 2

Visas for long visits

Article 18

Visas for visits of more than three months shall be national visas issued by one of the Contracting Parties in accordance with its own legislation. Such a visa shall enable its holder to transit through the territories of the other Contracting Parties in order to proceed the territory of the Contracting Party which issued the visa, unless he fails to fulfill the conditions of entry referred to in Article 5(1) (a), (d) and (e) or he is on the national reporting list of the Contracting Party through the territory of which he seeks to transit.

Chapter 4

Conditions governing the movements of aliens

Article 19

1. Aliens holding a uniform visa who have legally entered the territory of a Contracting Party may move freely within the territories of all the Contracting Parties throughout the period of validity of their visas, provided they fulfill the conditions of entry referred to in Article 5 (1) (a), (c), (d) and (e).
2. Pending the introduction of a uniform visa, aliens holding a visa issued by one of the Contracting Parties who have legally entered the territory of one Contracting Party may move freely within the territories of all the Contracting Parties during the period of validity of their visa up to a maximum of three months from the date of first entry, provided they fulfill the conditions of entry referred to in Article 5(1) (a), (c), (d) and (e).
3. Paragraphs 1 and 2 shall not apply to visas of which the validity is subject to territorial limitation in accordance with Chapter 3 of this Title.
4. This Article shall apply without prejudice to Article 22.

Article 20

1. Aliens not subject to a visa requirement may move freely within the territories of the Contracting Parties for a maximum period of three months during the six months following the date of first entry, provided they fulfill the conditions of entry referred to in Article 5 (1) (a), (c), (d) and (e).
2. Paragraph 1 shall not affect the rights of each Contracting Party to extend beyond three months the visit of an alien within its territory in exceptional circumstances or in implementation of a bilateral agreement concluded before the entry into force of this Convention.
3. This Article shall apply without prejudice to Article 22.

Article 21

1. An alien holding a residence permit issued by one of the Contracting Parties may, under cover of that permit and of a travel document, both documents still being valid, move freely for up to three months within the territories of the other Contracting Parties provided he fulfills the conditions of entry referred to in Article 5 (1) (a), (c) and (e) and is not on the national reporting list of the Contracting Party concerned.
2. Paragraph 1 shall also apply to an alien holding a provisional residence permit issued by one of the Contracting Parties and a travel document issued by that Contracting Party.
3. The Contracting Parties shall communicate to the Executive Committee a list of the documents which they issue that are valid as residence permits and travel documents within the meaning of this Article.
4. This Article shall apply without prejudice to Article 22.

Article 22

1. An alien who has legally entered the territory of one of the Contracting Parties shall be obliged to declare himself, in accordance with the conditions imposed by each Contracting Party, to the competent authorities of the Contracting Party the territory of which he enters. Such declaration may be made, at each Contracting Party's choice, either on entry or, within three working days of entry, within the territory of the Contracting Party which he enters.
2. An alien resident within the territory of one of the Contracting Parties who enters the territory of another Contracting Party shall be subject to the obligation to declare himself referred to in paragraph 1.
3. Each Contracting Party shall enact exceptions to paragraphs 1 and 2 and shall communicate them to the Executive Committee.

Article 23

1. An alien who does not fulfill or who no longer fulfills the short visit conditions applicable within the territory of a Contracting Party must in principle leave the territories of the Contracting Parties without delay.
2. An alien who holds a valid residence permit or temporary residence permit issued by another Contracting Party must enter the territory of that Contracting Party without delay.
3. Where such an alien has not left voluntarily or where it may be assumed that he will not so leave or if his immediate departure is required for reasons of national security or public policy, he must be expelled from the territory of the Contracting Party within which he has been arrested as laid down in the national law of that Contracting Party. If the application of that law does not permit expulsion, the Contracting Party concerned may allow the person concerned to remain within its territory.
4. Expulsion may be effected from the territory of that State to the alien's country of origin or to any other State to which he may be permitted entry, in particular under

the relevant provisions of the re-entry agreements concluded by the Contracting Parties.

5. Paragraph 4 shall not preclude the application of national provisions on the right of asylum, of the Geneva Convention of 28 July 1951 relating to the Status of Refugees as amended by the New York Protocol of 31 January 1967, or of paragraph 2 of this Article or Article 33 (1) of this Convention.

Article 24

Subject to the Executive Committee's definition of the appropriate practical criteria and arrangements, the Contracting Parties shall compensate each other for any financial imbalances resulting from the compulsory expulsion provided for in Article 23 where such expulsion cannot be effected at the alien's expense.

Chapter 5

Residence permits and reporting as a person not to be permitted entry

Article 25

1. Where a Contracting Party considers issuing a residence permit to an alien who has been reported as a person not to be permitted entry it shall first consult the reporting Contracting Party and shall take account of its interests; the residence permit shall be issued only on serious grounds, in particular of a humanitarian nature or pursuant to international obligations.

If a residence permit is issued the reporting Contracting Party shall withdraw the report but may put the alien concerned on its national reporting list of persons not to be permitted entry.

2. Where it emerges that an alien holding a valid residence permit issued by one of the Contracting Parties has been reported as a person not to be permitted entry the reporting Contracting Party shall consult the Party which issued the residence permit in order to determine whether there are sufficient grounds for the withdrawal of the residence permit.

If the residence permit is not withdrawn the reporting Contracting Party shall withdraw the report but may put the alien in question on its national reporting list.

Chapter 6

Measures relating to organized travel

Article 26

1. Subject to the obligations arising out of their accession to the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967, the Contracting Parties undertake to incorporate the following rules in their national legislation:

   (a) If an alien is refused entry into the territory of one of the Contracting Parties the carrier which brought him to the external border by air, sea or land shall be obliged to assume responsibility for him again without delay. At the request of the border surveillance authorities the carrier must return the alien to the Third State from which he was transported, to the Third State which issued the travel document on which he traveled or to any other Third State to which he is guaranteed entry.

