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COMMITTEE OF MINISTERS

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

25th meeting

(Strasbourg, 21 - 25 March 1988)

MEETING REPORT

Preliminary note

The Committee gave priority to pursuing its examination of the draft Agreement on responsibility for examining asylum requests. It was possible to adopt a certain number of provisions.

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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 25th meeting from 21 to 25 March 1988 at the headquarters of the Council of Europe, Strasbourg, under the chairmanship of Mr. B. WEIBO (Sweden) and Mr. G. ZÜRCHER (Switzerland), the members of the Bureau being: Mrs. E. RIEDL (Austria), Mr. O. REERMANN (Federal Republic of Germany) and Mr. E. GOSSCHALK (Netherlands).
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 in member States and 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 stand 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 aiming among other things to settle the question of the countries of first asylum and of territorial asylum;
 - ii. to search for concrete solutions aiming at the harmonisation of rules and practices which are followed in Europe in matters of asylum policy;
 - iii. to co-operate with other Steering or ad hoc Committees, and notably with the European Committee on migration (CDMG) as regards the reception and social integration of refugees (Field III, Chapter 4, Objective ii) of the 3rd Medium-Term Plan and concerning the achievement of the 4th multidisciplinary objective related to community relations;
 - iv. extraordinary meetings of the Committee might be convened if one or more governments so request, following the procedure decided by the Committee of Ministers (CM/Del/Concl (86) 397, item 20) to study specific urgent practical problems or questions of special political importance and related problems.

The completion date for these terms of reference is 31 December 1991 (Concl. (87) 404, Appendix 3).

Items submitted to the Committee of Ministers for decision

5. The Committee of Ministers is invited to take note of this report as a whole.

Decisions of the Committee of Ministers which are of interest to CAHAR

6. At their 410th meeting (September 1987), the Deputies took note of the report of the 23rd meeting of the CAHAR.

Concerning the report of the 24th meeting of the CAHAR, the Deputies examined it at their 415th meeting (March 1988). On that occasion they:

- decided to instruct the CAHAR to concentrate its work on approval of a draft Agreement, before the end of 1988, of a kind to ensure the accession of the largest possible number of member States;
- noted that the Secretary General is to consider the possibility of calling an additional CAHAR meeting in 1988, in the framework of the appropriations voted for the budget.

State of signatures and ratifications of the European Agreement on Transfer of Responsibility for Refugees

7. At present, the Agreement is in force between 9 States (Denmark, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom) and has been signed by 4 other States (Belgium, Federal Republic of Germany, Greece and Luxembourg).

The experts from the Netherlands and Switzerland mentioned having occasional difficulties deriving from requests to apply the Agreement to situations in which the other State involved is not a Party to the Agreement. Ratification of the Agreement by all the member States would facilitate their task, although it has been possible to find pragmatical solutions to every such situation.

Developments in domestic law of member States concerning asylum, refugees and stateless persons

8. The expert from the United Kingdom said that a bill on immigration was as present going through Parliament, albeit with little incidence on refugee matters. On the other hand, the judgment of 16.12.1987 by which the Lords agreed with the Home Office's interpretation of "well founded fear of persecution" had important implications for such matters.

9. The expert from Turkey reported that facilities had been created in some 18 different towns of the Turkish hinterland for the installation of refugees in transit awaiting clearance to enter third countries. This measure aims i.a. at making it more difficult for the refugees to have access to border towns and hence "move irregularly" to third countries.

10. In Switzerland, the new Law on asylum entered into force on 1.1.1988. Persons now seeking asylum in Switzerland must use one of 25 pre-established points of entry into the country. They are then channelled through one of four reception centres to the Canton assigned to each person according to a rate scheme that amounts to an internal "burden-sharing" scheme. Transit visas were introduced for a number of countries.

11. A governmental committee in Sweden finalised its proposals for an up-to-date version of the Aliens Act early this year. Accordingly a bill should be tabled in Parliament in the autumn; the new Act could enter into force on 1.7.1989. No fundamental changes should come up other than the speeding up of the procedures.

12. The Portuguese authorities are worried about the growing number of bogus asylum seekers. Consequently measures will shortly have to be envisaged.

