

# COUNCIL OF EUROPE

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# CONSEIL DE L'EUROPE

COMMITTEE OF MINISTERS

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AD HOC COMMITTEE OF EXPERTS ON THE LEGAL ASPECTS  
OF TERRITORIAL ASYLUM, REFUGEES AND STATELESS PERSONS (CAHAR)

15th meeting

(Strasbourg, 26-30 March, 1984)

MEETING REPORT

Preliminary note

The Ad Hoc Committee on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) gave priority to its work on the question of the country of first asylum as requested by the Committee of Ministers at the Deputies' 366th meeting and provisionally agreed on the text of a draft Agreement on the responsibility for examining asylum requests (item IV and Appendix V).

At the conclusion of this work a tour-de-table was held and each expert on the Committee was invited to indicate if he was disposed to recommending to his authorities to become Party to the Agreement in the form which had been agreed upon.

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### Introduction

1. The Ad Hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons held its 15th meeting from 26 to 30 March 1984 at the headquarters of the Council of Europe, Strasbourg.

In order to facilitate the completion of its work on the question of the country of first asylum, the Committee decided to renew the terms of office of Dr. P WEIS (United Kingdom) as Chairman and of Mr G KOJANEC (Italy) as Vice-Chairman for the present meeting.

The Bureau elected by the Ad Hoc Committee is also composed of Mrs E RIEDL (Austria), Mr T BEECKMANS de WEST MEERBEECK (Belgium) and Dr. G WIKREN (Sweden).

2. The list of participants is given in Appendix I to this report.
3. The Agenda will be found in Appendix II to this report.
4. The terms of reference of the Committee are as follows:
  - i. to follow developments in the field of territorial asylum, refugees and stateless persons, in particular within the framework of the United Nations and other international organisations and institutions, whether worldwide or regional, and to hold regular exchanges of views on this subject with a view to the adoption of a common stance by the Council of Europe member States, and to make proposals for the solution of practical and legal problems facing States in the field of territorial asylum, refugees and stateless persons, particularly by drawing up appropriate legal instruments (conventions and recommendations) in the liberal and humanitarian spirit of the member States of the Council of Europe;
  - ii. to continue the examination of the legal rules aimed at improving the situation of refugees and asylum-seekers by facilitating their integration into the host country;
  - iii. to continue study of Assembly Recommendation 773 and the question of the country of first asylum;
  - iv. to examine the possibility of drawing up a draft legal instrument on the granting of territorial asylum;
  - v. to study the extraterritorial effect of positive and negative decisions on the granting of refugee status and asylum requests.

The completion date for these terms of reference is 31 December 1986 (Concl. (84) 366, item 26).

These terms of reference expire on 31 December 1986 (Concl. (84) 366, point 26).

Points submitted to the Committee of Ministers for decision

5. The Committee of Ministers is invited:
- i. to agree to a derogation from Article 17(f) of Appendix II to Resolution (76) 3 on the structures, terms of reference and working methods of Committees in respect of the re-election of the Chairman and Vice-Chairman of CAHAR, which was decided upon at the latter's 15th meeting;
  - ii. to take note of this report as a whole.

I. State of signatures and ratifications of the European Agreement on transfer of responsibility for refugees (item 4 of the Agenda)

6. The Secretariat representative informed the Committee that, on 17 January 1984, Denmark deposited its instrument of ratification of this Agreement, which entered into force in respect of Denmark on 1 March 1984.

7. At the time of the present meeting, the Agreement was therefore in force between four States (Denmark, Norway, Portugal and Sweden) and had been signed by eight States (Belgium, Federal Republic of Germany, Greece, Italy, Luxembourg, Netherlands, Switzerland and United Kingdom).

II. Decisions of the Committee of Ministers which are of interest to the CAHAR (item 5 of the Agenda)

8. The Secretariat representative drew the Committee's attention to the decisions concerning it which had been taken by the Committee of Ministers at the 366th meeting of the Deputies (January 1984).

9. He informed it in particular that the Committee of Ministers had adopted the Recommendation on the protection of persons satisfying the criteria in the Geneva Convention who are not formally recognised as refugees and had authorised the publication of the explanatory memorandum relative to this Recommendation.

