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ASYLUM IN THE EUROPEAN UNION: THE “SAFE COUNTRY OF ORIGIN PRINCIPLE”

People's Europe Series

W-7

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DIRECTORATE-GENERAL FOR RESEARCH
DIVISION FOR BUDGETARY AFFAIRS, CIVIL LIBERTIES AND
INTERNAL AFFAIRS, RULES OF PROCEDURE, PETITIONS AND
COMPARATIVE LAW
B-1047 BRUSSELS
TEL. (32) 2/284 36 84
FAX (32) 2/284 49 55

EDITOR: Andrea SUBHAN

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I. Introduction

On 30 November and 1 December 1992 the Council of Ministers responsible for immigration adopted conclusions on countries in which there is generally no serious risk of persecution. The conclusions state that a safe country of origin is a country 'which can be clearly shown, in an objective and verifiable way, normally not to generate refugees or where it can be shown, in an objective and verifiable way, that circumstances which might in the past have justified recourse to the 1951 Geneva Convention have ceased to exist'.

The conclusions are based on the resolution on manifestly unfounded applications for asylum. Paragraph 1(a) of this resolution refers to countries where there is generally no serious risk of persecution¹.

The conclusions show that the aim is to establish a harmonized approach to applications for asylum from countries which give rise to a high proportion of clearly unfounded applications and to reduce pressure on the competent authorities. Refugees in genuine need of protection will not then be kept waiting unnecessarily long for their status to be recognized, and abuse of asylum procedures will be discouraged. Stricter application of the criteria for determining the status of refugees will result in bona fide refugees being accorded better treatment. The Member States are also seeking to arrive at a common assessment of certain countries of particular interest in this context.

The 'safe country of origin principle' is a relatively new legal instrument. It has been applied de facto for some considerable time: officials have often used the concept, based on their general knowledge of a country of origin, when deciding whether there are justified grounds for fearing persecution.

Member States may opt to have this decision taken by an accelerated procedure.

The conclusions on countries in which there is generally no serious risk of persecution² cite a number of criteria for the designation of a country as safe. Paragraph 4 refers to the following factors:

1. Previous numbers of refugees and recognition rates

The recognition rates for asylum-seekers from each country who have come to Member States in recent years must be considered.

2. Observance of human rights

It must be considered what formal obligations a country has undertaken in adhering to international human rights instruments and in its domestic law and also how in practice it meets these obligations. The latter is clearly more important, and a country's adherence or non-adherence to a particular instrument cannot in itself result in its being considered a country where there is generally no serious risk of persecution. It should be recognized that a pattern of breaches of human rights may be exclusively linked to a particular population group or a

¹SN 4823/92 WG 1283 AS 147

²SN 4821/92 WGI 1281 AS 145

particular area of the country. The country's willingness to allow monitoring of its human rights observance is also relevant.

3. Democratic institutions

The existence of one or more democratic institutions cannot be a *sine qua non*, but consideration should be given to democratic processes, elections, political pluralism and freedom of expression and thought.

4. Stability

With account taken of the above factors, an assessment must be made of the prospect of dramatic change in the immediate future. Any view formed must be reviewed over time in the light of events.

These criteria have been adopted to enable the Member States to establish a harmonized approach to applications by nationals of countries producing a disproportionately high number of manifestly unfounded applications for asylum and so to ease the burden on the often overloaded asylum authorities. Nonetheless, it is ultimately for the Member States themselves to decide which are safe countries of origin on the basis of the criteria set out in the conclusions. The conclusions also provide for the establishment of a framework for the exchange of information and appropriate national consultations.

According to the conclusions, the fact that an asylum-seeker comes from a safe country of origin must not lead to the automatic rejection of his application. The Member States may, on the other hand, opt to treat such applications by an accelerated procedure, as described in the resolution on manifestly unfounded applications for asylum.

The aim of this study is to determine which Member States comply with the principles defined in the conclusions. I will begin by identifying the countries which have introduced the 'safe country of origin principle'. The following questions will then be considered:

1. Which authority decides which countries are to be declared safe?
2. Is a list of safe countries of origin compiled? Which countries appear on this list?
3. What is the legal status of the list?
4. Is there any parliamentary control over the compilation of the list?
5. On the basis of what criteria are countries declared safe?
6. What sources of information are used to determine the situation in countries of origin?
7. Is the asylum-seeker given an opportunity to cite facts and circumstances that led him to assume he was in danger of persecution?

Asylum in the European Union: The 'Safe Country of Origin Principle'

	'Safe country of origin principle'	List	Status	Parl. control
Austria	Yes Article 17(3) of Asylum Act	No	-	-
Belgium	No	No	-	-
Denmark	Yes	Yes	Administrative order	No
Finland	Yes Article 32 of Aliens Act	Yes Article 34 of Aliens Act	Ministerial order	No
France	No	No	-	-
Germany	Yes Article 16a(3), first subparagraph, of Basic Law	Yes Article 34 of Asylum (Procedures) Act	Ministerial order Article 29a(3) of Asylum (Procedures) Act	Yes
Greece	No	No	-	-
Ireland	No	No	-	-
Italy	No	No	-	-
Luxembourg	Yes Article 5 of Asylum Act	No	-	-
Netherlands	Yes Article 15c(1)(f) of Aliens Act	Yes	Ministerial order	Yes
Portugal	Yes Article 1c of Asylum Act	No	-	-
Spain	No	No	-	-
Sweden	Yes	No	-	-
United Kingdom	Yes Section 1 of Asylum and Immigration Act	Yes	Ministerial order	Yes

Asylum in the European Union: The 'Safe Country of Origin Principle'

	Safe countries of origin
Denmark	Poland, Czech Republic, Slovakia, Hungary, Romania, Bulgaria, Estonia, Latvia, Lithuania, Russia, Benin, Ghana, Niger, Senegal, Tanzania, all Scandinavian countries, all Western European countries, United States of America, Canada, Australia, New Zealand and Japan
Finland	Netherlands, Belgium, Bulgaria, Spain, Ireland, Iceland, Italy, United Kingdom, Austria, Greece, Cyprus, Latvia, Liechtenstein, Lithuania, Luxembourg, Norway, Portugal, Poland, France, Romania, Sweden, Germany, Slovakia, Switzerland, Denmark, Czech Republic, Hungary, Russia and Estonia
Germany	Bulgaria, Ghana, Poland, Romania, Slovakia, Czech Republic and Hungary
Netherlands	Bulgaria, Ghana, Hungary, Poland, Romania, Senegal, Slovakia and Czech Republic
United Kingdom	Romania, Poland, Pakistan, India, Ghana, Cyprus and Bulgaria

II. Countries

II.1 Belgium

The 'safe country of origin principle' was introduced into Belgium's asylum legislation when the relevant Act was amended in 1991³. The 'double 5% rule' was used in this context⁴. According to this rule, an asylum application could be declared inadmissible if the foreign national originated from a country which had accounted for 5% of asylum-seekers the previous calendar year and if fewer than 5% of the final decisions had resulted in recognition of refugee status. In 1992 the list of safe countries of origin based on this 'double 5% rule' comprised the following: Ghana, India, Nigeria, Pakistan and Romania.

The Court of Arbitration declared this rule void in its judgment of 4 March 1993⁵. The distinction between nationals of these countries and other asylum-seekers was, according to the court, incompatible with Article 128(6) and (6a) of the Basic Law. Reversing the burden of proof was deemed to be inconsistent with the principle of equal treatment. The rule was felt to be too stringent and therefore inconsistent with the principle of non-discrimination within the meaning of Articles 10 and 11 of the Basic Law, since the distinction was based entirely on nationality.

³Act of 18 July 1991 amending the Act of 15 July 1987

⁴Article 52(1), subparagraph 7, of the Aliens Act, 18 July 1991

⁵Judgment No 20/93, Mon b, 25 March 1993, p. 6392

All that now applies is the general principle set out in Article 52 of the Aliens Act, which states that an application is manifestly unfounded if the asylum-seeker spent the previous three months in one or more countries where there is generally no risk of persecution within the meaning of the Geneva Convention.