   (b) The carrier shall be obliged to take all necessary measures to ensure that an alien carried by air or sea is in possession of the travel documents required for entry into the territory of the Contracting Parties.

2. The Contracting Parties undertake, subject to the obligations arising out of their accession to the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967, and in accordance with their constitutional law, to impose penalties on carriers who transport aliens who do not possess the necessary travel documents by air or sea from a Third State to their territories.
3. Paragraph 1(b) and paragraph 2 shall also apply to carriers of groups by coach over international road links, with the exception of border traffic.

Article 27

1. The Contracting Parties undertake to impose appropriate penalties on any person who, for purposes of gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties contrary to the laws of that Contracting Party on the entry and residence of aliens.
2. If a Contracting Party is informed of the facts referred to in paragraph 1 which constitute an infringement of the legislation of another Contracting Party, it shall inform the latter accordingly.
3. Any Contracting Party which requests another Contracting Party to prosecute, on the grounds of the infringement of its own legislation, offenses such as those referred to in paragraph 1, must specify, by means of an official denunciation or a certificate from the competent authorities, the provisions of law which have been infringed.

Chapter 7

Responsibility for the processing of applications for asylum

Article 28

The Contracting Parties hereby reaffirm their obligations under the Geneva Convention of 28 July 1951 relating to the Status of Refugees as amended by the New York Protocol of 31 January 1967, without any geographical restriction on the scope of those instruments, as also their commitment to cooperate with the United Nations High Commissioner for Refugees in the implementation of those instruments.

Article 29

1. The Contracting Parties undertake to process any application for asylum lodged by an alien within the territory of any one of them,
2. This obligation shall not bind a Contracting Party to authorize every applicant for asylum to enter or to remain within its territory.

Every Contracting Party shall retain the right to refuse entry or to expel any applicant for asylum to a Third State on the basis of its national provisions and in accordance with its international commitments.

3. Regardless of the Contracting Party to which an alien addresses an application for asylum, only one Contracting Party shall be responsible for processing that application. It shall be determined by the criteria laid down in Article 30.
4. Notwithstanding paragraph 3 every Contracting Party shall retain the right, for special reasons concerning national law in particular, to process an application for asylum even if under this Convention the responsibility for doing so is that of another Contracting Party.

Article 30

1. The Contracting Party responsible for the processing of an application for asylum shall be determined as follows:

   (a) If a Contracting Party has issued to the applicant for asylum a visa of any type, or a residence permit, it shall be responsible for processing the application. If the visa was issued on the authorization of another Contracting Party, the Contracting Party who gave the authorization shall be responsible.

   (b) If two or more Contracting Parties have issued to the applicant for asylum a visa of any type or a residence permit, the Contracting Party responsible shall be the one which issued the visa or the residence permit that will expire last.

   (c) As long as the applicant for asylum has not left the territory of the Contracting Parties the responsibility defined in accordance with (a) and (b) shall subsist even if the period of validity of the visa of any type or of the residence permit has expired. If the applicant for asylum has left the territory of the Contracting States after the issue of the visa or the residence permit, these documents shall be the basis for the responsibility as defined in (a) and (b) unless they have expired in the interval under national provisions.

   (d) If the Contracting Parties exempt the applicant for asylum from the requirement for a visa, the Contracting Party across the external borders of which the applicant for asylum has entered the territory of the Contracting Parties shall be responsible.

Until the harmonization of visa policies is completed, and if the applicant for asylum is exempted from the requirement for a visa by certain Contracting Parties only, the Contracting Party across the external border of which the applicant for asylum has entered the territory of the Contracting Parties by means of an exemption from the requirement of a visa shall be responsible, subject to (a), (b) and (c).

If the applicant for asylum is submitted to a Contracting Party which has issued a transit visa to the applicant -whether the applicant has passed passport checks or not- and if the transit visa was issued after the country of transit had ascertained from the consular of diplomatic authorities of the Contracting Party of destination that the applicant for asylum fulfilled the conditions for entry into the Contracting Party of destination, the Contracting Party of destination shall be responsible for processing the application.

(e) If the applicant for asylum has entered the territory of the Contracting Parties without being in possession of one or more documents permitting the crossing of the border, determined by the Executive Committee, the Contracting Party across the external borders of which the applicant for asylum has entered the territory of the Contracting Parties shall be responsible.

(f) If an alien whose application for asylum is already being processed by one of the Contracting Parties submits a new application the Contracting Party responsible shall be the one processing the first application.

(g) If an alien on whose previous application for asylum a Contracting Party has already taken a final decision submits a new application, the Contracting Party responsible shall be the one that processed the previous request unless the applicant has left the territory of the Contracting Parties.

2. If a Contracting Party has undertaken the processing of an application for asylum in accordance with Article 29(4) the Contracting Party responsible under paragraph 1 of the present Article shall be relieved of its obligations.
3. If the Contracting Party responsible cannot be determined by means of the criteria laid down in paragraphs 1 and 2 the Contracting Party to which the application for asylum was submitted shall be responsible.

Article 31

1. The Contracting Parties shall endeavour to determine as quickly as possible which of them is responsible for the processing of an application for asylum.
2. If an application for asylum is addressed to a Contracting Party which is not responsible under Article 30 by an alien resident within its territory that Contracting Party may request the Contracting Party responsible to take responsibility for the applicant for asylum in order to process his application for asylum.
3. The Contracting Party responsible shall be bound to take responsibility for the applicant for asylum referred to in paragraph 2 if the request is made within six months of the submission of the applicant for asylum. If the request is not made within that time the Contracting Party to which the application for asylum was submitted shall be responsible for processing the application.

Article 32

The Contracting Party responsible for the processing of an application for asylum shall process it in accordance with its national law.