10. On the other hand, the Committee of Ministers had been unable to adopt the draft Recommendation on the acquisition by refugees of the nationality of the host country, and instructed the Secretariat to ask CAHAR to re-examine the draft Recommendation in the light of the comments made by the delegations of the Federal Republic of Germany and France.

11. The Committee of Ministers had also adopted the specific terms of reference of CAHAR, which henceforth also included the study of problems relating to stateless persons. The Ad Hoc Committee's title had therefore been amended to "Ad Hoc Committee on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons"; its initials, however, remain unchanged.

12. In connection with the extension of CAHAR's terms of reference to the problems of stateless persons, one expert suggested that work might be envisaged with a view to preparing a draft Protocol to the European Agreement on transfer of responsibility for refugees and to the European Agreement on the Abolition of visas for refugees, thus extending the benefit of the arrangements concerned to stateless persons and invited the Secretariat to prepare a draft text.

13. With regard to work on the question of the country of first asylum, the Committee of Ministers renewed those terms of reference which covered study of the question, but expressed the view that, if no agreement could be reached at CAHAR's present meeting on a text which was likely to be ratified by a sufficient number of States, the subject should be dropped, at least for the time being.

III. Re-examination of the draft Recommendation No. R (84) ... on the acquisition by refugees of the nationality of the host country, in the light of the comments made on it by delegations at the Deputies' 366th meeting (item 7 of the Agenda)

14. At the 366th meeting of the Deputies, the Committee of Ministers had been unable to adopt the draft Recommendation on the acquisition by refugees of the nationality of the host country, since the delegation of the Federal Republic of Germany had asked for the draft to be referred back to CAHAR. According to this delegation, the recommendations under (ii) of the draft Recommendation were not consistent with the state of legislation in the Federal Republic of Germany and were not acceptable.

Consequently, the Committee of Ministers had instructed the Secretariat to ask CAHAR to re-examine the said draft in the light of the comments made by the delegations of the Federal Republic of Germany and France. The text of these comments is reproduced in doc. CAHAR (84) 2.

15. The experts of the Federal Republic of Germany and France were invited to explain to the Ad Hoc Committee their countries' position on the problems raised by the recommendation contained in the text submitted to the Committee of Ministers, on the understanding that the draft Recommendation could not be re-examined until the next meeting of CAHAR, owing to the priority reserved at the current meeting to study of the question of the country of first asylum,

16. The expert of the Federal Republic of Germany confirmed that his country fully supported the objective underlying the draft Recommendation and particularly that of making it easier for the children of refugees to acquire the nationality of their country of residence.

17. However, in his view, the recommendations in paragraph (ii) - 1st dash - went too far insofar as they opened up a veritable right to naturalisation, whereas the decision to award nationality should be subject to the exercise of discretionary powers.

18. Moreover: paragraph (ii) - 1st dash - should be reworded to make it clear that, when the children of refugees applied for the nationality of the host country, they should be resident in that country at the time of application. It would be unacceptable if such an application could be made by an adolescent when he was no longer resident in the host country.

19. Finally, according to the expert of the Federal Republic of Germany, the recommendation in paragraph (ii) whereby, if a refugee parent acquired the nationality of the host country, his or her children should simultaneously acquire that nationality could be accepted only insofar as it was understood that the parent's acquisition of the said nationality would not automatically be extended to the children but should be applied for.

20. The amendments to the draft Recommendation proposed by the expert of the Federal Republic of Germany are set out in Appendix III to this report.

21. For his part, the expert of France reserved the right to explain his country's position on the problems raised by the draft Recommendation at the next meeting of CAHAR.

22. Finally, in the framework of the "Exchange of views" procedure with the European Consultation on Refugees and Exiles (1), the Ad Hoc Committee decided to invite a representative of the "European Consultation" to attend the next meeting of CAHAR in order to present the Consultation's opinion on the draft Recommendation and on any other possible measures for integrating refugees in the host country. It was agreed that CAHAR would pursue its examination of the draft Recommendation after the exchange of views with the representative of this Consultation.

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(1) Decision taken by the Committee of Ministers at the 360th Meeting of the Deputies (May 1983) - CM/Del/Concl. (83) 360, point 14.

IV. Question of the country of first asylum (item 6 of the Agenda)

The CAHAR continued its work on the draft Agreement on the responsibility for examining asylum requests, and tried to reach a text capable of meeting with the largest possible approval, in accordance with the instructions which had been given to it after its 14th meeting by the Committee of Ministers.