The new Article 52(1), fourth and fifth subparagraphs, introduced by the Act of 6 May 1993 is based on a general reversal of the burden of proof regardless of nationality. In practice, this means that a country is deemed to be safe unless the asylum-seeker can prove that he is at risk. As this provision places the burden of proof on the asylum-seeker in the first phase of the procedure, the effect of the double 5% rule is in fact extended to include all asylum-seekers⁶, since they are now required to produce evidence in the first phase of the procedure to show that, where they are concerned, there are serious indications of a justified fear of persecution within the meaning of the Geneva Convention,

Collection of information

It is clear that the authorities responsible for processing asylum applications obtain information on the situation in countries of origin. To this end, they consult both official reports from the diplomatic missions and such general information as books and periodicals and the legislation of the countries concerned. As the official reports are confidential, they may not be used in judicial proceedings. The country reports drawn up by the authorities responsible for processing asylum applications are also confidential. It is known that these authorities collect information on the following countries: Albania, Algeria, Angola, Bulgaria, the former Soviet Union, the former Yugoslavia, Nigeria, Rwanda, Turkey and Zaire⁷.

II.2 Denmark

In Denmark the 'safe country of origin principle' forms part of the national asylum policy, a list of safe countries of origin being used.

The Danish Immigration Service decides on the contents of the list of safe countries of origin, with the Danish Refugee Council playing an important part. It can make its objections known to the Danish Immigration Service, and a country to which the Council has serious objections is removed from the list.

A country is deemed safe if it poses no danger of persecution for the asylum-seeker and will not deport him to a country where he is at risk of persecution.

The safe countries of origin on the list include the following: Poland, Czech Republic, Slovakia, Hungary, Romania, Bulgaria, Estonia, Latvia, Lithuania, Russia, Benin, Ghana, Niger, Senegal,

⁶Kris Pollet, address, Conference on the Europeanization of Asylum Policy, Driebergen, October 1996, and L. Denys, *De asielprocedure na de wet van 6 mei 1993*, TVR, 1993, No 3/4, 149

⁷IGC Technology Working Group, Meeting of the Expert Group on Country of Origin Information, Country of Origin Questionnaire - Analysis, Nuremberg, 12 June 1996

Tanzania, all Scandinavian countries, all Western European countries, United States of America, Canada, Australia, New Zealand and Japan. The Gambia also appeared on the list at one time, but was removed under considerable pressure from the Danish Refugee Council.

It is worth noting that Denmark seems to make use of an extensive list of countries, on which even countries deemed genuinely safe appear.

The principle of safe countries of origin is not included in Denmark's asylum legislation. The legal status of the list is therefore unclear.

It is not known what criteria have to be satisfied for a country to be declared safe.

There is no legal remedy against the designation of an application for asylum as manifestly unfounded, unless the Danish Refugee Council disagrees with the Immigration Service's decision⁸. Appeals are heard by the Refugee Appeal Board. If it agrees with the Immigration Service, the asylum procedure is terminated and the asylum-seeker must leave Denmark.

Sources of information

Use is made of official reports from the diplomatic service. As these official reports have frequently been criticized, the Immigration Service itself now sends missions abroad. They are accompanied by staff of the Danish Refugee Council, who collaborate in the drafting of reports. Fact-finding missions are sent to some countries in cooperation with Sweden. The Immigration Service also has regular meetings with NGOs for exchanges of information. As a rule, these reports are public, but any report containing sensitive information remains confidential. The official reports may be used in legal proceedings. The authorities also consult such other sources of information as books, periodicals and judgments in judicial proceedings. Country reports and other analyses published by the asylum authorities are not confidential and may be used in judicial proceedings.

The countries on which information is collected include: Afghanistan, Algeria, Russia, Iran, Iraq, Lebanon, Nigeria, Pakistan, Somalia and Sri Lanka⁹.

II.3 Germany

Germany introduced the 'safe country of origin principle' on 28 June 1993. Safe countries of origin are defined in the first sentence of Article 16a(3) of the Basic Law. The principle is developed in section 29a of the Asylum (Procedures) Act. An application for asylum submitted by a national of a country within the meaning of the first sentence of Article 16a(3) of the Basic Law¹⁰ is rejected as manifestly unfounded if the asylum-seeker is unable to cite any facts or produce any evidence to show that he has general cause to fear political persecution in his country of origin.

⁸The Refugee Appeal Board disagrees with the Immigration Service in about 25% of cases. On appeal its decision differs from that of the Immigration Service in 6% of cases.

⁹IGC Country of Origin Questionnaire - Analysis, Nuremberg, 12 June 1996

¹⁰Amendment of 28 June 1993, Federal Law Gazette, 1993, Part 1

A safe country of origin is a country where the law, its enforcement and the general political situation give no cause to assume that political persecution or inhuman punishment or treatment occur. It is assumed that an asylum-seeker from a country of this kind need have no fear of persecution, unless he is able to show that is at risk of political persecution.

The Foreign Ministry decides which countries can be declared safe.

In Appendix II to Article 29a the following are referred to as safe countries: Bulgaria, Ghana, Poland, Romania, Slovakia, the Czech Republic and Hungary.

Originally, the Gambia and Senegal were also on this list. The government removed the Gambia from the list of safe countries on 6 October 1994¹¹. On 23 July 1994 the media had reported a military coup in the Gambia the previous day. Political parties were banned. The frontier control authorities and the Federal Agency were immediately instructed not to enforce the rules of the Asylum (Procedures) Act.

On 27 March 1996 the German Government decided to remove Senegal from the list for six months. In the Federal Republic's opinion it is no longer adequately ensured that inhuman and humiliating punishment does not occur in Senegal. Its decision may have been influenced by Amnesty International's reports of November 1995 and February 1996 of a number of cases of torture in 1995 and human rights violations in the province of Casamance in 1995 and by the evident lack of cooperation from the Senegalese authorities in the investigation of these cases¹².

The list is included in the Asylum (Procedures) Act as Appendix II to Article 29a¹³.

The government adopts the list by ministerial order, in consultation with parliament (section 29a(3)). It amends the list independently, i.e. without consulting parliament, when a country can no longer be considered safe because of democratic or political changes that make it reasonable to assume that Article 16a no longer applies. Such amendments remain in force for a minimum of six months.

A different procedure applies where an asylum-seeker arrives by air. Before he is admitted to the country, a decision has to be taken under the asylum procedure, the asylum-seeker being accommodated in a hostel. He must then immediately be given an opportunity to submit an application for asylum to the appropriate authorities. If the application is rejected as manifestly unfounded, he is refused entry to the country. The Federal Agency is then required by Articles 34 and 36 of the Act to inform him that he will be deported if he tries to enter the country. He may, however, apply for a stay of enforcement.

¹¹Federal Law Gazette I, p. 2850, 6 October 1994

¹²Switzerland, on the other hand, decided on 10 June 1996 to leave Senegal on its list of safe countries of origin.

¹³Section 29a(2)

On 14 May 1996 the Federal Constitutional Court ruled on complaints that the country-of-origin, safe-third-country and airport rules were unconstitutional¹⁴. It decided that the asylum legislation which entered into force in mid-1993 complied with the German Basic Law.

As regards the safe-country-of-origin rules the Court ruled that one of the conditions a country must satisfy to be recognized by the legislator as a safe country of origin is that all individuals and population groups throughout the country are safe from political persecution.

The fact that a country imposes or threatens to impose the death penalty for the most serious of crimes is no reason for it not to be shown in the Act as a safe country of origin. What is decisive in this context is 'the crimes for which the death penalty may be imposed, whether this is adequately defined in law, whether the death penalty may be imposed by independent judicial bodies only in proceedings in which the accused is assured of sufficient guarantees, how often it is imposed and enforced and how it is executed'.

In 1989 the Federal Constitutional Court ruled that asylum-seekers did not need protection in another country if there were areas in their country of origin where they were free from the danger of persecution and if they could reasonably be expected to move to such areas, even if the economic situation was difficult¹⁵.

To determine the situation in countries of origin, the German authorities use such general sources of information as books, periodicals and newspapers. Reports are also drawn by the diplomatic service. The asylum authorities compile country reports on the situation in countries of origin. Although confidential, the embassy reports may be used in judicial proceedings. The reports by the asylum authorities are partly confidential and may therefore be partly used in judicial proceedings. Other documents relating to individual asylum applications are not confidential and may be used in judicial proceedings.

Reports are drawn up on the following countries: the former Yugoslavia, Iran, Iraq, Lebanon, Nigeria, Pakistan, Sri Lanka, Sudan, Syria and Turkey¹⁶.

