

TREATY OF AMSTERDAM

CONSOLIDATED VERSION OF THE TREATY ON EUROPEAN UNION

TITLE I: COMMON PROVISIONS

Article 1

By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called "the Union".

This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty. Its task shall be to organise, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.

Article 6

1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.
2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.
3. The Union shall respect the national identities of its Member States.
4. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.

Article 7

1. The Council, meeting in the composition of the Heads of State or Government and acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article 6(1), after inviting the government of the Member State in question to submit its observations.

2. Where such a determination has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of this Treaty to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under this Treaty shall in any case continue to be binding on that State.

3. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 2 in response to changes in the situation which led to their being imposed.
4. For the purposes of this Article, the Council shall act without taking into account the vote of the representative of the government of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 1. A qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2) of the Treaty establishing the European Community.

This paragraph shall also apply in the event of voting rights being suspended pursuant to paragraph 2.

5. For the purposes of this Article, the European Parliament shall act by a two thirds majority of the votes cast, representing a majority of its members.

CONSOLIDATED VERSION OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY

TITLE IV, VISAS, ASYLUM, IMMIGRATION AND OTHER POLICIES RELATED TO FREE MOVEMENT OF PERSONS

Article 61

In order to establish progressively an area of freedom, security and justice, the Council shall adopt:

- (a) within a period of five years after the entry into force of the Treaty of Amsterdam, measures aimed at ensuring the free movement of persons in accordance with Article 14, in conjunction with directly related flanking measures with respect to external border controls, asylum and immigration, in accordance with the provisions of Article 62(2) and (3) and Article 63(1)(a) and (2)(a), and measures to prevent and combat crime in accordance with the provisions of Article 31(e) of the Treaty on European Union;
- (b) other measures in the fields of asylum, immigration and safeguarding the rights of nationals of third countries, in accordance with the provisions of Article 63;
- (c) measures in the field of judicial cooperation in civil matters as provided for in Article 65;
- (d)
- (a) appropriate measures to encourage and strengthen administrative cooperation, as provided for in Article 66;
- (b) measures in the field of police and judicial cooperation in criminal matters aimed at a high level of security by preventing and combating crime within the Union in accordance with the provisions of the Treaty on European Union.

Article 62

The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

- (1) measures with a view to ensuring, in compliance with Article 14, the absence of any controls on persons, be they citizens of the Union or nationals of third countries, when crossing internal borders;
- (2) measures on the crossing of the external borders of the Member State which shall establish:
 - (a) standards and procedures to be followed by Member States in carrying out checks on persons at such borders;

- (b) rules on visas for intended stays of no more than three months, including:
 - (i) the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement;
 - (ii) the procedures and conditions for issuing visas by Member States;
 - (iii) a uniform format for visas;
 - (iv) rules on a uniform visa;
- (3) measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of no more than three months.

Article 63

The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

- (1) measures on asylum, in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties, within the following areas:
 - (a) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States,
 - (b) minimum standards on the reception of asylum seekers in Member States,
 - (c) minimum standards with respect to the qualification of nationals of third countries as refugees,
 - (d) minimum standards on procedures in Member States for granting or withdrawing refugee status;
- (2) measures on refugees and displaced persons within the following areas:
 - (a) minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and for persons who otherwise need international protection,
 - (b) promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons;
- (3) measures on immigration policy within the following areas:
 - (a) conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunion,

- (b) illegal immigration and illegal residence, including repatriation of illegal residents;
- (4) measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States.

Measures adopted by the Council pursuant to points 3 and 4 shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements.

Measures to be adopted pursuant to points 2(b), 3(a) and 4 shall not be subject to the five year period referred to above.

Article 64

1. This Title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.
2. In the event of one or more Member States being confronted with an emergency situation characterised by a sudden inflow of nationals of third countries and without prejudice to paragraph 1, the Council may, acting by qualified majority on a proposal from the Commission, adopt provisional measures of a duration not exceeding six months for the benefit of the Member States concerned.

Article 65

Measures in the field of judicial cooperation in civil matters having crossborder implications, to be taken in accordance with Article 67 and insofar as necessary for the proper functioning of the internal market, shall include:

- (a) improving and simplifying:
 - the system for crossborder service of judicial and extrajudicial documents;
 - cooperation in the taking of evidence;
 - the recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases;
- (b) promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction;
- (c) eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.

Article 66

The Council, acting in accordance with the procedure referred to in Article 67, shall take measures to ensure cooperation between the relevant departments of the administrations of the Member States in the areas covered by this Title, as well as between those departments and the Commission.