The following comments may be made on the text of the articles of the draft Agreement as raised by the CAHAR in the light of its discussions.

Article 2

Asked to choose between the two alternatives put forward for the text of this article, the Committee thought that basically the two variations were equivalent.

However, for drafting reasons, it was agreed to retain Alternative B.

Article 3.2.d

On this point it was agreed that the presence of the term "at the frontier" in Article 3.1 makes paragraph 2.d of the same article superfluous. Paragraph 2.d was therefore deleted.

Article 4 (new)

This article was adopted following a proposal of the Chairman and inserted into the text in such a way as to emphasise that it constitutes a general provision.

The inclusion of the words "as far as possible", however, takes account of the observations made by several experts who thought that the intention of the asylum seeker cannot be an absolute criterion in the designation of the State responsible for examination of the asylum request.

Article 5 (formerly Article 4)

During the discussion on this point, the French expert recalled that, in accordance with the observations reproduced in document CAHAR (84) Misc 1, the draft Agreement as it stood could not expect the adherence of the French delegation. The text of the French delegate's statement is reproduced in Appendix IV to this report.

In accordance with the proposal made by the Secretariat in document CAHAR (84) 1, the wording of this article has been modified so as to align it with Article 8. Moreover, after a thorough discussion of the various aspects of the problem the Committee agreed to limit this article to State Parties.

However, it was decided that a provision in the agreement should specify that it does by no means affect the relations between State Parties and non-State Parties (see Article 13 of the draft Agreement).

#### Article 6 (formerly Article 5)

It was decided in this Article, and in the same spirit as for Article 5, to limit the links which could have an influence on the designation of the State responsible for examining the asylum request to those links existing with a State Party.

In addition, at the request of certain experts, sub-paragraphs (a) and (b) of paragraph 1 have been completed so as to take account of a possible expulsion order against an asylum seeker and issued by the State Party with which the links exist.

#### Article 7 (formerly Article 6)

Former Articles 6 and 7 have been reformulated, the provisions concerning the stay in another State being now taken care of in Article 7 and concerning only stays in State Parties.

It has been provided for that a State Party would not be obliged to examine an asylum request made by a person who entered the territory of this last State illegally or finds himself at the frontier if he has stayed at least 100 days on the territory of another State Party with the consent of the authorities of that State.

However, to take account of the objections of certain experts who said that they could not accept a period as long as that, paragraph 3 of Article 7 provides for the possibility of reducing the period by means of agreements provided that, in any event, the stay should not be less than 30 days.

Another expert stressed that for reasons of administrative efficiency he was not in a position to accept such a period as provided for in Article 7 para. 2 whatever its length might be.

#### Article 8

The discussion on this Article was directed particularly at discovering if sub-paragraph (e) (formerly sub-paragraph (d)) should be retained in the draft Agreement. Certain experts stated that when an asylum seeker leaves the State where he presented his request the procedure is normally brought to a close as quickly as possible.



It was however agreed that the State Party seized of the first asylum request should be obliged to take the applicant back and consequently it was decided that the provision should be retained in the draft Agreement.

Article 9

The time-limits mentioned in this provision were the subject of a detailed discussion.

The experts agreed that the second time-limit should be greater than the first one but a time-limit of nine months was considered to be too long; agreement was reached on a time-limit of seven months.

Article 10

Article 10 put forward in document CAHAR (83) 34 was amended to take account of the inclusion of sub-paragraph (e) in Article 8.

Article 11

Article 11, second paragraph, put forward in document CAHAR (83) 34 was amended, to make the Article clearer.

Article 12 (formerly Article 13)

The discussion on this point was directed at knowing whether bilateral agreements on reconduction should prevail over the future Agreement.

Several experts manifested their wish that reconduction agreements should not be affected by the future Agreement.

However a majority of experts opted for Alternative B which is included in Article 13 of document CAHAR (83) 31.

Article 13 (formerly Article 14)

The experts agreed to insert in the future explanatory report a comment on this provision which would stipulate in particular that none of the provisions in this Agreement could be interpreted as imposing on a State Party an obligation to examine an asylum request presented by a person who can legally proceed to the territory of another State non-Party which is obliged to examine his asylum request. According to several experts the form of Article 13 is, anyway, not final.