II.4 Finland

Finland's asylum legislation makes a distinction between manifestly unfounded asylum applications and clearly unfounded applications. An application is declared clearly unfounded if the asylum-seeker comes from a country deemed to be safe. The 'safe country of origin principle' is thus used in Finland. A list of safe countries of origin is published.

¹⁴Federal Constitutional Court, Judgment of 14 May 1996, 2 BvR 1938/93

¹⁵Judgments of the Federal Constitutional Court, Vol. 80, 315

¹⁶IGC Country of Origin Questionnaire - Analysis, 12 June 1996

Since a change in the law in July 1993 the 'safe country of origin principle' has formed part of the Finnish asylum legislation¹⁷. It is included in Article 32(3) of the Aliens Act 1991. Under this provision an asylum application submitted by a national of a safe country of origin may be rejected immediately.

The list of safe countries of origin is compiled in accordance with the Instructions on the Examination of Asylum Applications¹⁸, which are based on Article 34 of the Aliens Act. These Instructions provide for a list of safe countries of origin.

The Foreign Ministry decides which countries appear on the list. As this is done by ministerial order, the contents of the list are not discussed either with parliament or with NGOs operating in this field.

Since being compiled in 1993, the list has hardly been changed, and there is no distinct periodical review of its contents. The explanatory memorandum on the Act of 28 June 1993 states that the government may decide to declare a country safe after consulting the 'appropriate authority'. In practice, this means that the decision is prepared by Foreign Ministry officials without the local situation being investigated or such specialists as human rights experts being consulted.

The list comprises: the Scandinavian countries, the European countries that are members of the Council of Europe and are party to the 1951 Geneva Convention.

The Netherlands, Belgium, Bulgaria, Spain, Ireland, Iceland, Italy, the United Kingdom, Austria, Greece, Cyprus, Latvia, Liechtenstein, Lithuania, Luxembourg, Norway, Portugal, Poland, France, Romania, Sweden, Germany, Slovakia, Switzerland, Denmark, the Czech Republic, Hungary, Russia and Estonia.

Of these, Hungary, Russia, Estonia, Latvia and Lithuania are deemed safe for their own nationals.

Other countries in which persecution within the meaning of the Convention on refugees and human rights violations do not occur may also be declared safe in certain circumstances. Particular care must always be taken in this context to monitor the country concerned to permit a rapid response to any deterioration in the human rights situation¹⁹.

The Aliens Act itself does not provide for the establishment of a list or define the procedure for assessing countries. The Cabinet does not have the authority to take a legally binding decision on the list. Its declaration may therefore be described only as a statement, not as a statutory decision. The Ministry of Justice has, however, included the list in the Instructions on the Examination of Asylum Applications. The decision has thus acquired the status of a ministerial decree.

The explanatory memorandum on the Act permits the government to amend the list of safe countries of origin after consulting the competent authorities. This vague wording does not imply that the list has to be submitted to parliament for its approval. Formally, there is no parliamentary control over

¹⁷Amendment of 28 June 1993/639, entered into force on 15 July 1993

¹⁸27 July 1995, No 7/011/95

¹⁹Travaux Préparatoires, HE 293/1992 vp., p. 7

the establishment of the list. Nonetheless, decisions in this connection are politically sensitive, and the political parties can raise the subject in parliament. Apart from its normal monitoring of the government's activities, parliament has no powers.

The list has been changed only once, when the Baltic States and the Russian Federation were added. Parliament was not involved to such an extent that it can be said to have exercised control²⁰.

It is not known what sources of information are used to assess the situation in countries of origin.

Asylum-seekers are given an opportunity to show that in their case special circumstances make it reasonable to assume that they will be in danger of persecution in their countries of origin. In practice, however, this is very difficult, since Article 32(3) provides for an accelerated procedure for manifestly unfounded asylum applications, with no right of review.

The Directorate-General for Immigration also decides on admission to the country. An appeal against its decision can be lodged with the Supreme Administrative Court, but this legal remedy does not have a delaying effect. Asylum-seekers may then be immediately sent back to their country of origin. In these circumstances, they may not even have an opportunity to inform their legal advisers.

II.5 France

The 'safe country of origin principle' is not used in France. However, there is currently some concern among French NGOs about the 'cessation clause' in the Geneva Convention, as applied to some countries, such as Romania, by the authorities, possibly being used as an exclusion clause²¹.

The debate has its origins in a communication on Romanian asylum-seekers from the Director of the Office Français de protection des réfugiés et apatrides (OFPRA)²². In this communication the OFPRA formally adopted the position that the protection the French Government offered Romanian asylum-seekers was no longer justified and would cease²³. Future asylum applications from foreign nationals of Romanian origin would not be approved unless special circumstances warranted an exception. This rider can be seen as an informal application of the 'safe country of origin principle' now that such asylum-seekers are denied the normal examination of their applications.

²⁰There is consequently little experience of open and fundamental debate on the criteria for the assessment of safety. The Finnish Refugee Advice Centre believes that greater importance is attached to political aspects, especially in the field of foreign relations, than to asylum as such and the international protection of refugees.

²¹The 'cessation clauses' indicate the cases in which the Geneva Convention ceases to apply to a given individual because he no longer satisfies the criteria set out in Article 1A or 1B of the Convention.

²²The body responsible for processing asylum applications.

²³Communiqué du Directeur de l'OFPRA relatif à la situation des réfugiés roumains, 19 June 1995

The new Immigration Bill of March 1996 contained proposals relating to this principle. The current proposal provides, among other things, for a list of safe countries to be compiled, the rule being that asylum-seekers originating from the countries on the list will not be granted a stay of enforcement where they appeal against the OFPRA's rejection of their applications. This Bill has never been put before parliament.

II.6 Greece

The 'safe country of origin principle' as such does not appear in the Aliens Act²⁴. Article 25(1) of this Act does, however, state that an application is to be declared inadmissible if (a) it was not submitted immediately on the asylum-seeker's arrival in Greece or (b) he did not come directly from a country where he was at risk within the meaning of Article 1 of the Geneva Convention. The Act does not name the countries concerned. Formally, no use is made of a list of safe countries.

II.7 United Kingdom

The new asylum legislation passed in 1996²⁵ includes the principle of safe countries of origin. Section 1 of the Act authorizes the Home Secretary to designate safe countries, where there is generally no risk of persecution. This is to be done when a large number of applications are submitted by asylum-seekers from a given country, while the recognition rate is low.

The 'safe country of origin principle' in the UK is based on a 'white list' introduced by section 1 of the Asylum and Immigration Act 1996. The assumption here is that, where an asylum-seeker originates from a country recognized by the Home Secretary as a country where 'there is generally no risk of persecution', his application is processed by an accelerated appeals procedure. If it is then decided that the application is unfounded, there is no further appeal and the asylum-seeker may be forced to leave the country.

The list itself cannot be used to achieve the immediate deportation of asylum-seekers to their country of origin. The principle takes effect after an application has been rejected. The contents of the white list were formally approved by parliament on 15 October 1996.

The principle is based on a general premise, asylum-seekers not being rejected solely on grounds of nationality²⁶.

The 'safe country of origin principle' is included in section 1 of the Asylum and Immigration Act of 24 July 1996.

The Home Secretary decides on the contents of the list.

²⁴Aliens Act, No 1975/1991

²⁵The Asylum and Immigration Act 1996, as passed on 24 July 1996

²⁶This does not alter the fact that all asylum applications received from the nationals of some countries are rejected.

The list comprises Romania, Poland, Pakistan, India, Ghana, Cyprus and Bulgaria.

The list is compiled by ministerial order by the Home Office. The Foreign Office is consulted at all times²⁷. The list requires parliamentary approval²⁸. Later additions can be made by ministerial order, unless this is rejected by one of the Houses of Parliament.

The compilation of the list is monitored by parliament. During the second reading of the new Asylum and Immigration Act the Home Secretary drew up an initial list of safe countries.

There are no published criteria for determining the situation in countries of origin. A country is designated safe if it generally poses no risk of persecution within the meaning of the Geneva Convention. The premise in this respect is that numerous applications are received, while the recognition rate is low. Where a country is generally safe and suddenly generates numerous asylum-seekers, of whom many are rejected, the country may be added to the list. On the other hand, if a large number of applications are suddenly approved, giving rise to doubts about the safety of the country, it must be removed from the list very rapidly²⁹.