Article 67

1. During a transitional period of five years following the entry into force of the Treaty of Amsterdam, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.
2. After this period of five years:
 - the Council shall act on proposals from the Commission; the Commission shall examine any request made by a Member State that it submit a proposal to the Council;
 - the Council, acting unanimously after consulting the European Parliament, shall take a decision with a view to providing for all or parts of the areas covered by this Title to be governed by the procedure referred to in Article 251 and adapting the provisions relating to the powers of the Court of Justice.
3. By derogation from paragraphs 1 and 2, measures referred to in Article 62(2)(b) (i) and (iii) shall, from the entry into force of the Treaty of Amsterdam, be adopted by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.
4. By derogation from paragraph 2, measures referred to in Article 62(2)(b) (ii) and (iv) shall, after a period of five years following the entry into force of the Treaty of Amsterdam, be adopted by the Council acting in accordance with the procedure referred to in Article 251.

Article 68

1. Article 234 shall apply to this Title under the following circumstances and conditions: where a question on the interpretation of this Title or on the validity or interpretation of acts of the institutions of the Community based on this Title is raised in a case pending before a court or a tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.
2. In any event, the Court of Justice shall not have jurisdiction to rule on any measure or decision taken pursuant to Article 62(1) relating to the maintenance of law and order and the safeguarding of internal security.
3. The Council, the Commission or a Member State may request the Court of Justice to give a ruling on a question of interpretation of this Title or of acts of the institutions of the Community based on this Title. The ruling given by the Court of Justice in response to such a request shall not apply to judgments of courts or tribunals of the Member States which have become *res judicata*.

Article 69

The application of this Title shall be subject to the provisions of the Protocol on the position of the United Kingdom and Ireland and to the Protocol on the position of Denmark and without prejudice to the Protocol on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and to Ireland.

5. If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.
6. Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted.
7. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

UNHCR'S POSITION

AMSTERDAM TREATY: UNHCR calls for a fair and coherent EU asylum policy

1 May 1999

With entry into force of the Amsterdam Treaty on 1 May, the United Nations High Commissioner for Refugees (UNHCR) urges EU Member States to develop a consistent and coherent asylum policy at European level, ensuring protection to those who need it.

UNHCR believes that the Amsterdam Treaty represents a unique opportunity for refugee protection in the EU, as it enables Member States to resolve considerable differences in their asylum systems. At the same time, the danger exists that new EU-wide arrangements may be based on the lowest common denominator, or, failing common agreement, emptied of meaningful substance.

In Europe, like on other continents, Governments have taken measures to reinforce their borders and are increasingly reluctant to bear the costs of asylum. A failure to distinguish refugees who flee persecution from economic migrants seeking better economic opportunities has increasingly characterised both official policy and public attitudes. While the States of the European Union continue to provide effective protection to very significant numbers of refugees, Governments have progressively resorted to a wide range of control and deterrence measures. Instead of being the precision tools required to distinguish those in need of international protection from those who are not, these have generally taken the form of drag nets catching both irregular immigrants and persons in need of protection.

- Common EU measures to combat irregular border-crossing must not obstruct access for asylum-seekers to Member States' territory. Mechanisms for sharing the responsibility for processing an asylum claim, based on the Dublin Convention, the "safe third country" notion, or readmission agreements, need to contain appropriate safeguards to ensure that the asylum applicant will receive a fair examination of his or her claim by an identified State.
- UNHCR urges EU Member States to take a strategic and principled approach to the development of a common EU asylum policy, agreeing first on a common interpretation of the refugee definition according to the 1951 Convention, before developing various procedural instruments and complementary schemes of protection.
- Many of today's victims of internal conflicts and civil war can and should be offered protection under the 1951 Convention, which is to be considered as the cornerstone of any future EU asylum regime. UNHCR urges that the Convention be applied in a way which is responsive to all forms of persecution – irrespective of whether it is due to state or non-state actors – and which gives due recognition to the persecutory nature of much contemporary conflict. The spirit and intention of the Convention are seriously undermined when those with a well-founded fear of persecution based on race, religion, nationality, political opinion or membership of a social group are not afforded international protection just because that persecution is inflicted by a non-State agent or because it is directed towards an entire community rather than individually targeted.
- UNHCR recognises the need to develop complementary forms of protection for those who fall outside the scope of the 1951 Convention, properly applied. It would, however, be unacceptable if complementary forms of protection were to be little more than a

pretext for granting a lesser degree of protection to victims of persecution who meet the criteria for recognition as Convention refugees. The organisation also supports recourse to temporary protection in cases of sudden and large-scale influx of asylum-seekers displaced by war and generalised violence, when it may be impractical to apply individual status determination procedures. UNHCR is strongly of the view that beneficiaries of temporary protection arrangements need to be accorded a consistent standard of rights throughout the EU, which takes due account of the fact that many of them meet all the criteria for 1951 Convention status.