Article 15 (formerly Article 17)

The expert from Turkey expressed the point of view of his authorities concerning the provision on the settlement of disputes contained in Article 15 of the draft Agreement and proposed that the possibility of making a reservation to paragraph 3 of Article 15 should be provided for in this Agreement.

The Secretariat pointed out that the same clause was embodied in several Council of Europe conventions and agreements and that providing for reservations to the clause of settlement of disputes raised a question of principle which owing to its very nature should be decided upon by the Committee of Ministers rather than by the CAHAR.

It was agreed that if the Turkish authorities wished to maintain their position it would be convenient that they raise the question when the Committee of Ministers examines the draft Agreement.

Article 16 (formerly Article 22)

The experts put forward the list of the various reservations of a technical nature which one or other expert wished to have provided for at this stage.

It was stressed, however, that the question of the reservations was an essential point in the negotiation and that a final position could be taken only when the whole of the draft Agreement is finally adopted.

It was also pointed out that the reservations to be provided for in the Agreement could by no means affect the purpose and aim of the latter by rendering its basic provisions inefficient.

Consequently the text of the reservations under 3) has been placed in brackets; the expert who requested that this reservation be provided for in the Agreement expressed again his position in respect of Article 7 para. 2 which he said was impossible for him to apply. According to several experts reservation (1) should also be placed between brackets for the same reasons.

Article 18

The experts agreed to fix the date of entry into force of the Agreement on ratification by five States.

24. At the conclusion of this work, the CAHAR provisionally agreed on the text of a draft Agreement which is reproduced in Appendix V to this report. As agreed, the Chairman invited each expert to indicate if he was disposed to recommending to his authorities to become party to such an Agreement. It emerged from the tour-de-table that among the 15 experts sitting on the Ad Hoc Committee seven experts could at this

stage reply in principle affirmatively to this question, on certain conditions in the case of three of them; seven other experts replied rather negatively and one expert could not take a decision.

The CAHAR believed that if, taking account of the result of the tour-de-table, the Committee of Ministers decided to instruct the CAHAR to complete its work in this area, this question should be put on the agenda for two more meetings of the CAHAR in order to firstly draw up the final text of the draft Agreement and secondly to finalise the text of the Explanatory Report.

V. Situation of de facto refugees (item 8 of the agenda)

Owing to the priority given to the question of the country of first asylum it was decided to pursue work in connection with this item at the next meeting of the CAHAR.

VI. Miscellaneous (item 9 of the agenda)

The CAHAR agreed to hold its next meeting on 10-14 September 1984.

A N N E X E I  

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A P P E N D I X I

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LIST OF PARTICIPANTS

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A P P E N D I X II

AGENDA

1. Opening of the meeting
2. Election of the Chairman, Vice-Chairman and members of the Bureau
3. Adoption of the Agenda
4. State of signatures and ratifications of the European Agreement on Transfer of Responsibility for Refugees
5. Decisions of the Committee of Ministers which are of interest to the CAHAR

6. Question of the "country of first asylum" (1)

Working documents: CAHAR (80) 4 and Appendices; CAHAR (82) 4;  
CAHAR/GT (82) 1; CAHAR (82) 5; CAHAR (82) 10 final;  
CAHAR/GT (83) 1; CAHAR (83) 2 and Addendum;  
CAHAR (83) 20 final; CAHAR (83) 34, and CAHAR (84) 1

7. Re-examination of the draft Recommendation No. R (84) ... on the acquisition by refugees of the nationality of the host country in the light of the comments made on it by delegations at the Deputies' 366th meeting

8. Situation of de facto refugees (Assembly Recommendation 773)

Working documents: CAHAR (82) 4; CAHAR (82) 7; CAHAR (83) 20 final;  
CAHAR (83) 24; CAHAR (83) 29 and CAHAR (83) 36 final

9. Miscellaneous

- Future work of the Committee
- Date of the next meeting

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(1) As requested by the Committee of Ministers at the Deputies' 366th meeting priority should be given to the question of the "country of first asylum"; further items might be dealt with depending on the time available.

A P P E N D I X III

Amendments to the  
draft Recommendation on the acquisition by  
refugees of the nationality of the host country  
as proposed by the expert of the  
Federal Republic of Germany

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In respect of (ii) of the draft Recommendation on the acquisition by refugees of the nationality of the host country the German delegation proposes.