In general, the following factors are considered during the decision-making process: whether or not the country is party to human rights agreements, the existence of democratic institutions, elections and political pluralism, freedom of expression by the individual and the media and the existence of effective legal safeguards. While the Act was being debated in parliament, it was pointed out that assessment was not confined to countries deemed to be 'universally safe' but also extended to countries generating numerous refugees³⁰.

The Home Secretary has made it clear that not every country in the world will be examined to assess general safety. The fact that a country does not appear on the list does not mean that it cannot be deemed safe or that other countries are not completely free to consider it safe. It simply means that,

²⁷'Using the expertise, information and intelligence of the Foreign Office, we shall update continually our views on those countries.' Minister of State, Home Office, Baroness Blatch, HL Committee, 23 April 1996, Col. 1046

²⁸'It is made clear that parliament and not the Minister has the final say: 'It will not be a matter of the Home Secretary's Opinion. He may well have a view that a country should be added to the list but whether or not it is added is a matter for Parliament.' Minister of State, Home Office, Baroness Blatch, HL Committee, 23 April 1996, Col. 1045.

²⁹Minister of State, Home Office, Ann Widdecombe MP, HC Committee, 16 January 1996, Col. 158

³⁰Secretary of State for the Home Department Rt. Hon. Michael Howard MP, HC Second Reading, 11 December 1995, Col. 703. In addition: 'We could not possibly accept an obligation to apply such standards, and no such obligation exists in international law. What we are saying is that a country has functioning institutions, and stability and pluralism in sufficient measure to support an assessment that, in general, people living there are not at risk.'

as it does not play a major role in the British asylum procedures, it was not considered necessary for it to be examined³¹.

Sources of information

The authorities responsible for processing asylum applications collect information on countries of origin. They use both general sources of information, such as books, periodicals and newspapers, and official reports by the embassies in the various countries. As these reports are confidential, they may not be used in legal proceedings. The Home Office draws up reports on the situation in the countries on the list. These reports are public and may therefore be used in legal proceedings.

It is known that the authorities also gather information on the following countries: Algeria, the former Yugoslavia, Ghana, India, Nigeria, Pakistan, Somalia, Sri Lanka, Tanzania and Turkey³². NGOs operating in this field are not consulted.

Even if a country is declared safe, individual asylum applications are assessed and approved as appropriate. A clear distinction is still made between the assessment of the situation in a given country and the individual asylum procedure³³. The substance of asylum applications is still examined, since the 'safe country of origin principle' does not really begin to take effect until the appeals procedure is set in motion. The fact that an asylum-seeker comes from a country that appears on the white list has implications only for the appeals procedure and the time limits for which it provides. Nonetheless, it must be assumed that, in practice, many applications submitted by asylum-seekers from countries on the white list are rejected.

II.8 Ireland

There is as yet no legal basis for the asylum procedure in Ireland. All that Ireland has is an agreement between the UNHCR and the Ministry of Justice setting out the procedure for determining the status of refugees³⁴.

The new Refugee Act 1996 is expected to enter into force at the beginning of 1997. Article 12(4)(j) of this Act can be seen as introducing the principle of safe countries of origin, although it is not mentioned in so many words. Article 12 concerns an accelerated procedure for manifestly unfounded asylum applications. According to Article 12(4)(j), an application is to be rejected as manifestly unfounded if it is submitted by an asylum-seeker who is a national of or has resident status in a country that is party to the Geneva Convention and who has been unable to prove that he has cause to fear persecution.

³¹Minister of State, Home Office, Ann Widdecombe MP, HC Committee, 9 January 1996, Col. 45

³²IGC Country of Origin Questionnaire - Analysis, 12 June 1996

³³Parliamentary Undersecretary of State for the Home Department, Timothy Kirkhope MP, HC Committee, 11 January 1996, Col. 65

³⁴December 1985. This agreement is not constitutionally binding.

II.9 Italy

The 'safe country of origin principle' is not used in Italy. Until 1990 Italy imposed a geographical restriction on the recognition of refugee status under Article 1B of the Geneva Convention. The Act of 31 December 1989, which entered into force on 28 February 1990, abolished this geographical restriction. Nor does the Italian asylum procedure provide for an accelerated procedure for manifestly unfounded asylum applications³⁵.

II.10 Luxembourg

The 'safe country of origin principle' was first applied in 1991. At that time the asylum procedure had not yet been included in formal legislation, but it had its place in the administrative rules.

The 'safe country of origin principle' has been included in Article 5 of the Asylum Act. An application for asylum can be declared manifestly unfounded if the applicant comes from a country where there is generally no risk of persecution. It is explicitly stated in this context that an application is not to be automatically rejected because of the 'safe country of origin principle', the principle of treating each application on its merits having priority.

The authorities responsible for processing asylum applications - senior officials in the Ministry of Justice - appraise the situation in countries of origin.

A list of safe countries of origin is not compiled in Luxembourg, as the Minister of Justice has confirmed in answer to a parliamentary question³⁶.

Collection of information

Before an asylum application is rejected in accordance with this principle, the UNHCR is consulted. According to the refugee organization Caritas Luxembourg, advantage is taken of country information like that compiled by the German Foreign Ministry and used by German officials responsible for processing asylum applications. Although NGOs are not officially asked for information, they regularly forward information on the situation in countries of origin to the competent authorities.

Asylum-seekers are given an opportunity to prove that they would be at risk in their country of origin.

II.11 Netherlands

An application for admission to the country as a refugee is not approved on the ground that it is manifestly unfounded if the applicant comes from a country designated by ministerial ruling in which, having regard to the overall situation, there is no risk of persecution within the meaning of

³⁵Presidential Decree of 15 May 1990, No 136

³⁶Letter from the Minister of Justice, 12 August 1996

Article 15(1) of the Aliens Act. Applications are not, however, deemed to be manifestly unfounded if they are based on special circumstances which, in contrast to the overall situation, may give rise to the assumption that there is nonetheless a justified cause to fear persecution³⁷.

The Safe Country of Origin Act entered into force on 1 January 1995.

The State Secretary of Justice decides which countries of origin are deemed safe.

By order of 18 February 1995³⁸ the following are deemed to be safe countries of origin: Bulgaria, Ghana³⁹, Hungary, Poland, Romania, Senegal, Slovakia and the Czech Republic.

Besides this list, the authorities use a list of 'grey-area' countries: Bosnia, Iraq, Afghanistan, Burundi, Rwanda and parts of Somalia. A very cautious deportation policy is also pursued in the case of Sierra Leone and Sudan.

The contents of the list are determined by ministerial order. To ensure adequate flexibility, the list is not included in the Act.

The compilation of the list is subject to parliamentary control. The State Secretary for Justice generally consults the Lower Chamber's Justice Committee⁴⁰. Every six months parliament is notified of the contents of the list and on the situation in Germany. Before the Lower Chamber has been consulted, no new countries are added to the list. The State Secretary for Justice does, however, reserve the right to remove countries from the list without prior consultation. Subsequent consultation is possible, when the six-monthly report is submitted⁴¹.

The following criteria are considered when the situation in countries of origin is assessed, a distinction being made between Europe and Africa⁴².

Europe:

Membership of the Council of Europe

Party to the European Convention on Human Rights and recognition of the right of the individual to initiate legal proceedings

Independent judicial authority under the constitution

Respect for the principle that in criminal law everyone is innocent until found guilty

³⁷Article 15(c), first paragraph, introductory statement, and Article 15(f) of the Aliens Act

³⁸Official Gazette 1995, 34, entered into force on 18 February 1995

³⁹According to a judgment of the court in The Hague, however, Ghana is not a safe country of origin for anyone forced to appear before a 'public tribunal'. The presiding judge comes to this conclusion on the basis of the official report of the Minister for Foreign Affairs of 24 May 1993, which shows that the death penalty was still being carried out in 1990 and that a fair trial was not guaranteed before a 'public tribunal'. The Hague Court, 6 December 1995, AWB 95/11561.