- Procedures for examining individual asylum claims are in crisis in many EU countries. In the view of UNHCR, a fair, and efficient asylum procedure serves a dual objective: it identifies individuals in need of protection and it separates out those who do not and who can, in principle, be safely returned home. Problems of the capacity of asylum procedures need to be urgently addressed. At the same time, there is scope for streamlining procedures, while ensuring that fundamental safeguards are respected.
- Moreover, the European Union must resolve the considerable differences in procedural legislation and practice amongst Member States. Only this will ensure that asylum seekers enjoy an equal chance of obtaining protection throughout the Union, which is far from currently the case.
- Further erosion of the asylum systems in Member States hosting a relatively large number of asylum-seekers need to be counteracted by a fair sharing of the responsibilities among Member States and a harmonisation of the reception conditions in EU countries. Common standards of treatment, including legal security, socio-economic benefits and freedom of movement, need to be adopted in order to prevent secondary movement of asylum-seekers and refugees. Moreover, a common EU asylum policy should deal effectively with those screened out after a fair and satisfactory procedure, in order to preserve the integrity of Member States' asylum systems.
- UNHCR calls on the EU Commission and Member States to develop protection standards which could be a model for other regions, and which will influence positively the developing asylum systems in applicant countries of Central Europe. To achieve this, political vision and leadership will be required from the EU. Europe must continue squarely to face its responsibility to offer protection to those in need of it.

A total of 353,000 asylum seekers arrived in Western Europe in 1998, 304,000 of them in EU Member States.

Protocols

Protocols annexed to the Treaty on European Union and to the Treaty establishing the European Community

Protocol integrating the Schengen acquis into the framework of the European Union

THE HIGH CONTRACTING PARTIES,

NOTING that the Agreements on the gradual abolition of checks at common borders signed by some Member States of the European Union in Schengen on 14 June 1985 and on 19 June 1990, as well as related agreements and the rules adopted on the basis of these agreements, are aimed at enhancing European integration and, in particular, at enabling the European Union to develop more rapidly into an area of freedom, security and justice,

DESIRING to incorporate the abovementioned agreements and rules into the framework of the European Union, CONFIRMING that the provisions of the Schengen acquis are applicable only if and as far as they are compatible with the European Union and Community law,

TAKING INTO ACCOUNT the special position of Denmark,

TAKING INTO ACCOUNT the fact that Ireland and the United Kingdom of Great Britain and Northern Ireland are not parties to and have not signed the abovementioned agreements; that provision should, however, be made to allow those Member States to accept some or all of the provisions thereof,

RECOGNISING that, as a consequence, it is necessary to make use of the provisions of the Treaty on European Union and of the Treaty establishing the European Community concerning closer cooperation between some Member States and that those provisions should only be used as a last resort,

TAKING INTO ACCOUNT the need to maintain a special relationship with the Republic of Iceland and the Kingdom of Norway, both States having confirmed their intention to become bound by the provisions mentioned above, on the basis of the Agreement signed in Luxembourg on 19 December 1996,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty establishing the European Community,

Article 1

The Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland and the Kingdom of Sweden, signatories to the Schengen agreements, are authorised to establish closer cooperation among themselves within the scope of those agreements and related provisions, as they are listed in the Annex

to this Protocol, hereinafter referred to as the 'Schengen acquis'.

This cooperation shall be conducted within the institutional and legal framework of the European Union and with respect for the relevant provisions of the Treaty on European Union and of the Treaty establishing the European Community.

Article 2

1. From the date of entry into force of the Treaty of Amsterdam, the Schengen acquis, including the decisions of the Executive Committee established by the Schengen agreements which have been adopted before this date, shall immediately apply to the thirteen Member States referred to in Article 1, without prejudice to the provisions of paragraph 2 of this Article. From the same date, the Council will substitute itself for the said Executive Committee.

The Council, acting by the unanimity of its Members referred to in Article 1, shall take any measure necessary for the implementation of this paragraph. The Council, acting unanimously, shall determine, in conformity with the relevant provisions of the Treaties, the legal basis for each of the provisions or decisions which constitute the Schengen acquis.