Article 33

1. If an applicant for asylum is illegally within the territory of another Contracting Party while the asylum procedure is in progress the Contracting Party responsible shall be bound to take him back.
2. Paragraph 1 shall not apply where the other Contracting Party has issued an applicant for asylum with a residence permit valid for one year or more. In this case responsibility for the processing of the application shall be transferred to the other Contracting Party.

Article 34

1. The Contracting Party responsible shall be bound to take back an alien whose application for asylum has been finally rejected and who has entered the territory of another Contracting Party without being authorized to reside there.
2. Paragraph 1 shall not, however, apply where the Contracting Party responsible expelled the alien from the territories of the Contracting Parties.

Article 35

1. The Contracting Party which granted an alien the status of refugee and gave him the right of residence shall be bound, provided that those concerned are in agreement, to be responsible for processing any application for asylum made by a member of his family.
2. A family member for the purposes of paragraph 1 shall be the spouse or the unmarried child less than 18 years old of the refugee or, if the refugee is an unmarried child less than 18 years old, his father or mother.

Article 36

Any Contracting Party responsible for the processing of an application for asylum may, on humanitarian grounds based on family or cultural reasons, ask another Contracting Party to assume that responsibility insofar as the person concerned so wishes. The Contracting Party to whom such a request is made shall consider whether it can grant it.

Article 37

1. The competent authorities of the Contracting Parties shall at the earliest opportunity send each other details of:

    (a) any new rules or measures adopted as regards the law of asylum or of the treatment of applicants for asylum no later than their entry into force;
    (b) statistical data concerning the monthly arrivals of applicants for asylum, indicating the principal countries of origin, and decisions on applications for asylum insofar as they are available;
    (c) the emergence of, or significant increases in, certain groups of applicants for asylum and any information available on this subject;
    (d) any fundamental decisions as regards the law of asylum.

2. The Contracting Parties shall also guarantee close cooperation in the collection of information on the situation in the countries of origin of applicants for asylum with a view to reaching a common assessment.
3. Any instruction given by a Contracting Party concerning the confidential processing of the information that it communicates must be complied with by the other Contracting Parties.

Article 38

1. Every Contracting Party shall send every other Contracting Party that requests it the information it holds on an applicant for asylum that is necessary for purposes of
    - determining the Contracting Party responsible for processing the application for asylum;
    - processing the application for asylum;

- implementing the obligations arising under this chapter.

2. Such information may concern only

   (a) the identity (name and forename, and previous names, appellations or aliases, date and place of birth, present nationality and any previous nationalities of the applicant for asylum and, where appropriate, the members of his family);
   (b) the identity and travel documents (references, periods of validity, dates of issue, issuing authorities, place of issue, etc.);
   (c) any other particulars necessary for establishing the applicant's identity;
   (d) places of residence and the itineraries of journeys;
   (e) residence permits or visas issued by a Contracting Party;
   (f) the place where the application for asylum was submitted;
   (g) where appropriate, the date of submission of any previous application for asylum, the date of submission of the present application, the point reached in the procedure and the import of the decision taken.

3. In addition, a Contracting Party may ask another Contracting Party to inform it of the grounds invoked by an applicant for asylum in support of his application and, where appropriate, the grounds for the decision taken on it. The Contracting Party requested shall consider whether it can comply with the request made to it. In any case the communication of such information shall be subject to the consent of the applicant for asylum.
4. Exchanges of information shall be effected at the request of a Contracting Party and may be effected only between the authorities the designation of which has been communicated by each Contracting Party to the Executive Committee.
5. The information exchanged may be used only for the purposes set out in paragraph 1. Such information may be communicated only to the authorities and jurisdictions responsible for

   - determining the Contracting Party responsible for the processing of an application for asylum;

- processing an application for asylum;
- implementing obligations arising under this Chapter.

6. A Contracting Party that communicates information shall ensure it is correct and up to date.

If it emerges that this Contracting Party supplied information that was not correct or should not have been communicated the recipient Contracting Parties shall be informed without delay. They shall be bound to correct that information or to delete it.

7. An applicant for asylum shall be entitled to be informed, at his request, of the information exchanged regarding him as long as it is available.

If he ascertains that this information is incorrect or should not have been communicated he shall be entitled to require its correction or deletion. Corrections shall be effected as laid down in paragraph 6.

8. In each Contracting Party concerned the communication and receipt of information exchanged shall be recorded.
9. Information communicated shall be preserved no longer than the time necessary for the purposes for which it was exchanged. The need for its preservation must be assessed in due course by the Contracting Party concerned.
10. Information communicated shall in any case have at least the same protection as that laid down in the law of the recipient Contracting Party for information of a similar nature.
11. If information is not processed automatically but in another manner each Contracting Party must take appropriate measures to ensure that this Article is complied with by means of effective checks. If a Contracting Party has a service of the type referred to in paragraph 12 it may instruct that service to carry out those checks.
12. If one or more Contracting Parties want to computerize the processing of all or part of the information referred to in paragraphs 2 and 3, computerization shall be authorized only if the Contracting Parties concerned have adopted legislation

relating to such processing that implements the principles of the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data and if they have entrusted an appropriate national body with the independent control of the processing and use of data communicated under this Convention.

Title IV

The Schengen Information System

Chapter 1

Setting Up of the Schengen Information System

Article 92

1. The Contracting Parties shall set up and maintain a joint information system, hereinafter referred to as the Schengen Information System, consisting of a national section in each of the Contracting Parties and a technical support function. The Schengen Information System shall enable the authorities designated by the Contracting Parties, by means of an automated search procedure, to have access to reports on persons and objects for the purposes of border checks and controls and other police and customs checks carried out within the country in accordance with national law and, in the case of the single category of report referred to in Article 96, for the purposes of issuing visas, the issue of residence permits and the administration of aliens in the context of the application of the provisions of this Convention relating to the movement or persons.
2. Each Contracting Party shall set up and maintain, for its own account and at its own risk, its national section of the Schengen Information System, the data file of

which shall be made materially identical to the data files of the national sections of each of the other Contracting Parties using the technical support function. To ensure the rapid and effective transmission of data as referred to in paragraph 3, each Contracting Party shall observe, when creating its national section, the protocols and procedures which the Contracting Parties have jointly established for the technical support function. Each national section's data file shall be available for the purposes of automated search in the territory of each of the Contracting Parties. It shall not be possible to search the data files of other Contracting Parties' national sections.