NGO's estimate that the number of de facto asylum seekers presently in Portugal amounts to 50.000 persons.

13. The Norwegian Parliament pursues its examination of the Bill containing draft legislation on aliens. It should soon be adopted. Moreover the newly created Directorate of Immigration, which encompasses the competences that belonged before to both the Aliens' Office and the Refugee Council, initiated its activities on 1.1.88. Co-ordination of action pertaining to the legal as well as the social rights of asylum seekers was strengthened.

14. In the Netherlands, the Privy Council should soon produce its opinion on the draft bill on aliens. Moreover, its decisions concerning cases involving Tamils were such that the mere fact of being a Tamil does not prevent the authorities anymore from deporting such persons to Sri Lanka.

15. In Malta the relevant legislation is the Immigration Act, 1970, which however does not specifically deal with asylum, refugees and stateless persons.

16. A Private Members' Bill, signed by over 50 parliamentarians of different parties, is before the Italian Parliament. It reflects the position of Italy with respect to the question of the country of first asylum. Indeed it provides that only a stay of over three months in a third country may justify the Italian authorities to consider that country as the country responsible for examining a request.

17. The Irish authorities have extended visa requirements to five new countries and contemplate introducing transit visas.

18. In Greece, the government contemplates introducing measures aimed at speeding up procedures.

19. In the Federal Republic of Germany, the abbreviated procedure designed to deal with manifestly unfounded requests, hitherto applied on a provisional basis, will become a permanently available procedure when a Bill presently under consideration is adopted.

20. A "sunset" clause in the Danish law applicable to refugees obliged the government to submit that law to Parliament for revision. The government has proposed to Parliament to prolong the validity of the law.

21. The new Belgian Law of 14.7.87 came into force on 1.2.88.

22. Large debates and studies are going on in Austria with respect to the legislation pertaining to aliens, asylum, passport control, etc. They might lead to important changes, bringing in some instances the Austrian legislation closer to that of the EEC countries.

As from 1.1.88, no visas are required for Polish travellers. Asylum requests by Poles have increased since then.

23. The representative from the Commission of the EEC reported that preliminary draft proposals for a Directive aiming at bringing closer the rules pertaining to refugee matters had been elaborated and moreover discussed in Brussels last week by a group of governmental experts. The Commission should bring a final draft before the Council by July this year.

24. In Australia, an independent enquiry into the immigration policy and law is underway and its results may lead to changes. Furthermore, an amendment was introduced in the Immigration Act allowing for a more efficient system of imposing penalties on carriers that transport undocumented persons.

Forced returns to Sri Lanka started as from the beginning of this year. Two weeks' notice is given to the UNHCR.

25. Two important bills on immigration remain before Parliament in Canada.

The authorities are very concerned with the increased number of ill-founded claims that block, or slow down, the pace of their present determination procedure.

26. In Finland a working party was set up that should review the legislation on aliens and, if possible, make proposals by the end of 1988.

27. The observer from the UNHCR reported that accidental refoulement situations had occurred these last months. Notice to UNHCR as well as consultation with the transit country, prior to the deportation of a person, should normally be enough to avoid such incidents. All the experts re-stated their country's effective abidance to the non-refoulement principle.

Replying to a question, he said that in the UNHCR's view the situation in Sri Lanka remained fluid and such that forced returns to that country should not be considered. Voluntary returns should be dealt with with the utmost care and securing the involvement of the UNHCR and its ability to monitor the situation of the person concerned after his arrival. Some experts however questioned the appropriateness of this view in the light of the UNHCR's opinion, expressed elsewhere, that forced returns from India to Sri Lanka do not as a matter of principle raise difficulties.

Draft Agreement on the responsibility for examining asylum requests

28. In compliance with the instructions received from the Committee of Ministers, the CAHAR concentrated its work on this item of its Agenda.

29. As an introduction to the discussion, the experts from the Federal Republic of Germany and the Netherlands, as well as the representative from the Commission of the EEC, briefed the Committee on the progress achieved so far in the work in this field that is being undertaken respectively within the asylum group set up by the Ministers responsible for immigration of the 12 EEC members, the Schengen group (the Benelux countries, France and the Federal Republic) and the Commission of the EEC.