1. The phrase "either on application or by virtue of a declaration" at the end of in- first indent - be deleted and that the following wording be added  
  
"if, at the time of application, they have been legally resident on a permanent basis in this State for at least three years".
2. The final phrase of the second indent be worded as follows:  
  
... his children should be able to acquire that nationality simultaneously on application.

Explanatory memorandumRe 1

1.1 The deletion of the phrase "either on application or by virtue of a declaration", while restricting somewhat the operative part, does not lose sight of the objective of enabling refugee children to acquire the nationality of the country of residence under the conditions mentioned. It leaves it up to the States Parties to determine how this objective is to be achieved without pinning them down to a right of naturalisation or a right of declaration.

1.2 The proposed rewording of the final phrase is designed to ensure that, at the time of application, the children are still resident on a permanent basis in the State whose nationality they intend to acquire. The wording hitherto used does not appear to rule out a naturalisation request being made from abroad if a refugee child has been resident in the host country for a considerable length of time.

Re 2

The rewording is designed to ensure that the children may acquire, on application, the nationality at the same time as their parents; it rules out, however, that when the parents acquire the nationality of the host country this should automatically apply to the children, without preventing the States Parties from acting in this way.

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A P P E N D I X IV

Declaration made by the French expert

The draft Agreement on the responsibility for examining asylum requests, discussion of which appears in the agenda of the 15th meeting of the Ad Hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) of the Council of Europe which is due to meet from 26-30 March 1984, cannot as it stands, expect the support of the French delegation.

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The structure of the draft Agreement is essentially as follows:

1. The principle is laid down of the obligation for a State Party to examine any asylum request presented at its frontier or on its territory (Art. 3).
2. This obligation persists, in the first place, even if asylum "could be or could have been sought in another State" (Art. 3.2) except however if:
  - a) asylum or the right of permanent residence in that other State has been granted to the applicant (Art. 4);
  - b) the applicant for asylum has "strong links" with that other State, in particular family links: authorised residence of the spouse, of the father or of the mother if a minor is involved.

Every State Party must accept or take back, with a view to examining his asylum request, an asylum seeker who has been sent back by another State Party on the basis of a) or b) mentioned above (Art. 8), and to do so at any time (Art. 9.2).

3. The obligation so defined continues, in the second place, even if the asylum seeker had initially stayed in countries other than the one where he alleges fear of persecution (Art. 3.2b), unless however if:

- a) the applicant has beforehand had an authorised stay in another State Party of at least 100 days (Art. 6);
- b) the applicant has beforehand stayed for at least 30 days in one or several States and he can be admitted by one of those States (Art. 7).

Every State Party must take back with a view to examination of his asylum request, an applicant who has been sent back by another State Party on the basis of the abovementioned a) (Art. 8), but the obligation only arises in the two time limits - six months from the time of the asylum request presented in the second State and six months (or nine) from the time of departure from the territory of the first State (Art. 9.1)

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The practical bearing of the draft Agreement is concentrated mainly on the totality of the stipulations analysed at point 3 above and which aims at answering one of the major questions currently being examined by one of the inter-ministerial working groups set up to carry out government decisions taken last December: viz. the consequences to be drawn from a previous stay of an asylum seeker in a third country (without risk) in regard to both the admission or refoulement of the person concerned at the frontier and, if he has arrived in the territory, the admissibility or inadmissibility of his asylum request.

On at least three points, the response contemplated by the CAHAR would go against the directions which are reflected at the present stage of our work:

- 1. Subordinating to a condition concerning length of stay in a third country "without risk", the freedom to send back at the frontier an applicant who is not entitled to enter the territory in a normal manner, and who has come from such a country:

2. Subordinating to the same condition the freedom to reject the asylum request which has been presented on the territory when the applicant has beforehand stayed in a third country "without risk" and his re-admission there remains possible (access still possible);
3. Subordinating to the requirement that the previous stay in another State Party has been authorised and for at least 100 days (when re-admission is not or is no longer as of right), extension of the mechanism currently laid down in bilateral agreements concerning the return of persons which bind France to the Federal Republic of Germany, to Austria, to the Benelux countries and to Switzerland, the "authorising mechanisms" are defined more broadly, and which constitute - and experience shows this - a "minimum model", short of which efficiency cannot be hoped for.