3. The Contracting Parties shall set up and maintain jointly and with joint liability for risks, the technical support function of the Schengen Information System, the responsibility for which shall be assumed by the French Republic; the technical support function shall be located in Strasbourg. The technical support function shall comprise a data file which ensures that the data files of the national sections are kept identical by the on-line transmission of information. The data file of the technical support function shall contain reports on persons and objects where these concern all the Contracting Parties. The data file of the technical support function shall contain no data other than those referred to in this paragraph and in Article 113(2).

Chapter 2

Operation and Utilization of the Schengen Information System

Article 93

The purpose of the Schengen Information System shall be in accordance with this Convention to maintain public order and security, including State security, and to apply the provisions of this Convention relating to the movement of persons, in the territories of the Contracting Parties, using information transmitted by the system.

Article 94

1. The Schengen Information System shall contain only the categories of data which are supplied by each of the Contracting Parties and are required for the purposes laid down in Articles 95 to 100. The Contracting Party providing a report shall determine whether the importance of the case warrants the inclusion of the report in the Schengen Information System.
2. The categories of data shall be as follows:
   (a) persons reported
   (b) objects referred to in Article 100 and vehicles referred to in Article 99.

3. The items included in respect of persons, shall be no more than the following:
   (a) name and forename, any aliases possibly registered separately;
   (b) any particular objective and permanent physical features;
   (c) first letter of second forename;
   (d) date and place of birth;
   (e) sex;
   (f) nationality;
   (g) whether the persons concerned are armed;
   (h) whether the persons concerned are violent;
   (i) reason for the report;
   (j) action to be taken.

Other references, in particular the data listed in Article 6, first sentence of the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, shall not be authorized.

4. Insofar as a Contracting Party considers that a report in accordance with Articles 95, 97 or 99 is incompatible with its national law, its international obligations or essential national interests, it may subsequently add to the report in the data file of the national section of the Schengen Information System a note to the effect that the action referred to will not be taken in its territory in connection with the report. Consultations must be held in this connection with the other Contracting Parties. If

the reporting Contracting Party does not withdraw the report it will continue to apply in full for the other Contracting Parties.

Article 96

1. Data relating to aliens who are reported for the purposes of being refused entry shall be included on the basis of a national report resulting from decisions taken, in compliance with the rules of procedure laid down by national legislation, by the administrative authorities of courts responsible.
2. Decisions may be based on a threat to public order or national security and safety which the presence of an alien in national territory may pose.

   Such may in particular be the case with:

   (a) an alien who has been convicted of an offence carrying a custodial sentence of at least one year;

   (b) an alien who, there are serious grounds for believing, has committed serious offences, including those referred to in Article 71, or against whom there is genuine evidence of an intention to commit such offences in the territory of a Contracting Party.

3. Decisions may also be based on the fact that the alien has been the subject of a deportation, removal or expulsion measure which has not been rescinded or suspended, including or accompanied by a prohibition on entry or, where appropriate, residence, based on non-compliance with national regulations on the entry or residence of aliens.

Article 101

1. Access to data included in the Schengen Information System and the right to search such data directly shall be reserved exclusively for the authorities responsible for

(a) border checks;

(b) other police and customs checks carried out within the country, and the coordination of such checks.

2. In addition, access to data included in accordance with Article 96 and the right to search such data directly may be exercised by the authorities responsible for issuing visas, the central authorities responsible for examining visa applications and the authorities responsible for issuing residence permits and the administration of aliens within the framework of the application of the provisions on the movement of persons under this Convention. Access to data shall be governed by the national law of each Contracting Party.
3. Users may only search data which are necessary for the performance of their tasks.
4. Each of the Contracting Parties shall communicate to the Executive Committee a list of the competent authorities which are authorized to search the data included in the Schengen Information System directly. That list shall indicate for each authority the data which it may search, and for what purposes.

Chapter 3

Protection of Personal Data and Security of Data Under the Schengen Information System

Article 102

1. The Contracting Parties may use the data provided for in Article 95 to 100 only for the purposes laid down for each type of report referred to in those Articles.
2. Data may be duplicated only for technical purposes, provided that such duplication is necessary for direct searching by the authorities referred to in Article 101.

Reports by other Contracting Parties may not be copied from the national section of the Schengen Information System in other national data files.

3. In connection with the types of report provided for in Articles 95 to 100 of this Convention, any derogation from paragraph 1 in order to change from one type of report to another must be justified by the need to prevent an imminent serious threat to public order and safety, for serious reasons of State security or for the purposes of preventing a serious offence. The prior authorization of the reporting Contracting Party must be obtained for this purpose.
4. Data may not be used for administrative purposes. By way of derogation, data included in accordance with Article 96 may be used, in accordance with the national law of each of the Contracting Parties, only for the purposes of Article 101(2).
5. Any use of data which does not comply with paragraphs 1 to 4 shall be considered as a misuse in relation to the national law of each Contracting Party.

Article 103

Each Contracting Party shall ensure that, on average, every tenth transmission of personal data is recorded in the national section of the Schengen Information System by the data file managing authority for the purposes of checking the admissibility of searching. The recording may be used only for this purpose and shall be deleted after six months.

Article 104

1. The law applying to reports shall be the national law of the reporting Contracting Party, unless more rigorous conditions are laid down in this Convention.
2. Insofar as this Convention does not lay down specific provisions, the law of each Contracting Party shall apply to data included in the national section of the Schengen Information System.