With regard to such provisions and decisions and in accordance with that determination, the Court of Justice of the European Communities shall exercise the powers conferred upon it by the relevant applicable provisions of the Treaties. In any event, the Court of Justice shall have no jurisdiction on measures or decisions relating to the maintenance of law and order and the safeguarding of internal security.

As long as the measures referred to above have not been taken and without prejudice to Article 5(2), the provisions or decisions which constitute the Schengen acquis shall be regarded as acts based on Title VI of the Treaty on European Union.

2. The provisions of paragraph 1 shall apply to the Member States which have signed accession protocols to the Schengen agreements, from the dates decided by the Council, acting with the unanimity of its Members mentioned in Article 1, unless the conditions for the accession of any of those States to the Schengen acquis are met before the date of the entry into force of the Treaty of Amsterdam.

Article 3

Following the determination referred to in Article 2(1), second subparagraph, Denmark shall maintain the same rights and obligations in relation to the other signatories to the Schengen agreements, as before the said determination with regard to those parts of the Schengen acquis that are determined to have a legal basis in Title IV of the Treaty establishing the European Community. With regard to those parts of the Schengen acquis that are determined to have legal base in Title VI of the Treaty on European Union, Denmark shall continue to have the same rights and obligations as the other signatories to the Schengen agreements.

Article 4

Ireland and the United Kingdom of Great Britain and Northern Ireland, which are not bound by the Schengen acquis, may at any time request to take part in some or all of the provisions of this acquis.

The Council shall decide on the request with the unanimity of its members referred to in Article 1 and of the representative of the Government of the State concerned.

Article 5

1. Proposals and initiatives to build upon the Schengen acquis shall be subject to the relevant provisions of the Treaties.

In this context, where either Ireland or the United Kingdom or both have not notified the President of the Council in writing within a reasonable period that they wish to take part, the authorisation referred to in Article 11 of the Treaty establishing the European Community or Article 40 of the Treaty on European Union shall be deemed to have been granted to the Members States referred to in Article 1 and to Ireland or the United Kingdom where either of them wishes to take part in the areas of cooperation in question.

2. The relevant provisions of the Treaties referred to in the first subparagraph of paragraph 1 shall apply even if the Council has not adopted the measures referred to in Article 2(1), second subparagraph.

Article 6

The Republic of Iceland and the Kingdom of Norway shall be associated with the implementation of the Schengen acquis and its further development on the basis of the Agreement signed in Luxembourg on 19 December 1996. Appropriate procedures shall be agreed to that effect in an Agreement to be concluded with those States by the Council, acting by the unanimity of its Members mentioned in Article 1. Such Agreement shall include provisions on the contribution of Iceland and Norway to any financial consequences resulting from the implementation of this Protocol.

A separate Agreement shall be concluded with Iceland and Norway by the Council, acting unanimously, for the establishment of rights and obligations between Ireland and the United Kingdom of Great Britain and Northern Ireland on the one hand, and Iceland and Norway on the other, in domains of the Schengen acquis which apply to these States.

Article 7

The Council shall, acting by a qualified majority, adopt the detailed arrangements for the integration of the Schengen Secretariat into the General Secretariat of the Council.

Article 8

For the purposes of the negotiations for the admission of new Member States into the European Union, the Schengen acquis and further measures taken by the institutions within its scope shall be regarded as an acquis which must be accepted in full by all States candidates for admission.

ANNEX SCHENGEN ACQUIS

1. The Agreement, signed in Schengen on 14 June 1985, between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.
2. The Convention, signed in Schengen on 19 June 1990, between the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, implementing the Agreement on the gradual abolition of checks at their common borders, signed in Schengen on 14 June 1985, with related Final Act and common declarations.
3. The Accession Protocols and Agreements to the 1985 Agreement and the 1990 Implementation Convention with Italy (signed in Paris on 27 November 1990), Spain and Portugal (signed in Bonn on 25 June 1991), Greece (signed in Madrid on 6 November 1992), Austria (signed in Brussels on 28 April 1995) and Denmark, Finland and Sweden (signed in Luxembourg on 19 December 1996), with related Final Acts and declarations.
4. Decisions and declarations adopted by the Executive Committee established by the 1990 Implementation Convention, as well as acts adopted for the implementation of the Convention by the organs upon which the Executive Committee has conferred decision making powers.