30. The information thus transmitted, as well as the discussion that followed, showed that the texts that are being prepared and the solutions reached in these different fora are compatible with the draft agreement presently under CAHAR's examination as far as the underlying principles are concerned, although the view was expressed that the points of departure were different in each case.

31. The Secretariat stressed that in its view - save misinterpretation of the Schengen text to which it has not had access - all the texts were construed on the same principles, share the same objectives and, when enforced, will lead to the same solutions. Differences, which remain marginal, result mostly from the fact that the texts were not built upon the same concepts, eg while the CAHAR's draft builds upon the concept of "authorisation to enter", the Commission's text is based upon the concept of "visa". The latter avenue is possible only because it anticipates the forthcoming visa harmonisation system within the Community. However, for all practical purposes, visa harmonisation amounts to a common policy on "authorisation to enter" and that is how the two texts indeed fit into each other.

What is really important and worth considering is that all texts are construed on the following principles:

- a. prime concern is devoted to safeguarding and enhancing the effective implementation of national and international law pertaining to the protection of refugees;
- b. in each and every instance involving an asylum request, one State, and not more than one State, shall be responsible for examining that asylum request;
- c. the State responsible shall be the first to have actively shown that the person concerned may enter its territory, be it by not having opposed (albeit being in a position to do so) that person's physical entry into its territory, or be it by having delivered to that person a document (eg visa, authorisation, permit, etc) amounting to prima facie evidence of that State's intention not to oppose that person's effective entry into its territory.

32. It was recognised that the CAHAR should keep to its work as an exercise separate from that of other groups or institutions and endeavour to reach flexible solutions that leave room for the States to act in accordance with obligations that they might assume elsewhere.

33. The Committee started examining the draft Agreement as from Article 9, in the version that is reproduced in Appendix III to doc. CAHAR (87) 8, and then reverted to the preamble and the first articles.

Article 9

34. Adopted.

The Explanatory report shall mention that the expression "as soon as possible" imposes an obligation of promptness on the requested State that in some instances should materialise in a matter of hours and in no case should exceed one month. It also imposes an obligation of the same nature, albeit less drastic, on the requesting State.

Article 10

35. No conclusion was reached with respect to this Article, although a clear preference was shown by many experts in favour of the alternative version of Article 10 (cfr. Appendix III to CAHAR (87) 8). Moreover a different text was proposed by the expert from the Netherlands (cfr. Appendix III to this report).

Article 11

36. Adopted.

Article 12

37. Deleted.

Articles 13, 14, 15, 16, 17, 18

38. Adopted.

Article 19

39. Paragraphs 1 and 2 were adopted; paragraph 3 was deleted.

Article 20

40. Adopted.

Preamble

41. Paragraphs 4 and 10 were deleted; changes were introduced in paragraphs 2, 3, 5 and 8.

42. Some experts considered that paragraph 5 should be inserted between paragraphs 1 and 2, while deleting paragraph 6, the reason being i.a that paragraph 5 (where it is said that States are in a position to grant protection even where this may involve a considerable burden) is incompatible with paragraph 6 (where it is said that the burden must be shared).

43. Indeed some experts thought that there was no reason for mentioning "burden-sharing" in the preamble because (a) it is not a well-defined concept and (b) there is no provision in the Agreement for burden sharing and therefore no grounds for raising the issue in the preamble.

44. Other experts, however, thought on the contrary that any agreement should be construed on the basis of a general willingness to put solidarity into practice on refugee matters within the member States and that burden sharing is inherent in solidarity. Therefore burden sharing must be an underlying idea to any agreement and hence be referred to as such in the preamble.

Article 1

45. Adopted with modifications.
46. One expert warned the Committee against what he thought to be a legal misconstruction in paragraph 2 to the extent that the latter would impose obligations on non Parties. This question should be cleared up in the Explanatory report.