3. Insofar as this Convention does not lay down specific provisions concerning performance of the action requested in the report, the national law of the Contracting Party requested which carries out the action shall apply. Insofar as this Convention lays down specific provisions concerning performance of the action requested in the report, responsibility for the action to be taken shall be governed by the national law of the requested Contracting Party. If the action requested cannot be performed, the requested Contracting Party shall inform the reporting Contracting Party without delay.

Article 105

The reporting Contracting Party shall be responsible for the accuracy, up-to-dateness and lawfulness of the inclusion of data in the Schengen Information System.

Article 106

1. Only the reporting Contracting Party shall be authorized to amend, supplement, correct or delete data which it has introduced.
2. If one of the Contracting Parties which has not made the report has evidence to suggest that an item of data is legally or factually inaccurate, it shall advise the reporting Contracting Party thereof as soon as possible; the latter must check the communication and, if necessary, correct or delete the item in question without delay.
3. If the Contracting Parties are unable to reach agreement, the Contracting Party which did not generate the report shall submit the case to the joint supervisory authority referred to in Article 115(1) for its opinion.

Article 107

Where a person has already been the subject of a report in the Schengen Information System, a Contracting Party which introduces a further report shall come to an agreement on the inclusion of the report with the Contracting Party which introduced the first report. The Contracting Parties may also adopt general provisions to this end.

Article 108

1. Each of the Contracting Parties shall designate an authority which shall have central responsibility for the national section of the Schengen Information System.
2. Each of the Contracting Parties shall make its reports via that authority.
3. The said authority shall be responsible for the correct operation of the national section of the Schengen Information System and shall take the measures necessary to ensure compliance with the provisions of this Convention.
4. The Contracting Parties shall inform one another, via the Depository, of the authority referred to in paragraph 1.

Article 109

1. The right of any person to have access to data relating to him which are included in the Schengen Information System shall be exercised in accordance with the law of the Contracting Party before which it invokes that right. If the national law so provides, the national supervisory authority provided for in Article 114(1) shall decide whether information shall be communicated and by what procedures. A Contracting Party which has not made the report may communicate information concerning such data only if it has previously given the reporting Contracting Party an opportunity to state its position.
2. Communication of information to the person concerned shall be refused if it may undermine the performance of the legal task specified in the report, or in order to

protect the rights and freedoms of others. It shall be refused in any event during the period of reporting for the purposes of discreet surveillance.

Article 110

Any person may have factually inaccurate data relating to him corrected or have legally inaccurate data relating to him deleted.

Article 111

1. Any person may, in the territory of each Contracting Party, bring before the courts or the authority competent under national law an action to correct, delete or provide information or obtain compensation in connection with a report concerning him.
2. The Contracting Parties shall undertake amongst themselves to execute final decisions taken by the courts or authorities referred to in paragraph 1, without prejudice to the provisions of Article 116.

Article 112

1. Personal data included in the Schengen Information System for the purposes of locating persons shall be kept only for the time required to achieve the purposes for which they were supplied. No later than three years after their inclusion, the need for their retention must be reviewed by the reporting Contracting Party. This period shall be one year in the case of reports referred to in Article 99.
2. Each of the Contracting Parties shall, where appropriate, set shorter review periods in accordance with its national law.

3. The technical support function of the Schengen Information System shall automatically inform the Contracting Parties of a scheduled deletion of data from the system, giving one month's notice.
4. The reporting Contracting Party may, within the review period, decide to retain the report if its retention is necessary for the purposes for which the report was made. Any extension of the report must be communicated to the technical support function. The provisions of paragraph 1 shall apply to report extension.

Article 113

1. Data other than those referred to in Article 112 shall be retained for a maximum of ten years, data relating to identity documents issued and to registered bank notes for a maximum of five years and those relating to motor vehicles, trailers and caravans for a maximum of three years.
2. Data deleted shall continue to be retained for one year in the technical support function. During that period they may be consulted only for the purposes of subsequently checking their accuracy and the lawfulness of their inclusion. Afterwards they must be destroyed.

Article 114

1. Each Contracting Party shall designate a supervisory authority responsible, in compliance with national law, for carrying out independent supervision of the data file of the national section of the Schengen Information System and for checking that the processing and utilization of data included in the Schengen Information System are not in violation of the rights of the person concerned. For this person the supervisory authority shall have access to the data file of the national section of the Schengen Information System.
2. Any person shall have the right to ask the supervisory authorities to check the data concerning him which are included in the Schengen Information System, and the

use which is made of such data. That right shall be governed by the national law of the Contracting Party to which the request is made. If the data have been included by another Contracting Party, the check shall be carried out in close coordination with that Contracting Party's supervisory authority.

Article 115

1. A joint supervisory authority shall be set up, with responsibility for supervising the technical support function of the Schengen Information System. This authority shall consist of two representatives of each national supervisory authority. Each Contracting Party shall have one vote. Supervision shall be carried out in accordance with the provisions of this Convention, of the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to the Automatic Processing of Personal Data, taking into account Recommendation R(87) 15 of 17 September 1987 of the Committee of Ministers of the Council of Europe regulating the use of personal data in the police sector, and in accordance with national law of the Contracting Party responsible for the technical support function.
2. As regards the technical support function of the Schengen Information System, the joint supervisory authority shall have the task of checking that the provisions of this Convention are properly implemented. For this purpose it shall have access to the technical support function.
3. The joint supervisory authority shall also be competent to examine any difficulties of application or interpretation which may arise during the operation of the Schengen Information System, to study problems which may arise with the exercise of independent supervision by the national supervisory authorities of the Contracting Parties or in the exercise of the right of access to the system, and to draw up harmonized proposals for the purpose of finding joint solutions to the problems.
4. Report drawn up by the joint supervisory authority shall be forwarded to the authorities to which the national supervisory authorities submit their reports.