Protocol on asylum for nationals of Member States of the European Union

Protocol annexed to the Treaty establishing the European Community

THE HIGH CONTRACTING PARTIES;

WHEREAS pursuant to the provisions of Article 6(2) of the Treaty on European Union the Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950;

WHEREAS the Court of Justice of the European Communities has jurisdiction to ensure that in the interpretation and application of Article 6(2) of the Treaty on European Union the law is observed by the European Community;

WHEREAS pursuant to Article 49 of the Treaty on European Union any European State, when applying to become a Member of the Union, must respect the principles set out in Article 6(1) of the Treaty on European Union, BEARING IN MIND that Article 309 of the Treaty establishing the European Community establishes a mechanism for the suspension of certain rights in the event of a serious and persistent breach by a Member State of those principles;

RECALLING that each national of a Member State, as a citizen of the Union, enjoys a special status and protection which shall be guaranteed by the Member States in accordance with the provisions of Part Two of the Treaty establishing the European Community;

BEARING IN MIND that the Treaty establishing the European Community establishes an area without internal frontiers and grants every citizen of the Union the right to move and reside freely within the territory of the Member States;

RECALLING that the question of extradition of nationals of Member States of the Union is addressed in the European Convention on Extradition of 13 December 1957 and the Convention of 27 September 1996 drawn up on the basis of Article 31 of the Treaty on European Union relating to extradition between the Member States of the European Union;

WISHING to prevent the institution of asylum being resorted to for purposes alien to those for which it is intended;

WHEREAS this Protocol respects the finality and the objectives of the Geneva Convention of 28 July 1951 relating to the status of refugees;

HAVE AGREED UPON the following provisions which shall be annexed to the Treaty establishing the European Community,

Sole Article

Given the level of protection of fundamental rights and freedoms by the Member States of the European Union, Member States shall be regarded as constituting safe countries of origin in respect of each other for all legal and practical purposes in relation to asylum matters. Accordingly, any application for asylum made by a national of a Member State may be taken into consideration or declared admissible for processing by another Member State only in the following cases:

- (a) if the Member State of which the applicant is a national proceeds after the entry into force of the Treaty of Amsterdam, availing itself of the provisions of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms, to take measures derogating in its territory from its obligations under that Convention;
- (b) if the procedure referred to in Article 7(1) of the Treaty on European Union has been initiated and until the Council takes a decision in respect thereof;
- (c) if the Council, acting on the basis of Article 7(1) of the Treaty on European Union, has determined, in respect of the Member State which the applicant is a national, the existence of a serious and persistent breach by that Member State of principles mentioned in Article 6(1);
- (d) if a Member State should so decide unilaterally in respect of the application of a national of another Member State; in that case the Council shall be immediately informed; the application shall be dealt with on the basis of the presumption that it is manifestly unfounded without affecting in any way, whatever the cases may be, the decision-making power of the Member State.

UNHCR's position on the proposal of the European Council concerning the treatment of asylum applications from citizens of European Union Member States

1. At the Dublin Summit of 13 and 14 December 1996, the European Council called upon the Intergovernmental Conference to develop the important proposal to amend the Treaties to establish it as a clear principle that no citizen of a Member State of the Union may apply for asylum in another Member State, taking into account international treaties. This proposal raises the following concerns from the viewpoint of international refugee law.
2. Access for all asylum seekers - without any discrimination as to country of origin - to fair and efficient procedures for the determination of refugee status is a basic prerequisite of international refugee protection, which has repeatedly been affirmed by the UNHCR Executive Committee and by the United Nations General Assembly. Unless asylum seekers are afforded access to determination procedures, it is impossible for States to know who is a refugee requiring international protection, and for a refugee to enjoy the minimum guarantees of safety and security to which such person is entitled.
3. The decision as to whether a person qualifies as a refugee is taken by each State in accordance with its own established procedures, consistent with international standards, on the basis of the criteria laid down in Article 1 of the 1951 Convention. The implementation of the 1951 Convention/1967 Protocol requires the individual determination of refugee status, including an assessment of the subjective element of fear of persecution. It is impossible, realistically speaking, to exclude the possibility that an individual could have a well-founded fear of persecution in any particular country however great its attachment to human rights and the rule of law. While a highly sophisticated democratic order and an elaborate system of legal safeguards, as well as of judicial and administrative remedies, allow for a general presumption of safety, the need for international protection cannot be excluded absolutely and categorically in every case. Nor, regrettably, can fundamental changes in the political system or in the human rights situation of any State. The only exception made to the requirement of individual determinations, as a matter of practicality, is in situations of positive group determination in case of large-scale influxes.
4. All Member States of the European Union are States parties to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and have thus adopted a refugee definition without any limitations as to country of origin. Such an automatic bar to refugee status determination, introduced by a provision in another legally binding treaty, could result in a partial but essential modification of Article 1 of the 1951 Convention, as revised by the 1967 Protocol. The proposed modification would, in effect, introduce a posteriori a geographical limitation to the application of the refugee definition, as contained in Article 1 A (2) of the 1951 Convention. This is incompatible with the 1967 Protocol and the fact that any such previously existing limitation has been removed by the Member States of the Union. The proposed amendment would, furthermore, be inconsistent with Article 3 of the 1951 Convention that requires States to apply its

provisions without discrimination as to country of origin. The above-mentioned concerns can, however, not be remedied by mere reference to the need to take international treaties into account.