Definitions

47. At this stage and making reference to what formed an Article 1 in the draft initially prepared by the Secretariat (doc. CAHAR (87) 1, Appendix II), the experts from Belgium and the Netherlands proposed that the CAHAR should reconsider its previous decision with respect to including or not in the draft the definition of some concepts, eg asylum request and asylum seeker or asylum applicant. They furthermore proposed that the CAHAR might for that purpose adopt the definitions which were already adopted, in a different context, by the Benelux countries, France and the Federal Republic (reproduced in Appendix IV to this report).

The importance of definitions was underlined by the expert of Portugal. The Committee did not take a stand on this issue.

Article 2

48. Before entering the discussion of Article 2, the Chairman, at the request of the expert from Switzerland, proceeded to a tour de table aimed at assessing the position of the different experts with respect to the scope of the obligations that should derive to each State once that State was identified as the State responsible under this Agreement. Should that responsibility entail:

- a. only the obligation to take the person concerned back to its territory, or also
- b. the obligation to examine that person's asylum request, and to reach a final decision.
- c. the obligation to take further action in accordance with that decision ie either grant asylum, or grant a residence permit under some other basis, or deport the person out of the geographical area covered by the Agreement?

49. The Committee agreed that only the obligations at a. and b. above should be retained, therefore excluding c. Moreover, the following clarification was agreed upon: the obligation to examine an asylum request means the obligation to engage an asylum determination procedure and to pursue it in accordance with the domestic law. Several experts underlined that the principle of good neighbourood commands that States refusing to grant leave to remain, regardless of the grounds, should deport the person concerned out of the geographical area covered by the Agreement.

50. With reference to the substance of Article 2, the expert from Turkey said that he maintained the reservations that he had expressed in previous meetings, namely that the wishes of the asylum seeker must be taken care of. Responsibility should not derive from an authorisation to enter because in many instances States were not given the choice to authorise or not to authorise the entry of aliens. Presently some 15,000 persons are staying in Turkey without the Turkish Government having had the choice for humanitarian reasons of not permitting their entry; they do not wish to stay in Turkey; they seek asylum in other countries: why should Turkey be given responsibility over these persons?

51. The expert from Greece stated that she is not prepared to withdraw her reservations, expressed in previous meetings, concerning the principles underlying Article 2.

52. The ensuing discussion on Article 2 showed that many difficulties remained unresolved, in particular with respect to conflicting interpretations that some experts gave to the text under consideration.

53. Different proposals with amendments to Article 2 were made. They appear in Appendix III to this report.

54. The Committee deemed that the discussion on this Article could only be pursued in a clear way if the experts sent in their proposals and their comments to the Secretariat who should then circulate them. That should be done by 30 May 1988.

Articles 3 to 8

55. Due to lack of time these articles were not examined. However, the expert of Italy made it clear that in his view:

- Article 3, paragraph 1, in fine, should read:

"... onto whose territory it is proved that the applicant first went";

- the time limit provided for in Article 5, paragraph 2 should be reduced from eighteen months to three months.

General observations

56. The experts from Greece and Italy underlined that all articles remain open for further consideration and none have been finally decided upon.

57. The observer from UNHCR pointed out to the Committee that there are signs that whatever happens with this Agreement will have considerable relevance in the policies of many countries, including non-European countries, and even in the work of UNHCR.

58. The Committee will consider at its next meeting, in the light of the progress achieved by then, whether it is necessary and useful to avail itself of the possibility of holding a third meeting this year.

Elaboration of a legal instrument on territorial asylumSituation of de facto refugees: draft Declaration and draft Explanatory Memorandum

59. Having given priority to item 6 of the agenda, at the request of the Committee of Ministers, the CAHAR was unable to address the above two items due to lack of time.

Exchange of views on concrete problems with which member States are confronted in the field of competence of CAHAR

60. The Committee held a thorough exchange of views and information on the situation in each member State relating to the continuing inflow of asylum seekers.

61. It emerged in particular from the exchange that an increasing number of unaccompanied minors were arriving in different European countries and seeking asylum there. This appeared to some to be the result of an organised traffic.