⁴⁰Lower Chamber, 1994-1995, 19 637, No 126

⁴¹Report on the General Consultation, Lower Chamber, 1994-1995, 19 637, No 126

⁴²Letter from the State Secretary for Justice to the President of the Lower Chamber of the States General, The Hague, 10 October 1995, Lower Chamber, 1995-1996, 19 637, No 139

Legal assistance ensured
Freedom of worship, constitutional guarantees in this respect
Position and legal certainty of minorities
Whether homosexual relations are an offence

Africa:

Parliamentary democracy
Division of powers
Independent judicial authority
Does the judicial authority provide the usual legal guarantees?
Legal assistance ensured
Reports from human rights organizations on human rights violations
Political situation and penalization of political activities

Unlike Germany, the Netherlands does not believe that Senegal should be removed from the list of safe countries of origin. In view of the improvement in the general human rights situation in Senegal since 1994/1995 and, more recently, in Casamance the Netherlands sees no reason at present to remove Senegal from the list of safe countries of origin. However, the situation will be watched very closely⁴³.

Collection of information

The list of safe countries of origin is compiled in direct and continual consultation with the Ministry of Foreign Affairs. Use is made in this context not only of formal official reports from this Ministry but also of information obtained from such non-governmental organizations as Amnesty International⁴⁴.

The authorities responsible for processing asylum applications collect information on the situation in countries of origin. They use general information obtained from books, periodicals and newspapers. The various embassies also draw up official reports. Although the contents of these official reports is partly confidential, they may be used in legal proceedings. Official reports are drawn up on Angola, Armenia/Azerbaijan, China, Georgia, Iran, the Federal Republic of Yugoslavia, Croatia, Nigeria, Ukraine, Pakistan, Romania, the Russian Federation, Sierra Leone, Sri Lanka, Syria and the Czech Republic.

As most of the country reports drawn up by the authorities are partly confidential, they may not always be used in proceedings.

The authorities collect information on the following countries: Afghanistan, Algeria, the former Yugoslavia, Iran, Iraq, Somalia, Sri Lanka, Sudan and Zaire.

An opportunity for asylum-seekers to produce facts and circumstances in evidence forms an essential part of the rules on safe countries of origin, since it can never be completely guaranteed

⁴³Lower Chamber, 1995-1996, 19 637, No 201

⁴⁴State Secretary for Justice, E.M.A. Schmitz, Lower Chamber, 1994-1995, 19 637, No 126

that persecution does not occur in the country concerned. Special attention should be paid to people who are members of minority groups or groups of special interest.

From August 1995 to September 1996 there is known to have been one case of justification for recognizing someone as a refugee on humanitarian grounds even though he originated from a safe country⁴⁵.

II.12 Austria

Although the 'safe country of origin principle' is used in Austria, there is no list of safe countries.

The Austrian Asylum Act of 4 December 1991⁴⁶, which entered into force on 1 June 1992, provides for an accelerated procedure for manifestly unfounded asylum applications. An application can be rejected as manifestly unfounded under Article 17(3) if the asylum-seeker is a national of a country where it can be assumed he will be safe.

As stated above, there is no list of safe countries of origin. It is left to the Federal Refugee Agency to decide on the safety of a country in individual cases, there being no general decision-making procedure in this respect.

The criteria applied are not entirely clear, since decisions are taken on an ad hoc basis in individual cases. It must be generally assumed that a country's legal system and the enforcement of the law do not constitute a threat of persecution on one of the grounds referred to in the Geneva Convention.

Sources of information

According to the UNHCR, no requests are made by administrative authorities or courts involved in the asylum procedure for information on the political or human rights situation of certain population groups in countries of origin.

The asylum legislation is currently being reviewed.

II.13 Portugal

The 'safe country of origin principle' has been used since 1993, when Asylum Act 70/93 was introduced. The principle is included in Article 1C of this Act, which defines the term 'safe country'. The criteria are consistent with the 1992 Conclusions.

Asylum-seekers from safe countries are processed by an accelerated procedure under Article 19b. The accelerated procedure is used when it is reasonable to assume that an asylum-seeker is from a safe country of origin.

⁴⁵It is not known which country. As there was only one case, the Ministry of Justice did not want to disclose this information and so reveal the individual's identity.

⁴⁶Austrian Federal Law Gazette 1992, 8

The authority normally responsible for processing asylum applications, the Serviço de Estrangeiros e Fronteiras (SEF, Aliens and Frontier Service) of the Ministry of Foreign Affairs, decides which countries of origin are to be deemed safe.

There is no formal list of safe countries of origin. It is suspected, however, that the authorities are looking into this.

Article 1C of Asylum Act 70/93 complies with the criteria set out in the Council's conclusions accompanying the London resolutions of 30 November and 1 December 1992.

Collection of information

The authorities use information on the situation in countries of origin obtained from the UNHCR, the Portuguese Refugee Council and Amnesty International among others. Reports from the embassies in the various countries are also consulted.

An appeal against an unfavourable decision may be lodged with the Supreme Administrative Court. An appeal does not have the effect of delaying the procedure.

II.14 Spain

Although the Spanish Asylum Act provides for an accelerated procedure where asylum applications are manifestly unfounded⁴⁷, it is not applied on the basis of the 'safe country of origin principle'. Consequently, there is no list of safe countries of origin on which the immediate rejection of asylum applications might be based.

Collection of information

The authorities responsible for processing asylum applications collect information on countries of origin. To this end, they make use both of general information accessible to everyone, such as books, newspapers and periodicals, and of reports obtained from the diplomatic service in the various countries. The general information is not confidential and may be used in judicial proceedings. Although official reports obtained from the diplomatic service are confidential, they may nonetheless be used as sources of information during judicial proceedings.

The country reports drawn up by the authorities responsible for processing asylum applications are confidential, but may be used in judicial proceedings.

Disclosure may be required by the court where an appeal is lodged against the rejection of an application.

⁴⁷Ley 5/1984, del 26 de marzo, modificada por la Ley 9/1994, del 19 de mayo, reguladora del derecho de asilo y de la condición de refugiado. The amending law entered into force on 12 June 1994. The new implementing measures entered into force on 22 March 1995: Real Decreto 203/1995 del 10 de febrero, por el que se aprueba el Reglamento de aplicación de la Ley reguladora del derecho de asilo y de la condición de refugiado.

The Spanish authorities collect information on the following countries: Afghanistan, Cuba, Russia, Armenia, the former Yugoslavia, Iran, Iraq, Peru, Somalia and Turkey⁴⁸.

II.15 Sweden

An asylum application is declared manifestly unfounded if the applicant originates from a country where there is no question of there being any risk of persecution or where it can be said with certainty that human rights are not violated. Manifestly unfounded asylum applications are processed by a simplified and accelerated procedure.

Applications by asylum-seekers from countries where the possibility of human rights violations cannot be ruled out are also rejected if asylum-seekers from the same country or the same region have previously been sent back because the reasons they gave were deemed insufficient for refugee status to be granted by the authorities. This applies primarily where a given religion or a given part of a country is concerned. A new element is thus added to the 'safe country of origin principle'. A country is no longer assumed to be safe for all its nationals, only for a given section of the population.

The 'safe country of origin principle' is not included in Sweden's asylum legislation. Nor is a list of safe countries of origin compiled. The situation in a country is re-assessed by the asylum authorities on each occasion.

In 1994 asylum applications submitted by nationals of Bosnia, Somalia, Uganda, Zaire, Iran and Syria were declared manifestly unfounded, and the asylum-seekers were sent back to their country of origin. It can thus be assumed that these countries are regarded as safe countries of origin.

The Swedish authorities collect information on the situation in countries of origin, making use both of such general sources as books, periodicals and newspapers and of legislation and judgments in the countries concerned. The asylum authorities draw up country reports. Use is also made of reports drawn up by the diplomatic service in the various countries. It is known that information is collected on the following countries: Afghanistan, China, Russia, Armenia, the former Yugoslavia, Iran, Iraq, Peru, Somalia and Turkey. Information obtained from the UNHCR and Amnesty International is also included in the assessment. In addition, fact-finding missions are undertaken in some countries in cooperation with Denmark.

⁴⁸ICG Country of Origin Questionnaire - Analysis, 12 June 1996.

III. Positions

III.1 The UNHCR's position⁴⁹

The UNHCR opposes the use of the 'safe country of origin principle' as a condition for admission to an asylum procedure on the grounds that it conflicts with the principle that every asylum application should be assessed individually.

The UNHCR has no objection to the principle being used solely as a procedural aid for dealing with certain asylum applications by an accelerated procedure. This simplified procedure must, however, be accompanied by the usual guarantees. Asylum-seekers must also have an opportunity to dispute the alleged safety of the country concerned.