5. In short, the modification of the Treaties as proposed would affect the very essence of international refugee law since the provision to be adopted in a subsequent international convention between fifteen Contracting States alone would restrict the definition of its beneficiaries. Any such partial derogation from the refugee definition, as contained in Article 1 of the 1951 Convention/1967 Protocol, to which reservations are prohibited in accordance with Article 42 of the 1951 Convention, would be incompatible with the object and purposes of these instruments as a whole. The essential purpose of these two international conventions is to provide for a universally applicable legal regime that ensures protection to an internationally defined group of persons who are in a particularly vulnerable situation. The universal and unconditional application of the international refugee instruments has repeatedly been emphasised by the international community. The UNHCR Executive Committee and the General Assembly only last year invited States parties to these instruments to review any reservations with a view to their withdrawal.
6. In addition, the precedent value of such a development is cause for concern. The ripple effects may be considerable, and this concept may well be followed by other regions, with the inherent danger of undermining the scope of the applicability of the international refugee instruments universally. It may also erode the humanitarian nature of asylum by complicating relations with non-EU States.
7. Finally, the Office has consistently opposed the use of the notion of safe country of origin as an automatic bar to access to asylum procedures. Where the notion of safe country of origin is used as a procedural tool to channel certain applications into accelerated procedures, or where its use has an evidentiary function, the Office has had no objection, as long as the presumption of safety is rebuttable in a fair procedure. This understanding is generally followed in the state practice of most EU Member States, as inter alia, exemplified by the Conclusion of the EC Immigration Ministers adopted at their meeting of 30 November and 1 December 1992 on countries where there is generally no serious risk of persecution. The assessment, on the basis of objective and verifiable information, of conditions prevailing in a particular country may give rise to a rebuttable presumption concerning the general absence of a serious risk of persecution, but should not automatically result in the refusal of all asylum applications from its nationals or their exclusion from individualized determination procedures (paragraph 3 of this Conclusion). The proposed amendment would, in effect, detract substantively from this position and codify the opposite view in an international treaty.
8. In conclusion, the Office hopes that any changes in the European Union Treaty will inter alia facilitate the adoption of a coherent and comprehensive European asylum policy, promoting common standards of protection that are consonant with internationally agreed standards. For the above reasons, UNHCR advises against introducing such an amendment, which would be at variance with international obligations that all Member States of the Union have undertaken.
9. The position of the Office here parallels the position of the Council of Ministers of Justice and Home Affairs in its Resolution adopted at its meeting of 20 June 1995 on minimum guarantees for asylum procedures. It was agreed in this position that a particularly rapid or simplified procedure will be applied to an asylum application lodged by a national of

another Member State, in accordance with each Member State's rules and practice. The Council specified in this regard that the Member States continue to be obliged to examine individually every application for asylum, as provided by the Geneva Convention to which the Treaty on European Union refers (paragraph 20 of this Resolution). It would clearly be preferable to address the treatment of asylum requests from nationals of other Member States by operation of this Resolution than through altering the scope of application of the international refugee instruments between EU Member States alone.

Office of the United Nations High Commissioner for Refugees
Geneva, January 1997

Protocol on the application of certain aspects of Article 14 (ex Article 7a) of the Treaty establishing the European Community to the United Kingdom and to Ireland

Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community.

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain questions relating to the United Kingdom and Ireland,

HAVING REGARD to the existence for many years of special travel arrangements between the United Kingdom and Ireland,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty establishing the European Community and to the Treaty on European Union,

Article 1

The United Kingdom shall be entitled, notwithstanding Article 14 of the Treaty establishing the European Community, any other provision of that Treaty or of the Treaty on European Union, any measure adopted under those Treaties, or any international agreement concluded by the Community or by the Community and its Member States with one or more third States, to exercise at its frontiers with other Member States such controls on persons seeking to enter the United Kingdom as it may consider necessary for the purpose:

- (a) of verifying the right to enter the United Kingdom of citizens of States which are Contracting Parties to the Agreement on the European Economic Area and of their dependants exercising rights conferred by Community law, as well as citizens of other States on whom such rights have been conferred by an agreement by which the United Kingdom is bound; and
- (b) of determining whether or not to grant other persons permission to enter the United Kingdom.