62. One expert underlined the need to link the study of refugee related problems in the long term with what is expected to be an increased immigration pressure over Europe in the years to come. In this respect he advised that in Switzerland a strategy group was set up to study and make proposals for the definition of the refugee and asylum policies in the 1990's.

Co-operation with the CDMG

63. The Secretariat informed the Committee that the CDMG pursues its discussions on how to implement its new terms of reference on the social condition of refugees. The CAHAR shall be informed in due course of any action envisaged by the CDMG.

Exchange of views with representatives from the I.C.M.

64. For reasons of mutual convenience, the Secretariat agreed with I.C.M. to postpone this exchange of views until the September meeting of the CAHAR.

Miscellaneous

65. The Committee agreed on the following dates for its forthcoming meetings:

- 19-23 September 1988, usual autumn meeting;
- 28 November - 2 December, should it decide to hold a 3rd meeting in 1988;
- 13-17 March 1989, usual Spring meeting.

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A P P E N D I X II

AGENDA

1. Opening of the meeting
2. Adoption of the Agenda
3. Decisions of the Committee of Ministers which are of interest to CAHAR
4. State of signatures and ratifications of the European Agreement on Transfer of Responsibility for Refugees
5. Developments in domestic law of member States concerning asylum, refugees and stateless persons
6. Draft Agreement on the responsibility for examining asylum requests
7. Elaboration of a legal instrument on territorial asylum
8. Exchange of views on concrete problems with which member States are confronted in the field of competence of CAHAR
9. Situation of de facto refugees: draft Declaration and draft Explanatory Memorandum
10. Co-operation with the CDMG
11. Exchange of views with representatives from the I.C.M.
12. Miscellaneous

A P P E N D I X III

Draft Agreement on responsibility
for examining asylum requests (*)

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

1. Recalling their undertakings under the Convention relating to the Status of Refugees signed at Geneva on 28 July 1951 and the Protocol thereto signed in New York on 31 January 1967, as well as their continued observance of the liberal traditions of the European democracies regarding asylum;
2. Considering that the responsibilities inherent in these undertakings and traditions must be borne jointly by all Council of Europe member States and that to this end it is desirable to specify which State is responsible for examining a request for asylum in each case;
3. In order to offer a collective assurance of adequate protection to all persons requiring it on grounds of the persecutions that they risk for the reasons specified in Article 1 of the 1951 Convention;
4. Considering that each Council of Europe member State is in a position to grant adequate protection to the persons requiring it on the aforesaid grounds, even where for some countries this may involve a considerable burden;
5. Considering nevertheless that the burden must be borne jointly and shared by all the States concerned;
6. Considering that the aim of the Council of Europe is to achieve greater unity among its members;
7. Bearing in mind the advantage to asylum seekers of having their requests examined promptly;
8. Having regard to the European Convention on Human Rights, and in particular Article 3 thereof;

Have agreed as follows:

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- (*) The preamble, as well as Articles 1 and 9 to 20, are reproduced so as to reflect the discussions and the decisions taken by the CAHAR at its 25th meeting. The remaining Articles are reproduced from Appendix III to CAHAR (87) 8, unless otherwise stated.

Article 1

1. In accordance with the liberal and humanitarian traditions of the member States of the Council of Europe, the Parties shall co-operate for the purpose of granting to persons who are persecuted or fear persecution on the grounds specified in Article 1 of the 1951 Convention the full protection secured to them by the said Convention, and shall in particular co-operate with a view to establishing which State is responsible for examining an asylum request.

2. The Parties accordingly shall ensure effective co-operation among themselves and if possible shall seek such co-operation with the other member States of the Council of Europe with a view to securing effective implementation of this Agreement and to resolving any problems deriving therefrom.

Article 2

1. Any Party authorising a person to enter or stay on its territory shall be solely responsible for examining his asylum request, to the exclusion of all other Parties, including a Party on whose territory the person in question may be present at a later time and a Party to which the request may have been addressed.

2. For the purposes of paragraph 1, the following in particular shall be deemed to constitute an authorisation to enter:

- any entry processed through an authorised point of entry;
- the issue of an entry or temporary residence visa or permit;
- the issue of a transit visa where the subject does not hold an entry or temporary residence visa issued by another State or where it is clear from the circumstances that he would be refused entry to the territory of another Party;

3. Where an applicant for asylum possesses more than one visa or permit, responsibility for the examination of an asylum request shall lie with the State whose visa/permit has the longest validity.