The concept becomes dangerous when it is used to exclude whole groups of a given nationality from the asylum procedure. It is difficult to determine the political and human rights situation, it may change quickly, and it may vary from one ethnic and social group to another. The combination of a rigid classification of countries of origin and the refusal to admit applicants to the asylum procedure may lead to expulsion and ultimately to serious personal danger.

The decision to declare a country safe must be based on verifiable and recent assessments of the situation. Countries where there is more than a negligible fear of a threat to life and freedom must not be declared safe. Thus countries in a state of civil war must never be declared safe.

When the situation in a country is being assessed, the following criteria must be applied:

- respect for human rights and the rule of law
- information concerning the non-persecution of refugees
- the ratification and enforcement of human rights codes
- accessibility of national and international organizations seeking to protect human rights

III.2 Amnesty International's position

Amnesty International is concerned about the growing number of EU countries using the 'safe country of origin principle'⁵⁰. It regrets the compilation of such lists. Their existence signifies that individual cases are not considered entirely on their merits, and they may easily result in the violation of the principle of non-expulsion.

This erodes the basic principle of international refugee law that every asylum application must be considered on its merits. Deciding whether an asylum-seeker is really at risk of persecution in his

⁴⁹An Overview of Protection Issues in Western Europe: Legislative Trends and Positions Taken by UNHCR, UNHCR Regional Bureau for Europe, Volume 1, No. 3, September 1995

⁵⁰Amnesty International, Yearbook 1996

country of origin is a difficult and complex process largely based on comments and declarations by the asylum-seeker which do not always have the backing of clear evidence. It is difficult to make an objective assessment of the situation in countries of origin since the political and human rights situation may fluctuate significantly. AI believes that only if each asylum application is assessed individually can allowance be made for these factors.

AI is concerned that asylum applications submitted by nationals of safe countries are not assessed entirely on their merits. It is particularly worried in this context that countries are declared safe on the basis of unclear and incorrect criteria. It is wrong to consider the number of asylum applications submitted and the number approved when a country is assessed. It results in such countries as India, Kenya and Pakistan appearing on lists of safe countries, when AI believes them to be guilty of violating human rights. There is a danger that even such countries as Algeria, Nigeria and Zaire will appear on these lists since, while they are now generating many asylum-seekers, the recognition rate is low.

III.3 The position of the European Council on Refugees and Exiles (ECRE)

The ECRE believes that the Member States should not automatically exclude an asylum-seeker from a fair and efficient asylum procedure by applying the 'safe country of origin principle'. It also calls for a suitable approach to compiling country reports on the basis of reliable and objective information obtained from various sources, such as NGOs and research institutes. These country reports should be subject to public parliamentary control and available to the asylum-seeker and to his or her representative at all stages of the asylum procedure⁵¹.

III.4 General objections

The most important objections to the 'safe country of origin principle' are based on the 1951 Geneva Convention. As the principle results in the partial or complete exclusion of the nationals of certain countries from the asylum procedure, it is considered to be inconsistent with the general principle that asylum applications should be processed individually. Denying an asylum-seeker the opportunity to refute statements and to demonstrate that he is indeed at risk of persecution is deemed to be inconsistent with the prohibition of expulsion under Article 3 of the European Convention for the Protection of Human Rights.

Others believe that the automatic exclusion of asylum-seekers originating from certain countries amounts to a qualification with regard to the territorial application of the Convention and even the principle of non-expulsion set out in Article 33 of the Convention⁵². The concept is also inconsistent

⁵¹A European Refugee Policy in the light of established principles, European Council on Refugees and Exiles, April 1994.

⁵²Kris Pollet, *Asielrecht in de Europese Unie*, published by Europees Instituut; Professor P. Boeles, *A new immigration law for Europe*, published by Nederlands Centrum Buitenlanders

with Article 2 of the Dublin Convention, in which the Member States undertake to comply with the 1951 Geneva Convention and the 1967 Protocol without geographical restriction.

Such treatment is also inconsistent with Article 1A, which defines the term 'refugee' without regard for statistics or place of persecution.

IV. Centre for Information, Discussion and Exchange on Asylum (CIREA)

In 1992 the Council of Ministers responsible for immigration set up the Centre for Information, Discussion and Exchange on Asylum. In 1988 this Council of Ministers had already decided to cooperate in assessing the situation in countries of origin. It was agreed that to this end joint country reports should be drawn up on the basis of information received from the local diplomatic representatives of the countries of the Union. This was continued within the framework of the CIREA. The reports will form part of the background information used during the actual assessment of asylum applications in the Member States⁵³. The clearing house held its first meeting on 15 October 1992, with Britain taking the chair.

The CIREA is an informal forum without any executive powers. It is composed of representatives of the authorities responsible in the Member States for matters relating to asylum. Its mandate includes the exchange of information on the number of applications for admission and the numbers approved and rejected.

The clearing house has two important functions. The first is to act as a database for the Member States. It provides for the collection, exchange and dissemination of information and for documentation on all matters relating to asylum. This involves the storage of the information on legislation, policy and case law and the statistics which the Member States are required to exchange by Article 14(1) of the Dublin Convention and the non-compulsory information referred to in Article 14(2) concerning new developments with regard to asylum applications and the situation in asylum-seekers' countries of origin.

The second function is to act as an informal forum for the exchange of information and consultation without any decision-making powers. The forum consists of officials responsible for dealing with asylum matters in the Member States. This exchange of information is intended to facilitate the coordination and harmonization of practices and policies relating to asylum.

Statistical information on asylum-seekers also needs to be harmonized. As statistics are kept in different ways in the various countries, it is difficult to compare data and draw conclusions from them⁵⁴.

⁵³SN 2834/93 (WGI 1503 CIREA 66)

⁵⁴COM(94)0023, 23 February 1994, point 44

The clearing house will draw up reports on the situation in countries of origin, as provided for in the conclusions on countries in which there is generally no serious risk of persecution⁵⁵. These reports must be drawn up jointly, and they must also indicate whether or not a country can be deemed safe⁵⁶. The joint reports must be drawn up by the embassies of the Member States and require the approval of the Member States' foreign ministries.

There is cooperation with Political Cooperation in the assessment of the situation in countries of origin, and the UNHCR is invited to provide information on the situation in the country to be discussed.

On 20 June 1994 the Council of Ministers responsible for immigration gave its final approval of the guidelines on the contents of the joint reports on the situation in third countries from which asylum-seekers originate. A procedure was also adopted for drawing up reports in connection with the joint assessment of the situation in third countries and the dissemination of these reports within the CIREA framework.

The information gathered will in principle be accessible only to the bodies directly involved in the asylum procedure at both administrative and ministerial level.

The CIREA's agenda, discussions and documents are confidential and not therefore accessible to the public, NGOs, etc. Consequently, it is not clear what information from what body is included or how this information is assessed. This often puts asylum-seekers and their legal advisers at a disadvantage, given that they are unable to react to facts of which they are unaware. This is deemed inconsistent with the principle of the 'equality of arms'.

The Council has adopted the following position on the circulation and confidentiality of the joint country reports. Once drawn up, the reports are forwarded to the chairmen of the national delegations of Steering Group I, who are therefore responsible for deciding on the circulation of the reports at national level, with account taken of the following: the national authorities responsible for matters relating to asylum and aliens are to be permitted to make use of the reports and any other information available. Depending on national procedures, the reports may also be made accessible to the parties concerned where an appeal has been lodged against a decision taken by the authorities responsible for processing asylum applications⁵⁷.

The CIREA denies that a systematic approach is in practice adopted in drawing up country reports. In fact, information is merely exchanged on various aspects. The information exchanged primarily concerns the number of people who have submitted asylum applications and their countries of

⁵⁵The Member States' aim is to arrive at a common assessment of certain countries which are particularly important in this context. To this end, they will exchange by appropriate means information on national decisions to regard certain countries as countries in which there is generally no serious risk of persecution.

⁵⁶Working document of the Ad Hoc Group on Immigration, 24 September 1992, in preparation for the London Conference of Ministers.

⁵⁷ITEM NOTE from the Permanent Representatives Committee to the Council of Justice and Home Affairs Ministers, Brussels, 3 June 1994 (15.06) 7473/94

origin. The various motives are also compared to gain an impression of the level of persecution. A third topic discussed by the working groups is the routes by which asylum-seekers have arrived in the European Union. In addition, the application of Articles 1C and 1F of the Geneva Convention are discussed to the extent that they are applied in the Member States. Other subjects considered are the number of cases in which an alternative status has been granted on humanitarian grounds and the reasons for such decisions. Also considered is the problem of returning rejected aliens and their removal.