Nothing in Article 14 of the Treaty establishing the European Community or in any other provision of that Treaty or of the Treaty on European Union or in any measure adopted under them shall prejudice the right of the United Kingdom to adopt or exercise any such controls. References to the United Kingdom in this Article shall include territories for whose external relations the United Kingdom is responsible.

Article 2

The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories ('the Common Travel Area'), while fully respecting the rights of persons referred to in Article 1, first paragraph, point (a) of this Protocol. Accordingly, as long as they maintain such arrangements, the provisions of Article 1 of this Protocol shall apply to Ireland under the same terms and conditions as for the United Kingdom. Nothing in Article 14 of the Treaty establishing the European Community, in any other provision of that Treaty or of the Treaty on European Union or in any measure adopted under them, shall affect any such arrangements.

Article 3

The other Member States shall be entitled to exercise at their frontiers or at any point of entry into their territory such controls on persons seeking to enter their territory from the United Kingdom or any territories whose external relations are under its responsibility for the same purposes stated in Article 1 of this Protocol, or from Ireland as long as the provisions of Article 1 of this Protocol apply to Ireland.

Nothing in Article 14 of the Treaty establishing the European Community or in any other provision of that Treaty or of the Treaty on European Union or in any measure adopted under them shall prejudice the right of the other Member States to adopt or exercise any such controls.

Protocol on the position of the United Kingdom and Ireland

Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community.

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain questions relating to the United Kingdom and Ireland,

HAVING REGARD to the Protocol on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and to Ireland,

HAVE AGREED UPON the following provisions which shall be annexed to the Treaty establishing the European Community and to the Treaty on European Union,

Article 1

Subject to Article 3, the United Kingdom and Ireland shall not take part in the adoption by the Council of proposed measures pursuant to Title IV of the Treaty establishing the European Community. By way of derogation from Article 205(2) of the Treaty establishing the European Community, a qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in the said Article 205(2). The unanimity of the members of the Council, with the exception of the representatives of the governments of the United Kingdom and Ireland, shall be necessary for decisions of the Council which must be adopted unanimously.

Article 2

In consequence of Article 1 and subject to Articles 3, 4 and 6, none of the provisions of Title IV of the Treaty establishing the European Community, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Community pursuant to that Title, and no decision of the Court of Justice interpreting any such provision or measure shall be binding upon or applicable in the United Kingdom or Ireland; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of those States; and no such provision, measure or decision shall in any way affect the *acquis communautaire* nor form part of Community law as they apply to the United Kingdom or Ireland.

Article 3

1. The United Kingdom or Ireland may notify the President of the Council in writing, within three months after a proposal or initiative has been presented to the Council pursuant to Title IV of the Treaty establishing the European Community, that it wishes to take part in the adoption and application of any such proposed measure, whereupon that State

shall be entitled to do so. By way of derogation from Article 205(2) of the Treaty establishing the European Community, a qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in the said Article 205(2).

The unanimity of the members of the Council, with the exception of a member which has not made such a notification, shall be necessary for decisions of the Council which must be adopted unanimously. A measure adopted under this paragraph shall be binding upon all Member States which took part in its adoption.

2. If after a reasonable period of time a measure referred to in paragraph 1 cannot be adopted with the United Kingdom or Ireland taking part, the Council may adopt such measure in accordance with Article 1 without the participation of the United Kingdom or Ireland. In that case Article 2 applies.

Article 4

The United Kingdom or Ireland may at any time after the adoption of a measure by the Council pursuant to Title IV of the Treaty establishing the European Community notify its intention to the Council and to the Commission that it wishes to accept that measure. In that case, the procedure provided for in Article 11(3) of the Treaty establishing the European Community shall apply *mutatis mutandis*.

Article 5

A Member State which is not bound by a measure adopted pursuant to Title IV of the Treaty establishing the European Community shall bear no financial consequences of that measure other than administrative costs entailed for the institutions.

Article 6

Where, in cases referred to in this Protocol, the United Kingdom or Ireland is bound by a measure adopted by the Council pursuant to Title IV of the Treaty establishing the European Community, the relevant provisions of that Treaty, including Article 68, shall apply to that State in relation to that measure.

Article 7

Articles 3 and 4 shall be without prejudice to the Protocol integrating the Schengen acquis into the framework of the European Union.