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May I add that during its meeting in Geneva on 16 February last, the Contact Group, set up by way of extension of the seminar of 12-15 September 1983 on the integration of refugees in Europe, as well as those responsible for the European section of the HCR, were I believe convinced by what I said on the appropriateness of a new session of the same seminar mainly devoted to the examination of the above question and which would take place during the 4th part of this year.

This competing work, in progress or in the process of starting, could provide CAHAR with a reason to adjourn its initiatives in this field, without however "discrediting" itself.

A P P E N D I X V

Draft Agreement  
on the responsibility for examining  
asylum requests

as provisionally adopted by CAHAR

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The member States of the Council of Europe, signatory to this Agreement,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Convinced that rules should be established in order to avoid cases where asylum seekers are unable to find a State which will examine their request;

Believing that such rules should be designed to improve the situation of the persons concerned, in accordance with the liberal and humanitarian spirit guiding the member States of the Council of Europe, as reaffirmed in the Declaration on Territorial Asylum of 18 November 1977;

Recalling the spirit of solidarity and collective responsibility which should guide the member States of the Council of Europe in finding a solution to problems as stated in Resolution (67) 14 on asylum to persons in danger of persecution;

Having regard to the Convention relating to the Status of Refugees signed at Geneva on 28 July 1951 and the Protocol relating to the Status of Refugees of 31 January 1967;

Taking into account the European Convention on Human Rights and more particularly Article 3 thereof;

Bearing in mind the recommendations contained in Conclusion No 15 (XXX) on Refugees without an asylum country adopted by the Executive Committee of the Programme of the United Nations High Commissioner for Refugees;

Recalling Recommendation No R (81) 16 on harmonisation of national procedures relating to asylum;

Have agreed as follows:

Article 1

For the purpose of this Agreement:

- (a) the term "asylum request" means any such request requiring an examination based on the criteria for granting of refugee status as provided for under the Convention relating to the Status of Refugees of 28 July 1951 and the Protocol relating to the Status of Refugees of 31 January 1967.
- (b) by "decided upon its merits" is meant the decision taken by the authority competent for such decision on the merits of the asylum request with regard to the criteria provided for under the Convention relating to the Status of Refugees of 28 July 1951 and the above-mentioned Protocol;
- (c) the expression "another State" means any State, even one non-Party to this Agreement, where the asylum seeker does not have to fear being persecuted within the meaning of Article 1 of the above-mentioned Convention and Protocol or being sent back to a territory regarding which he claims a fear of persecution;

Article 2

Every asylum request satisfying the aforementioned definition shall be decided upon its merits in accordance with the following provisions.

Article 3

1. Subject to the exceptions laid down in Articles 5, 6 and 7 of this agreement, the obligation to examine an asylum request is incumbent on the State Party to this agreement on whose frontier or territory that request has been presented.

2. Subject to the exceptions laid down in Articles 5, 6 and 7 of this agreement the obligation of a State Party to examine an asylum request in accordance with the provision of the preceding paragraph shall not be affected by the fact that:

- a. asylum could be or could have been sought in another State;
- b. the asylum seeker has not arrived directly from the country where he alleges that he has well-founded fear of being persecuted or has stayed in other countries during his journey to the State where the request is formulated;
- c. the asylum seeker has not complied with a requirement that a request be submitted within a specified period;

## Article 4

The wishes of the asylum seeker shall as far as possible be taken into account.

## Article 5

A State Party shall not be obliged to examine an asylum request when the applicant is authorised to proceed to or return to the territory of another State Party and reside there on a permanent basis.

## Article 6

1. A State Party on whose frontier or territory an asylum request has been presented shall not be obliged to examine that request when the asylum seeker has strong links with another State Party,

For the purposes of this Agreement, such links are considered as being in existence when:

- a) the spouse of an asylum seeker or the father or the mother of a minor or dependant asylum seeker, are on the territory of another State Party where they are authorised to reside permanently and the asylum seeker is not subject to an expulsion order in that State Party;
- b) the applicant is authorised to exercise a gainful activity in another State Party other than on a purely temporary basis and is not subject to an expulsion order in that State Party.

2. If the links mentioned above under a) and b) exist with the State Party to whom the asylum request is made that State Party shall examine the request.

3. If the applicant has strong links with another State Party other than those referred to in a) and b) that State Party, at the request of a State Party seised of an asylum request, shall consider the possibility of examining the request and admitting the applicant to its territory.