Article 116

1. Each Contracting Party shall be responsible, in accordance with its national law, for any injury caused to a person through the use of the national data file of the Schengen Information System. This shall also be the case where the injury was caused by the reporting Contracting Party, where the latter included legally or factually inaccurate data.
2. If the Contracting Party against which an action is brought is not the reporting Contracting Party, the latter shall be required to reimburse, on request, sums paid out as compensation, unless the data were used by the requested Contracting Party in contravention of this Convention.

Article 117

1. With regard to the automatic processing of personal data which are transmitted pursuant to this Title, each Contracting Party shall, not later than when this Convention enters into force, make the national arrangements necessary to achieve a level of protection of personal data at least equal to that resulting form the principles of the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to the Automatic Processing of Personal Data, and in compliance with Recommendation R (87) 15 of 17 September 1987 of the Committee of Ministers of the Council of Europe regulating the use of personal data in the police sector.
2. The transmission of personal data provided for in this Title may take place only where the arrangements for the protection of personal data provided for in paragraph 1 have entered into force in the territory of the Contracting Parties concerned by the transmission.

Article 118

1. Each of the Contracting Parties shall undertake, in respect of the national section of the Schengen Information System, to take the measures necessary to:
   (a) prevent any unauthorized person from having access to installations used for the processing of personal data (checks at the entrance to installations);
   (b) prevent data media from being read, copied, modified or removed by unauthorized persons (control of data media);
   (c) prevent the unauthorized entry of data into the file and any unauthorized consultation, modification or deletion of personal data included in the file (control of data entry);
   (d) prevent automated data processing systems from being used by unauthorized persons by means of data transmission equipment (control of utilization);
   (e) guarantee that, with respect to the use of an automated data processing system, authorized persons have access only to data for which they are responsible (control of access);
   (f) guarantee that it is possible to check and establish to which authorities personal data may be transmitted by data transmission equipment (control of transmission);
   (g) guarantee that it is possible to check and establish a posteriori what personal data has been introduced into automated data processing systems, when and by whom (control of data introduction);
   (h) prevent the unauthorized reading, copying, modification or deletion of personal data during the transmission of data and the transport of data media (control of transport).

2. Each Contracting Party must take special measures to ensure the security of data when it is being transmitted to services located outside the territories of the Contracting Parties. Such measures must be communicated to the joint supervisory authority.

3. Each Contracting Party may designate for the processing of data in its national section of the Schengen Information System only specially qualified persons subject to security checks.
4. The Contracting Party responsible for the technical support function of the Schengen Information System shall take the measures laid down in paragraph 1 to 3 in respect of the latter.

Chapter 4

Apportionment of the Costs of the Schengen Information System

Article 119

1. The costs of setting up and using the technical support function referred to in Article 92(3), including the cost of cabling for connecting the national sections of the Schengen Information System to the technical support function, shall be defrayed jointly by the Contracting Parties. Each Contracting Party's share shall be determined on the basis of the rate for Each Contracting Party applied to the uniform basis of assessment of value-added tax within the meaning of Article 2(1) (c) of the Decision of the Council of the European Communities of 24 June 1988 on the system of the Communities' own resources.
2. The costs of setting up and using the national section of the Schengen Information System shall be borne by each Contracting Party individually.

Title VI

Protection of Personal Data

Article 126

1. With regard to the automatic processing of personal data transmitted pursuant to this Convention, each Contracting Party shall, no later than the time of entry into force of this Convention, adopt the national provisions required to achieve a level of protection of personal data at least equal to that resulting from the principles of the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data.
2. Personal data for which this Convention provides may not be transmitted until after the provisions for the protection of personal data as specified in paragraph 1 have entered into force within the territory of the Contracting Parties involved in such transmission.
3. The following provisions shall, moreover, apply in respect of the automatic processing of personal data pursuant to this Convention:
    (a) the data may be used by the recipient Contracting Party solely for the purposes which this Convention stipulates that such data may be transmitted; such data may be used for other purposes only with the prior authorization of the Contracting Party which transmitted the data and in compliance with the legislation of the recipient Contracting Party; such authorization may be granted insofar as the national legislation of the Contracting Party transmitting the data permits;
    (b) the data may be used only by the judicial authorities and by the departments and authorities carrying out a task or performing a function in connection with the aims mentioned in paragraph (a);
    (c) the Contracting Party transmitting the data shall be obliged to ensure the accuracy thereof; should it note, either on its own initiative or further to a request by the person concerned, that the data are inaccurate or should not have been transmitted or provided, the recipient Contracting Party or

Parties must be informed thereof forthwith; the latter shall be obliged to correct or destroy the data, or state that such data are inaccurate or should not have been transmitted;

(d) a Contracting Party may not plead that another Contracting Party had transmitted inaccurate data in order to avoid its liability under its national legislation vis-à-vis an injured party; if damages are awarded against the recipient Contracting Party because of its use of inaccurate data transmitted, the Contracting Party which transmitted the data shall refund in full to the recipient Contracting Party the sums paid in damages;

(e) the transmission and receipt of personal data must be recorded both in the data file from which they originated and in the data file in which they are incorporated;

(f) the joint supervisory authority mentioned in Article 115 may, at the request of one of the Contracting Parties, issue an opinion on the difficulties of implementing and interpreting this Article.

4. This Article shall not apply to the transmission of data provided for under Title II, Chapter 7 and in Title IV. Paragraph 3 shall not apply to the transmission of data provided for under Title III, Chapters 2, 3, 4 and 5.