Article 8

Ireland may notify the President of the Council in writing that it no longer wishes to be covered by the terms of this Protocol. In that case, the normal Treaty provisions will apply to Ireland.

Protocol on the position of Denmark

Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community.

THE HIGH CONTRACTING PARTIES,

RECALLING the Decision of the Heads of State or Government, meeting within the European Council at Edinburgh on 12 December 1992, concerning certain problems raised by Denmark on the Treaty on European Union,

HAVING NOTED the position of Denmark with regard to Citizenship, Economic and Monetary Union, Defence Policy and Justice and Home Affairs as laid down in the Edinburgh Decision,

BEARING IN MIND Article 3 of the Protocol integrating the Schengen acquis into the framework of the European Union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty establishing the European Community and to the Treaty on European Union,

PART I

Article 1

Denmark shall not take part in the adoption by the Council of proposed measures pursuant to Title IV of the Treaty establishing the European Community. By way of derogation from Article 205(2) of the Treaty establishing the European Community, a qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in the said Article 205(2). The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the decisions of the Council which must be adopted unanimously.

Article 2

None of the provisions of Title IV of the Treaty establishing the European Community, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Community pursuant to that Title, and no decision of the Court of Justice interpreting any such provision or measure shall be binding upon or applicable in Denmark; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of Denmark; and no such provision, measure or decision shall in any way affect the *acquis communautaire* nor form part of Community law as they apply to Denmark.

Article 3

Denmark shall bear no financial consequences of measures referred to in Article 1, other than administrative costs entailed for the institutions.

Article 4

Articles 1, 2 and 3 shall not apply to measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas.

Article 5

1. Denmark shall decide within a period of 6 months after the Council has decided on a proposal or initiative to build upon the Schengen acquis under the provisions of Title IV of the Treaty establishing the European Community, whether it will implement this decision in its national law. If it decides to do so, this decision will create an obligation under international law between Denmark and the other Member States referred to in Article 1 of the Protocol integrating the Schengen acquis into the framework of the European Union as well as Ireland or the United Kingdom if those Member States take part in the areas of cooperation in question.
2. If Denmark decides not to implement a decision of the Council as referred to in paragraph 1, the Member States referred to in Article 1 of the Protocol integrating the Schengen acquis into the framework of the European Union will consider appropriate measures to be taken.

PART II

Article 6

With regard to measures adopted by the Council in the field of Articles 13(1) and 17 of the Treaty on European Union, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications, but will not prevent the development of closer cooperation between Member States in this area. Therefore Denmark shall not participate in their adoption. Denmark shall not be obliged to contribute to the financing of operational expenditure arising from such measures.

PART III

Article 7

At any time Denmark may, in accordance with its constitutional requirements, inform the other Member States that it no longer wishes to avail itself of all or part of this Protocol. In that event, Denmark will apply in full all relevant measures then in force taken within the framework of the European Union.

Declarations

Relevant Declarations annexed to the final act of Amsterdam

DECLARATION (No 17) on Article 63 (ex Article 73k) of the Treaty establishing the European Community

Consultations shall be established with the United Nations High Commissioner for Refugees and other relevant international organisations on matters relating to asylum policy.

DECLARATION (No 48) relating to the Protocol on asylum for nationals of Member States of the European Union

The Protocol on asylum for nationals of Member States of the European Union does not prejudice the right of each Member State to take the organisational measures it deems necessary to fulfil its obligations under the Geneva Convention of 28 July 1951 relating to the status of refugees.

DECLARATION (No 49) relating to subparagraph (d) of the Sole Article of the Protocol on asylum for nationals of Member States of the European Union

The Conference declares that, while recognising the importance of the Resolution of the Ministers of the Member States of the European Communities responsible for immigration of 30 November/ 1 December 1992 on manifestly unfounded applications for asylum and of the Resolution of the Council of 20 June 1995 on minimum guarantees for asylum procedures, the question of abuse of asylum procedures and appropriate rapid procedures to dispense with manifestly unfounded applications for asylum should be further examined with a view to introducing new improvements in order to accelerate these procedures.

DECLARATION (No 56) by Belgium on the Protocol on asylum for nationals

of Member States of the European Union In approving the Protocol on asylum for nationals of Member States of the European Union, Belgium declares that, in accordance with its obligations under the 1951 Geneva Convention and the 1967 New York Protocol, it shall, in accordance with the provision set out in point (d) of the sole Article of that Protocol, carry out an individual examination of any asylum request made by a national of another Member State.