## Article 7

1. A State Party shall examine an asylum request made by a person who has entered legally the territory of that State Party.

2. A State Party shall not be obliged to examine an asylum request made by a person who has entered illegally the territory or is at the frontier of that State Party if the applicant has stayed on the territory of another State Party for a period equal to or greater than 100 days with the consent of the authorities of the latter State Party.

3. State Parties to this Agreement may conclude agreements according to which the period mentioned in the preceding paragraph may be reduced to a period of not less than 30 days.

### Article 8

At the request of a State Party seised of an asylum request, a State Party shall accept or take back the asylum seeker and examine his request when:

- a) the asylum seeker is authorised to reside on a permanent basis on the territory of that State Party;
- b) the spouse of an asylum seeker, or the father or the mother of the minor or dependant asylum seeker are on the territory of that State Party where they are authorised to reside there on a permanent basis and the asylum seeker is not subject to an expulsion order in that State Party;
- c) the asylum seeker is authorised to exercise a gainful activity in that State Party other than on a purely temporary basis and is not subject to an expulsion order in that State Party;
- d) the asylum seeker has effectively stayed on the territory of that State Party with the agreement of its authorities, for a period equal to, or greater than, the period mentioned in Article 6;
- e) the asylum seeker has presented in that State Party an asylum request which has not yet been the subject of a final decision on the merits.

### Article 9

1. A request for re-admission in accordance with Article 8 based on the circumstances mentioned under d) or e) of that Article must be presented six months at the latest from the time of the asylum request and at the latest seven months from the date on which the asylum seeker has left the country to which the request for re-admission is made.
2. The request for admission or re-admission based on the circumstances mentioned under a), b) or c) of Article 8 is not subject to the aforementioned time limits.
3. After the expiry of the aforementioned time limits the State Party seised of the asylum request is bound to examine it on the merits.
4. When the State Party concerned by circumstances mentioned in Article 8 is seised of a request for information as to the existence of such a link, formulated by the State seised of the asylum request the aforementioned time limits are suspended until the expiry of a period of two months from the receipt of the reply.

## Article 10

1. If two or more of the circumstances mentioned in Article 8 apply simultaneously to several State Parties circumstance a) takes precedence over the others, circumstance b) takes precedence over c), and c) over d) and e). As regards priority between these last two circumstances, the oldest takes precedence over the others provided that the time limits in the preceding article have not expired in which case only the circumstance which is not barred by the expiry of the time limits is taken into consideration.
2. This order may be derogated from particularly to take account of the wishes of the asylum seeker.

## Article 11

1. The period referred to in Article 7 only runs from the date of the final departure of the asylum seeker from his country and, in the case where he subsequently had knowledge of events in his country making him seek asylum, from the date on which he had knowledge of it.
2. The knowledge of the events which led him to seek asylum, unless proven otherwise is presumed to be acquired 30 days after their occurrence.

## Article 12

1. The obligations resulting for a State Party by virtue of this Agreement shall not be affected by the application of agreements concerning the reconduction of persons to the frontier to which the State is also a Party.
2. In particular, the carrying out of a readmission accepted by virtue of such a reconduction agreement shall be postponed until there is a negative decision on the asylum request examined by virtue of this Agreement.

However, the provisions of the preceding paragraph do not preclude a State Party from requesting by virtue of a reconduction agreement the readmission of a person whose asylum request is being examined under this Agreement, in the time-limits laid down for this purpose in the reconduction agreement.

3. State Parties to this Agreement may conclude agreements according to which reconduction agreements shall apply inter se in derogation from Article 12.

## Article 13

This Agreement does not affect the relations between State Parties to this Agreement and States non-Party.



Article 14

1. Nothing in this Agreement shall be interpreted as precluding a State Party from granting asylum on wider grounds existing in its national law or practice than those provided for under this Agreement.
2. Nothing in this Agreement shall impair any rights and benefits which have been or which may be granted to asylum seekers independently of this Agreement.

Article 15

1) Difficulties with regard to the interpretation and application of this Agreement shall be settled by direct contacts between the competent administrative authorities and, if the need arises, through diplomatic channels. These authorities shall be specified by each State when expressing its consent to be bound by the Agreement by means of a notification addressed to the Secretary General of the Council of Europe.