Article 127

1. Where personal data are transmitted to another Contracting Party pursuant to the provisions of this Convention, the provisions of Article 126 shall apply to the transmission of data from a non-automated data file and to their incorporation in another non-automated data file.
2. Where, in cases other than those governed by Article 126 (1), or by paragraph 1 of the present Article, personal data are transmitted to another Contracting Party pursuant to this Convention, Article 126 (3) shall, with the exclusion of subparagraph (e), apply. The following provisions shall also apply:

(a) a written record shall be kept of transmission and receipt of personal data; this obligation shall not apply where there is no need, in order to use them, to record such data, particularly if they are not used or are used only very briefly;

(b) the recipient Contracting Party shall guarantee, for the use of transmitted data a level of protection at least equal to that stipulated under its national legislation for the use of data of a similar nature;

(c) access to data and the conditions under which it shall be granted, shall be governed by the national legislation of the Contracting Party to which the person concerned applies.

3. This Article shall not apply to the transmission of data provided for under Title II, Chapter 7 and Title III, Chapters 2,3,4 and 5 and also in Title IV.

Article 128

1. The transmission of personal data for which this Convention makes provisions may not take place until the Contracting Parties involved in that transmission have instructed a national supervisory authority to monitor independently, in respect of the processing of personal data in data files, compliance with the provisions of Article 126 and Article 127 and the provisions adopted in implementation thereof.
2. Insofar as the Contracting Party has, in accordance with its national legislation, instructed a supervisory authority to monitor independently, in one or more areas, compliance with the provisions on the protection of personal data not incorporated in a data file, that Contracting Party shall instruct the same authority to supervise compliance with the provisions of this title in the areas involved.
3. This Article shall not apply to the transmission of data provided for under Title II, Chapter 7 and in Title III, Chapters 2,3,4 and 5.

Article 129

With regard to the transmission of personal data pursuant to Title III, Chapter 1, the Contracting Parties undertake, without prejudice to the provisions of Articles 126 and 127, to implement a level of protection for personal data which complies with the principles of Recommendation R (87) 15 of 17 September 1987 of the Committee of Ministers of the Council of Europe regulating the use of personal data in the police sector. Moreover, with regard to transmission pursuant to Article 46, the following provisions shall apply:

(a) the data may be used by the recipient Contracting Party solely for the purposes indicated by the Contracting Party which provided such data and in compliance with the conditions imposed by that Contracting Party;

(b) the data may be forwarded only to police departments and authorities; such data may be communicated to other departments only with the prior authorization of the Contracting Party which provided them;

(c) the recipient Contracting Party shall, upon request, inform the Contracting Party which transmitted the data of the use made of them and of the results thus obtained.

Article 130

If personal data are transmitted through a liaison officer as referred to in Article 47 or Article 125, the provisions of this Title shall apply only where that liaison officer transmits such data to the Contracting Party which seconded him to the territory of the other Contracting Party.

Title VII

Executive Committee

Article 131

1. An Executive Committee shall be set up for the implementation of this Convention.
2. Without prejudice to the special powers granted to it by this Convention, the general purpose of the Executive Committee is to ensure that this Convention is implemented correctly.

Article 132

1. Each of the Contracting Parties shall have one seat on the Executive Committee. The Contracting Parties shall be represented on the Committee by a Minister responsible for the implementation of this Convention; he may be assisted by the requisite experts who may participate in the deliberations.
2. The Executive Committee shall take its decisions unanimously. It shall draw up its own rules of procedure; in this connection it may provide for a written procedure for the taking of decisions.
3. At the request of the representative of a Contracting Party, the final decision on a draft on which the Executive Committee has taken its decision may be postponed until no more than two months after the submission of that draft.
4. The Executive Committee may set up Working Parties comprising representatives of the Administrations of the Contracting Parties in order to conduct preparations for decisions or for other work.

Article 133

The Executive Committee shall meet in the territory of every Contracting Party in turn. It shall meet as often as necessary in order to discharge its duties effectively.

Title VIII

Final provisions

Article 134

The provisions of this Convention shall apply only insofar as they are compatible with Community law.

Article 135

The provisions of this Convention shall apply to the provisions of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967.

Article 136

1. A Contracting Party which envisages conducting negotiations on border checks with a Third State shall inform the other Contracting Parties thereof in good time.
2. No Contracting Party shall conclude with one or more Third States agreements simplifying or abolishing border checks without the prior agreement of the other

Contracting Parties, subject to the right of the Member States of the European Communities to conclude such agreements jointly.

3. The provisions of paragraph 2 shall not apply to agreements on local border traffic since these agreements comply with the exemptions and arrangements laid down under Article 3(1).

Article 137

This Convention shall not be the subject of any reservations, save for those referred to in Article 60.

Article 138

As regards the French Republic, the provisions of this Convention shall apply only to the European territory of the French republic.

As regards the Kingdom of the Netherlands, the provisions of this Convention shall apply only to the territory of the Kingdom of the Netherlands situated in Europe.

Article 139

1. The present Convention shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Government of the Grand Duchy of Luxembourg, which shall notify all the Contracting Parties thereof.
2. This Convention shall enter into force on the first day of the second month following the deposit of the final instrument of ratification, acceptance or approval. The provisions concerning the setting up, activities and jurisdiction of the Executive Committee shall apply as from the entry into force of this

Convention. The other provisions shall apply as from the first day of the third month following the entry into force of this Convention.

3. The Government of the Grand Duchy of Luxembourg shall notify all the Contracting Parties of the date of entry into force.

Article 140

1. Any Member State of the European Communities may become a Party to this Convention. Such accession shall be the subject of an agreement between that State and the Contracting Parties.
2. Such an agreement shall be subject to ratification, acceptance or approval by the acceding State and by each of the Contracting Parties. It shall enter into force on the first day of the second month following the deposit of the final instrument or ratification, acceptance or approval.

Article 141

1. Any Contracting Party may submit to the depository a proposal to amend this Convention. The depository shall forward that proposal to the other Contracting Parties. At the request of one Contracting Party, the Contracting Parties shall re-examine the provisions of the Convention if, in their opinion, there has been a fundamental change in the conditions obtaining when the Convention entered into force.
2. Amendments shall enter into force on the first day of the second month following the date of deposit of the final instrument of ratification, acceptance or approval.