4. (a) Where an asylum seeker is in transit in a port, including an airport, and remains on the vessel or aircraft or in the transit area of the port or airport which is outside or before passport control and as a result he is not required to undergo the formal procedure of admission to the territory, such transit shall not be regarded as an authorised entry.

(b) Where, however, the asylum seeker makes his asylum request during transit, the Party of transit shall be responsible for examining the request unless another Party is already responsible under this <Agreement> <Article>.

Article 2

(Secretariat's proposal)

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- any entry processed through an authorised point of entry;
- the issue of an entry or temporary residence visa or permit;
- the issue of a transit visa where the subject does not hold an entry or temporary residence visa issued by another State or where it is clear from the circumstances that he would be refused entry to the territory of another Party;

3. In a case in which a person's entry has been processed through an authorised point of entry on the territory of more than one Party, it is the Party which first processed the entry which shall be solely regarded as having authorised the entry.

4. In a case in which a person's entry has been processed through an authorised point of entry on the territory of a Party and that person has also been issued by another Party, either with an entry or temporary residence visa or permit, or with a transit visa in the circumstances envisaged in paragraph 2, the (latter) (former) Party shall be solely regarded as having authorised the entry.

5. Where an applicant for asylum possesses more than one visa or permit, responsibility for the examination of an asylum request shall lie with the State whose visa/permit has the longest validity.

6. (a) Where an asylum seeker is in transit in a port, including an airport, and remains on the vessel or aircraft or in the transit area of the port or airport which is outside or before passport control and as a result he is not required to undergo the formal procedure of admission to the territory, such transit shall not be regarded as an authorised entry.

(b) Where, however, the asylum seeker makes his asylum request during transit, the Party of transit shall be responsible for examining the request unless another Party is already responsible under this Article.

Additional paragraph proposed by the expert
from the Federal Republic of Germany

Unless an asylum seeker has left the territory of the Parties concerned, the responsibility resulting from paragraphs 2 or 3 above shall continue to exist even if the validity of the visa or residence permit has lapsed.

Article 3

1. In the event
 - (a) that it is not possible to establish whether, according to Article 2, an entry is an authorised entry, or
 - (b) that an entry is not an authorised entry,the Party responsible for examining the asylum request shall be the Party onto whose territory the applicant first went.
2. In the event that it is still not possible to establish the Party onto whose territory the applicant first went according to paragraph 1 above, the Party responsible for examining the asylum request shall be the Party where the applicant is.

Article 4

The provisions of this Agreement shall not prevent any party from making use of its sovereign right to examine any asylum request.

Article 5

1. Where an asylum seeker is on the territory or at the frontier of a Party other than the Party which is responsible under this Agreement to examine his or her asylum request, the latter Party shall, at the request of the former, accept back the person concerned pending a decision on his or her request.
2. The obligations of any Party under paragraph 1 shall however lapse eighteen months after the date on which the person concerned left the territory of that Party for the last time.

Article 6

<In the interests of family unity, any Party shall refrain from availing of the provisions of Article 4 in respect of an applicant, in particular:

- where that Party is already responsible for examining an asylum request lodged by that applicant's spouse or, where that applicant is a minor or dependent child, by either parent; or
- where one of the afore-mentioned persons already enjoys asylum on the territory of that Party or is otherwise protected against refoulement by the latter; or
- where one of the afore-mentioned persons is habitually and lawfully resident in that Party's territory.>

Article 6 bis

<If requested by a Party responsible for examining an asylum request, any other Party may consider assuming this responsibility:

- where the other Party is already responsible for examining an asylum request lodged by a member of the applicant's family; or
- where a member of the applicant's family already enjoys asylum on the territory of the other Party or is otherwise protected against refoulement by the latter; or
- where a member of the applicant's family is habitually and lawfully resident in the territory of the other Party.>

Article 7

1. Should any Party assert that, because of the operation of this Agreement, the number of asylum requests for which it is responsible has grown disproportionately, it may notify that fact, accompanied by supporting figures, to the Secretary General of the Council of Europe who shall forward the notification to the other Parties as well as to the Office of the United Nations High Commissioner for Refugees.