2) If one or more of the Parties to the Agreement consider that a difficulty is likely to affect all the Parties, this difficulty may be made the subject of consultations between the Parties to the Agreement.

The United Nations High Commissioner for refugees shall be informed of the difficulty. The Party or Parties in question may request the convening of a committee in which each Party to the Agreement will be represented by one delegate, and in which every member State of the Council of Europe as well as the High Commissioner will be entitled to be represented by an observer.

If appropriate the Committee will endeavour to reconcile the positions of the Parties.

3) Any dispute between Parties concerning the interpretation or application of this Agreement which it has not been possible to settle by negotiation or other means shall, at the request of any party to the dispute, be referred to arbitration. Each party shall nominate an arbitrator and the two arbitrators shall nominate a referee. If any party has not nominated its arbitrator within the three months following the request for arbitration, he shall be nominated at the request of the other party by the President of the European Court of Human Rights. If the latter should be a national of one of the parties to the dispute, this duty shall be carried out by the Vice-President of the Court, or, if the Vice-President is one of the parties to the dispute, by the most senior judge of the Court not being a national of one of the parties to the dispute. The same procedure shall be observed if the arbitrators cannot agree on the choice of referee.

The arbitration tribunal shall lay down its own procedure. Its decisions shall be taken by majority vote. Its award shall be final.

The High Commissioner shall be informed of the institution of proceedings and shall be given a possibility to present its observations.

## Article 16

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it reserves to itself the right:

- not to examine by virtue of Article 3, paragraph 1 of this Agreement an asylum request presented at the frontier with another State where the asylum seeker does not have to fear being persecuted within the meaning of Article 1 of the Convention relating to the Status of refugees of 28 July 1951 and the Protocol relating to the status of refugees of 31 January 1967 or being sent back to a territory regarding which he claims a fear of persecution;
- not to apply the provisions of Article 7, paragraph 2 and of Article 8(d) and (e) to asylum seekers who have been admitted to the territory of a State Party solely for the purposes of their re-establishment in another State.
- /- not to apply the provisions of Article 7 paragraph 2 and Article 8(d) and (e)./

No other reservation may be made.

2. Any Contracting State which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.

## Article 17

1) This Agreement shall be open for signature by the member States of the Council of Europe, which may express their consent to be bound by:

- a. signature without reservation as to ratification, acceptance or approval, or
- b. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2) Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 18

1) This Agreement shall enter into force on the first day of the month following the expiration of a period of one month after the date on which five member States of the Council of Europe have expressed their consent to be bound by the Agreement, in accordance with the provisions of Article 17.

2) In respect of any member State which subsequently expresses its consent to be bound by it, the Agreement shall enter into force on the first day of the month following the expiration of a period of one month after the date of signature or of the deposit of the instrument of ratification, acceptance or approval.

Article 19

1) After the entry into force of this Agreement, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council which is a Party to the Convention relating to the status of refugees of 28 July 1951 or, as the case may be, the Protocol relating to the status of refugees of 31 January 1967, to accede to the Agreement. The decision to invite shall be taken by the majority provided for by Article 20 d. of the Statute and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.

2) In respect of any acceding State, the Agreement shall enter into force on the first day of the month following the expiration of a period of one month after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 20

1) Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Agreement shall apply.

2) Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Agreement to any other territory specified in the declaration. In respect of such territory the Agreement shall enter into force on the first day of the month following the expiration of a period of one month after the date of receipt by the Secretary General of such declaration.

3) Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

## Article 21

Without prejudice to the provisions of Article 15, this Agreement shall apply to each Party subject to the same limitations and reservations applicable to its obligations under the Convention relating to the Status of refugees of 28 July 1951 or, as the case may be, the Protocol relating to the Status of Refugees of 31 January 1967.

## Article 22

- 1) Any Party may at any time denounce this Agreement by means of a notification addressed to the Secretary General of the Council of Europe.
- 2) Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.
- 3) Rights and benefits acquired or in the course of being acquired by refugees under this Agreement shall not be affected in the event of the Agreement being denounced.

## Article 23

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Agreement of:

- a. any signature;
- b. the deposit of any instrument of ratification, acceptance, approval or accession;
- c. any date of entry into force of this Agreement in accordance with articles 18, 19 and 20;
- d. any other act, notification or communication relating to this Agreement.