Article 142

1. When Conventions are concluded between the Member States of the European Communities with a view to the completion of an area without internal frontiers, the Contracting Parties shall agree on the conditions under which the provisions of the present Convention are to be replaced or amended in the light of the corresponding provisions of such Conventions.

The Contracting Parties shall, to that end, take account of the fact that the provisions of this Convention may provide for more extensive cooperation than that resulting from the provisions of the said Conventions.

Provisions which are in breach of those agreed between the member States of the European Communities shall in any case be adapted in any circumstances.

2. Amendments to this Convention deemed necessary by the Contracting Parties shall be subject to ratification, acceptance or approval. The provision contained in Article 141(3) shall apply, it being understood tat the amendments will not enter into force before the said Conventions between the Member States of the European Communities come into force.

Final Act

At the time of signing this Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic regarding the gradual abolition of checks at their common borders, the Contracting Parties adopted the following statements:

1. Joint statement concerning Article 139.

The signatory States shall, prior to the entry into force of the Convention, inform each other of all circumstances of significance for the matters covered by the Convention and for its entry into force.

The Convention shall not enter into force until the prior conditions for its implementation are fulfilled in the signatory States and checks at external borders are effective.

2. Joint statement concerning Article 4.

The Contracting Parties undertake to make every effort to comply with this deadline simultaneously and to preclude any shortcomings in security. Before 31 December 1992, the Executive Committee shall examine what progress has been made. The Kingdom of the Netherlands stresses that difficulties in meeting the deadline in a particular airport cannot be excluded but that this will not give rise to any shortcomings in security. The other Contracting Parties will take account of this situation although this may not be allowed to lead to difficulties for the internal market.

In the event of difficulties, the Executive Committee shall examine the optimal conditions for the simultaneous implementation of these measures at airports.

5. Joint statement on national asylum policies.

The Contracting Parties shall make an inventory of national asylum policies with a view to the harmonization thereof.

6. Joint statement concerning Article 132.

The Contracting Parties shall inform their national Parliaments of the implementation of this Convention.

Minutes

Further to the Final Act of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic regarding the gradual abolition of checks at their common borders, the Contracting Parties adopted the following joint statement and took note of the following unilateral declarations made in respect of the said Convention:

I. Statement on the scope of the Convention.

The Contracting Parties note that, after the unification of the two German States, the scope of the Convention shall under international law also extend to the current territory of the German Democratic Republic.

II. Declarations by the federal Republic of Germany concerning the interpretation of the Convention.

1. The Convention has been concluded in the light of the prospective unification of the two German States.

The German Democratic Republic is not a foreign country in relation to the Federal Republic of Germany.

Article 136 shall not apply in relations between the Federal Republic of Germany and the German Democratic Republic.

2. This Convention shall not jeopardize the arrangements agreed in the Germano-Austrian exchange of letters of 20 August 1984 simplifying checks at their common borders for nationals of both States. Such arrangement will however have to be implemented in the light of the over-riding security and immigration requirements of the Schengen Contracting Parties so that such facilities will in practice be restricted to Austrian nationals.

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BIBLIOGRAPHY

- Bainbridge, Timothy and Anthony Teasdale; ***The Penguin Companion to European Union***, Penguin Books Ltd., Middlesex, England, 1995.
- Castles, Stephan and Mark Miller; ***The Age of Migration***, Macmillan Press Ltd., London, 1993.
- Close, Paul; ***Citizenship, Europe and Change***, Macmillan Press Ltd., England, 1995.
- Coffey, Peter; ***The Future of Europe***, Published by Edward Elgar Publishing Limited, England, 1995.
- Collinson, Sarah; ***Europe and International Migration***, Royal Institute of International Affairs, Pinter Publishers Limited, London, 1993.
- Handoll, John; ***Free Movement of Persons in the European Union***, Chancery Law Publishing Ltd., Sussex, England, 1995.
- Meehan, Elizabeth; ***Citizenship and the European Community***, SAGE Publications Ltd., London, 1993.
- Raoux, Alian and Alain Terrenoire; ***L'Europe et Maastricht- le Pour et le Contre***, Le Cherche Midi Editeur, Paris, 1992.
- Rees, Philip (ed.) and John Stillwell, Andrew Convey, Marek Kupiszewski; ***Population Migration in the European Union***, published by John Wiley & Sons Ltd., West Sussex, England, 1996.
- Robertson, A. H. and J. G. Merrils; ***Human Rights in Europe***, Manchester University Press, UK, 1993.
- Wæver, Ole and Barry Buzan, Morten Kelstrup and Pierre Lemaitre with David Carlton, Kristian Gerner, Torben Hansen, Martin O. Heisler, Zig Layton-Henry, B. A. Roberson, Håkan Wiberg; ***Identity, Migration and the New Security Agenda in Europe***, Pinter Publishers Ltd., London 1993.

- **The Financial Times,** various issues.
- **Newsweek,** various issues.
- **The Economist,** various issues.
- **Le Monde,** various issues.
- **Cumhuriyet,** various issues.
- **Briefing on the 1996 Intergovernmental Conference and the Schengen Convention,** no:27, European Parliament, Luxembourg, 30 January, 1996.
- Aksöyek, Dr. M. Ataman, Kayahan Uygur, ***"Avrupa'da Serbest Dolasim Sorunu"***, Cumhuriyet Gazetesi, Mart 1995.
- Dirks, Gerald E.; ***International Migration in the Nineties: Causes and Consequences***, International Journal, Vol. 48, no:2, 1993.
- **Tribune Pour L'Europe**, Informations du Parlement Européen, various issues.
- **Common Market Law Review,** various issues.
- **Journal of Common Market Studies,** various issues.
- **For A Europe of Civic and Social Rights,** report by the Comité des Sages chaired by Maria de Lourdes Pintasilgo, Brussels, October 1995-February 1996, Office for Official Publications of the European Communities, Luxembourg, 1996.

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