2. Should the Party that initiated the procedure laid down in paragraph 1 assert that the situation which gave rise to the notification has not been redressed after a period of six months, that Party may request the Secretary General of the Council of Europe to open negotiations aimed at redressing the situation.

Article 8

(as proposed by the Secretariat)

1. For the purposes of this Agreement, any Party to which an asylum request has been addressed, may request from any other Party the following information:
 - a. data concerning the identity of the asylum seeker or his civil status;
 - b. whether the asylum seeker has addressed an asylum request to the latter Party and if so, what was the outcome;
 - c. whether the asylum seeker has stayed or has been on the territory of the latter Party and, if so, when and under what circumstances;
 - d. whether any person belonging to the asylum seeker's family is staying in the territory of the latter Party and, if so, since when and on what basis.
2. A Party shall in no case seek to obtain that information from the State of origin of the asylum seeker.
3. Where necessary, the Party requested may indicate the relevant safeguards laid down in its domestic law and to which the transmission of the information is subject. Moreover, it may refuse to communicate the information where such communication would be contrary to its domestic law.
4. Information obtained by virtue of the implementation of this article shall in no case be used for purposes other than the application of this Agreement.

Article 9

Readmission of a person resulting from the implementation of one or other of the provisions of Articles 2, 3 or 5 shall take place as soon as possible upon request addressed by one Party to the other Party.

Article 10

1. A Party to this Agreement may not invoke the application of readmission agreements to which it may be a party with a view to avoiding the obligations which this Agreement confers on it.
2. In concluding new agreements between themselves, the Parties to this Agreement may however expressly derogate of the obligations conferred on them by this Agreement insofar as their mutual relations are concerned. <paragraph redrafted by the Secretariat>

Article 10

(new text submitted by the Dutch delegation)

The State Party shall readmit the alien whose asylum request has been finally rejected and who went to another State Party without authorisation.

This provision is not applicable if the State Party already expelled the alien to the territory of a third country.

Article 11

1. Nothing in this Agreement shall be interpreted as precluding a State Party from examining an asylum request 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 by the Parties to asylum seekers independently of this Agreement.

Article 13

The competent authorities of the Parties may communicate directly with each other as regards the application of this Agreement. 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.

Article 14

This Agreement does not apply to asylum seekers whose asylum request was addressed to a Party before the date of entry into force of the Agreement with respect to that Party.

Article 15

1. This Agreement shall be open for signature by the member States of the Council of Europe and by the European Communities, 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 16

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 15.
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 17

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 of Europe 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 18

1. Any Signatory 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 Party 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 or 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 19

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.

Article 20

The Secretary General of the Council of Europe shall notify the member States of the Council as well as the European Communities 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 15, 16, 17 and 18;
- d. any other act, notification or communication relating to this Agreement.

A P P E N D I X IV

Definitions adopted by the Benelux countries, France and the Federal Republic and submitted to the CAHAR by the Belgian and Dutch delegations for insertion in the draft Agreement

Asylum request

Any request, either in writing, orally or otherwise, made by an alien at the external border or on territory of a Party and aimed at having him recognised as a refugee in accordance with the Convention of 28 July 1951 relating to the status of refugees or its Protocol of 31 January 1987 and to enjoy in that quality of a right to reside.

Demander d'asile
(asylum seeker, asylum applicant)

Any alien who has lodged an asylum request with respect to which a final decision has not yet been taken.

Asylum procedure

The procedure consisting of examining an asylum request that is used by the Parties in conformity with their national rules.

Visa

Any visa, whatever its nature may be, that is delivered by a Party.

Titre de séjour
(leave to stay, authorisation to reside)

Any authorisation, whatever its nature may be, that is delivered by a Party and grants the right to stay (to reside) on its territory. Temporary admission (on the territory) with a view to the reception and examination of an asylum request or a request to obtain a "titre de séjour" are not to be included.