IV.1 The European Parliament's position

It is not clear on what legal basis the CIREA was established, under what legal rules it will operate or what the limits to its authority will be. The European Parliament has repeatedly opposed this practice and called for better monitoring of the activities of this clearing house. In its resolution on the harmonization within the European Communities of asylum law and policies⁵⁸, for example, it urges that a number of principles be guaranteed:

- the clearing house should be given an independent status by the Member States and must also be able to collect information which is less welcome to certain government bodies, including data provided by private organizations;
- the clearing house must only collect and process information; under no circumstances must it be given the task of making preparations for the 'harmonization of asylum policy';
- collected data on which official decisions with regard to individuals are based should be equally accessible to the official body in question and to the person concerned or the person or body empowered to act for the person concerned;
- the information collected must be comprehensible, up-to-date and accurate;
- the clearing house may not gather information on individual asylum-seekers;
- the operations of the clearing house must be monitored by the parliaments and all the information gathered must be accessible to the UNHCR and to experts in the field of asylum and refugee policy.

As these requirements have not been met, the EP has again expressed its dissatisfaction about the situation in its report on the Council resolution on minimum guarantees for asylum procedures⁵⁹. It called for an end to the secrecy of the CIREA's activities, asked to be regularly informed of the activities undertaken in this sphere and urged that due account be taken of its views.

⁵⁸A3-0337/92, paragraph 33

⁵⁹A4-0315/96

RESOLUTION
on manifestly unfounded applications for asylum

MINISTERS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES
responsible for Immigration, meeting in London on 30 November and
1 December 1992,

HAVING REGARD to the objective, fixed by the European Council
meeting in Strasbourg in December 1989, of the harmonization of
their asylum policies and the work programme agreed at the
meeting at Maastricht in December 1991;

DETERMINED, in keeping with their common humanitarian tradition,
to guarantee adequate protection to refugees in accordance with
the terms of the Geneva Convention of 28 July 1951, as amended by
the New York Protocol of 31 January 1967, relating to the Status
of Refugees;

NOTING that Member States may, in accordance with national
legislation, allow the exceptional stay of aliens for other
compelling reasons outside the terms of the 1951 Geneva
Convention;

REAFFIRMING their commitment to the Dublin Convention of 15 June
1990, which guarantees that all asylum applicants at the border
or on the territory of a Member State will have their claim for
asylum examined and sets out rules for determining which Member
State will be responsible for that examination;

AWARE that a rising number of applicants for asylum in the Member
States are not in genuine need of protection within the Member
States within the terms of the Geneva Convention, and concerned
that such manifestly unfounded applications overload asylum
determination procedures, delay the recognition of refugees in
genuine need of protection and jeopardize the integrity of the
institution of asylum;

INSPIRED by Conclusion No. 30 of the Executive Committee of the United Nations High Commissioner for Refugees;

CONVINCED that their asylum policies should give no encouragement to the misuse of asylum procedures;

MAKE THE FOLLOWING RESOLUTION :

Manifestly unfounded applications

1. (a) An application for asylum shall be regarded as manifestly unfounded because it clearly raises no substantive issue under the Geneva Convention and New York Protocol for one of the following reasons :

- there is clearly no substance to the applicant's claim to fear persecution in his own country (paragraphs 6 to 8) ; or
- the claim is based on deliberate deception or is an abuse of asylum procedures (paragraphs 9 and 10).

(b) Furthermore, without prejudice to the Dublin Convention, an application for asylum may not be subject to determination by a Member State of refugee status under the terms of the Geneva Convention on the Status of Refugees when it falls within the provisions of the Resolution on host third countries adopted by Immigration Ministers meeting in London on 30 November and 1 December 1992.

2. Member States may include within an accelerated procedure (where it exists or is introduced), which need not include full examination at every level of the procedure, those applications which fall within the terms of paragraph 1, although an application need not be included within such procedures if there are national policies providing for its acceptance on other grounds. Member States may also operate admissibility procedures under which applications may be rejected very quickly on objective grounds.

3. Member States will aim to reach initial decisions on applications which fall within the terms of paragraph 1 as soon as possible and at the latest within one month and to complete any appeal or review procedures as soon as possible. Appeal or review procedures may be more simplified than those generally available in the case of other rejected asylum applications.

4. A decision to refuse an asylum application which falls within the terms of paragraph 1 will be taken by a competent authority at the appropriate level fully qualified in asylum or refugee matters. Amongst other procedural guarantees the applicant should be given the opportunity for a personal interview with a qualified official empowered under national law before any final decision is taken.

5. Without prejudice to the provisions of the Dublin Convention, where an application is refused under the terms of paragraph 1 the Member State concerned will ensure that the applicant leaves Community territory, unless he is given permission to enter or remain on other grounds.

No substance to claim to fear persecution

6. Member States may consider under the provisions of paragraph 2 above all applications the terms of which raise no question of refugee status within the terms of the Geneva Convention. This may be because:

- (a) the grounds of the application are outside the scope of the Geneva Convention : the applicant does not invoke fear of persecution based on his belonging to a race, a religion, a nationality, a social group, or on his political opinions, but reasons such as the search for a job or better living conditions;
- (b) the application is totally lacking in substance : the applicant provides no indications that he would be exposed to fear of persecution or his story contains no circumstantial or personal details;
- (c) the application is manifestly lacking in any credibility: his story is inconsistent, contradictory or fundamentally improbable.

7. Member States may consider under the provisions of paragraph 2 above an application for asylum from claimed persecution which is clearly limited to a specific geographical area where effective protection is readily available for that individual in another part of his own country to which it would be reasonable to expect him to go, in accordance with Article 33.1 of the Geneva Convention. When necessary, the Member States will consult each other in the appropriate framework, taking account of information received from UNHCR, on situations which might allow, subject to an individual examination, the application of this paragraph.

8. It is open to an individual Member State to decide in accordance with the conclusions of Immigration Ministers of 1 December 1992 that a country is one in which there is in general terms no serious risk of persecution. In deciding whether a country is one in which there is no serious risk of persecution, the Member States will take into account the elements which are set out in the aforementioned conclusions of Ministers. Member States have the goal to reach common assessment of certain countries that are of particular interest in this context. The Member State will nevertheless consider the individual claims of all applicants from such countries and any specific indications presented by the applicant which might outweigh a general presumption. In the absence of such indications, the application may be considered under the provisions of paragraph 2 above.

Deliberate deception or abuse of asylum procedures

9. Member States may consider under the provisions of paragraph 2 above all applications which are clearly based on deliberate deceit or are an abuse of asylum procedures. Member States may consider under accelerated procedures all cases in which the applicant has, without reasonable explanation:

- (a) based his application on a false identity or on forged or counterfeit documents which he has maintained are genuine when questioned about them;
- (b) deliberately made false representations about his claim, either orally or in writing, after applying for asylum;
- (c) in bad faith destroyed, damaged or disposed of any passport, other document or ticket relevant to his claim, either in order to establish a false identity for the purpose of his asylum application or to make the consideration of his application more difficult;

- (d) deliberately failed to reveal that he has previously lodged an application in one or more countries, particularly when false identities are used;
- (e) having had ample earlier opportunity to submit an asylum application, submitted the application in order to forestall an impending expulsion measure;
- (f) flagrantly failed to comply with substantive obligations imposed by national rules relating to asylum procedures;
- (g) submitted an application in one of the Member States, having had his application previously rejected in another country following an examination comprising adequate procedural guarantees and in accordance with the Geneva Convention on the Status of Refugees. To this effect, contacts between Member States and third countries would, when necessary, be made through UNHCR.

Member States will consult in the appropriate framework when it seems that new situations occur which may justify the implementation of accelerated procedures to them.

10. The factors listed in paragraph 9 are clear indications of bad faith and justify consideration of a case under the procedures described in paragraph 2 above in the absence of a satisfactory explanation for the applicant's behaviour. But they cannot in themselves outweigh a well-founded fear of persecution under Article 1 of the Geneva Convention and none of them carries any greater weight than any other.

Other cases to which accelerated procedures may apply

11. This Resolution does not affect national provisions of Member States for considering under accelerated procedures, where they exist, other cases where an urgent resolution of the claim is necessary, if it is established that the applicant has committed a serious offence in the territory of the Member States, if a case manifestly falls within the situations mentioned in Article 1.F of the 1951 Geneva Convention, or for serious reasons of public security, even where the cases are not manifestly unfounded in accordance with paragraph 1.

Further action

12. Ministers agreed to seek to ensure that their national laws are adapted, if need be, to incorporate the principles of this Resolution as soon as possible, at the latest by 1 January 1995. Member States will from time to time, in co-operation with the Commission and in consultation with UNHCR, review the operation of these procedures and consider whether any additional measures are necessary.

RESOLUTION ON
A HARMONIZED APPROACH TO QUESTIONS
CONCERNING HOST THIRD COUNTRIES

Ministers of the Member States of the European Communities responsible for immigration, meeting in London on 30 November to 1 December 1992;

DETERMINED to achieve the objective of harmonizing asylum policies as it was defined by the Luxembourg European Council in June 1991 and clarified by the Maastricht European Council in December 1991;

TRUE to the principles of the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967, relating to the Status of Refugees and in particular Articles 31 and 33 thereof;

CONCERNED especially at the problem of refugees and asylum seekers unlawfully leaving countries where they have already been granted protection or have had a genuine opportunity to seek such protection and CONVINCED that a concerted response should be made to it, as suggested in Conclusion No. 58 on Protection adopted by the UNHCR Executive Committee at its 40th session (1989);

CONSIDERING the Dublin Convention of 15 June 1990 determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities, and in particular Article 3(5) thereof, and WISHING to harmonize the principles under which they will act under this provision;

ANXIOUS to ensure effective protection for asylum seekers and refugees who require it;

MAKE THE FOLLOWING RESOLUTION

Procedure for application of the concept of host third country

1. The Resolution on manifestly unfounded applications for asylum, adopted by Ministers meeting in London of 30 November-1 December 1992, refers in paragraph 1(b) to the concept of host third country. The following principles should form the procedural basis for applying the concept of host third country:

- (a) The formal identification of a host third country in principle precedes the substantive examination of the application for asylum and its justification.
- (b) The principle of the host third country is to be applied to all applicants for asylum, irrespective of whether or not they may be regarded as refugees.
- (c) Thus, if there is a host third country, the application for refugee status may not be examined and the asylum applicant may be sent to that country.
- (d) If the asylum applicant cannot in practice be sent to a host third country, the provisions of the Dublin Convention will apply.
- (e) Any Member State retains the right, for humanitarian reasons, not to remove the asylum applicant to a host third country.

Cases falling within this concept may be considered under the accelerated procedures provided for in the aforementioned Resolution.

Substantive application : requirements and criteria for establishing whether a country is a host third country

2. Fulfilment of all the following fundamental requirements determines a host third country and should be assessed by the Member State in each individual case:

- (a) In those third countries, the life or freedom of the asylum applicant must not be threatened, within the meaning of Article 33 of the Geneva Convention.
- (b) The asylum applicant must not be exposed to torture or inhuman or degrading treatment in the third country.
- (c) It must either be the case that the asylum applicant has already been granted protection in the third country or has had an opportunity, at the border or within the territory of the third country, to make contact with that country's authorities in order to seek their protection, before approaching the Member State in which he is applying for asylum, or that there is clear evidence of his admissibility to a third country.
- (d) The asylum applicant must be afforded effective protection in the host third country against refoulement, within the meaning of the Geneva Convention.

If two or more countries fulfil the above conditions, the Member States may expel the asylum applicant to one of those third countries. Member States will take into account, on the basis in particular of the information available from the UNHCR, known practice in the third countries, especially with regard to the principle of non-refoulement before considering sending asylum applicants to them.

Dublin Convention

3. The following principles set out the relationship between the application of the concept of the third host country, in accordance with Article 3(5) of the Dublin Convention, and the procedures under the Convention for determining the Member State responsible for examining an asylum application:

- (a) The Member State in which the application for asylum has been lodged will examine whether or not the principle of the host third country can be applied. If that State decides to apply the principle, it will set in train the procedures necessary for sending the asylum applicant to the host third country before considering whether or not to transfer responsibility for examining the application for asylum to another Member State pursuant to the Dublin Convention.
- (b) A Member State may not decline responsibility for examining an application for asylum, pursuant to the Dublin Convention, by claiming that the requesting Member State should have returned the applicant to a host third country.
- (c) Notwithstanding the above, the Member State responsible for examining the application will retain the right, pursuant to its national laws, to send an applicant for asylum to the host third country.
- (d) The above provisions do not prejudice the application of Article 3(4) and Article 9 of the Dublin Convention by the Member State in which the application for asylum has been lodged.

CONCLUSIONS

on countries in which there is generally
no serious risk of persecution

1. The resolution on manifestly unfounded applications for asylum (WGI 1282) includes at paragraph 1(a) a reference to the concept of countries in which there is in general terms no serious risk of persecution.

This concept means that it is a country which can be clearly shown, in an objective and verifiable way, normally not to generate refugees or where it can be clearly shown, in an objective and verifiable way, that circumstances which might in the past have justified recourse to the 1951 Geneva Convention have ceased to exist ⁽¹⁾.

Purpose

2. The aim of developing this concept is to assist in establishing a harmonized approach to applications from countries which give rise to a high proportion of clearly unfounded applications and to reduce pressure on asylum determination systems that are at present excessively burdened with such applications. This will help to ensure that refugees in genuine need of protection are not kept waiting unnecessarily long for their status to be recognized and to discourage misuse of asylum procedures. Member States have the goal of reaching common assessment of certain countries that are of particular interest in this context. To this end, Member States will exchange information

⁽¹⁾ Report from Immigration Ministers to the European Council meeting in Maastricht

within an appropriate framework on any national decisions to consider particular countries as ones in which there is generally no serious risk of persecution. In making such assessments, they will use, as a minimum, the elements of assessment laid down in this document.

3. An assessment by an individual Member State of a country as one in which there is generally no serious risk of persecution should not automatically result in the refusal of all asylum applications from its nationals or their exclusion from individualized determination procedures. A Member State may choose to use such an assessment in channelling cases into accelerated procedures as described in paragraph 2 of the resolution on manifestly unfounded applications, agreed by Immigration Ministers at their meeting on 30 November and 1 December 1992. The Member State will nevertheless consider the individual claims of all applicants from such countries and any specific indications presented by the applicant which might outweigh a general presumption.

Elements in the assessment

4. The following elements should be taken together in any assessment of the general risk of persecution in a particular country :

- (a) previous numbers of refugees and recognition rates. It is necessary to look at the recognition rates for asylum applicants from the country in question who have come to Member States in recent years. Obviously, a situation may change and historically low recognition rates need not continue following (for example) a violent coup. But in the absence of any significant change in the country it is reasonable to assume that low recognition rates will continue and that the country tends not to produce refugees.

- (b) observance of human rights. It is necessary to consider the formal obligations undertaken by a country in adhering to international human rights instruments and in its domestic law and how in practice it meets those obligations. The latter is clearly more important and adherence or non-adherence to a particular instrument cannot in itself result in consideration as a country in which there is generally no serious risk of persecution. It should be recognized that a pattern of breaches of human rights may be exclusively linked to a particular group within a country's population or to a particular area of the country. The readiness of the country concerned to allow monitoring by NGO's of their human rights observance is also relevant in judging how seriously a country takes its human rights obligations.
- (c) democratic institutions. The existence of one or more specific institutions cannot be a sine qua non but consideration should be given to democratic processes, elections, political pluralism and freedom of expression and thought. Particular attention should be paid to the availability and effectiveness of legal avenues of protection and redress.
- (d) stability. Taking into account the above mentioned elements, an assessment must be made of the prospect for dramatic change in the immediate future. Any view formed must be reviewed over time in the light of events.

5. Assessments of the risk of persecution in individual countries should be based upon as wide a range of sources of information as possible, including advice and reports from diplomatic missions, international and non-governmental organizations and press reports.

Information from UNHCR has a specific place in this framework. UNHCR forms views of the relative safety of countries of origin both for their own operational purposes and in responding to request for advice. They have access to sources within the UN system and non-governmental organizations.

6. Member States may take into consideration other elements of assessment than those previously mentioned, which will be reviewed from time to time.