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TOWARDS A MIGRATION MANAGEMENT STRATEGY

**REPORT OF THE RESTRICTED WORKING GROUP
ON A MIGRATION MANAGEMENT STRATEGY**

and

**SUMMARY OF THE PROCEEDINGS OF THE SEMINAR
ON MANAGING MIGRATION IN THE WIDER EUROPE
(Strasbourg, 12-13 October 1998)**

PREFACE

At their 6th conference, held in Warsaw in June 1996, the European Ministers responsible for migration affairs encouraged the Council of Europe to develop a comprehensive approach to migration in Europe and to help define principles for orderly migration movements into and within Europe.

This led the European Committee on Migration (CDMG), the body responsible for the Council of Europe's intergovernmental activities on migration, to set up a Reflection Group of eminent experts in the migration field. The report is the fruit of the Group's work. It should be stressed that this is a working document, designed to stimulate a process of reflection. Its contents express the views of the members of the Group, and not necessarily those of the Council of Europe or its member States.

In order to gauge reactions to the report, the CDMG, working throughout in co-operation with the Ad Hoc Committee of Experts on the legal aspects of territorial asylum, refugees and stateless persons (CAHAR) organised a Seminar on managing migration in the wider Europe. The papers of this event, which brought together a significant number of government experts and a number of invited specialists from the academic world, are summarised in Part B. The Seminar was greatly appreciated by the participants as providing a rare opportunity for government officials to reflect in an open manner on the dilemmas of policy-making in the migration field.

The report of the Reflection Group as set out in Part A of this collection was in general warmly welcomed by the participants. At the same time, criticisms were made and possible improvements were suggested. This has encouraged the CDMG to continue its work and to commission a second version of the report to a restricted Group of experts and academics. This second version will be available in 2000.

This volume should be seen as a report on work in progress. This being so, the CDMG Secretariat would be pleased to receive observations and comments from readers*. I have pleasure in commending this collection to your attention.

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REPORT

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**This report was drawn up by the Reflection Group as an interim basis for discussion.
It does not necessarily reflect the official position of the Council of Europe
or its member States.**

A. TOWARDS A MIGRATION MANAGEMENT STRATEGY

1. THE NEW CONTEXT

As Europe's migration policy makers confront the new millennium, they are able to reflect on a decade of change, which has thrown up a number of novelties. The whole of the continent has become very attractive for migrants from much of the rest of the world. Partly this reflects the new political realities - Europe is for the most part a zone of democracy and one where human rights are generally upheld. Its perceived political and economic security have made it attractive to asylum seekers. Compared with much of the rest of the world it is also a prosperous region, though it has its own internal variations, and the economic gradient between Europe and the 'South' inevitably attracts a constant stream of migrants. Southern and Central and Eastern Europe, both until recently zones largely of emigration or of little movement, are now firmly part of a migration and circulation system characterised by inflows as well as outflows.

Neither should we forget that most European countries which had high levels of emigration at the beginning of the century now frequently have an immigrant community amounting to well over 1% of the total population, which is the level at which a country can be regarded as a country of immigration.

The population of greater Europe is ageing and its birth rate is decreasing more quickly than that of other continents, especially Africa and southern and southeast Asia. This discrepancy in demographic trends between different continents is bound to have consequences which events in the recent past have merely hinted at.

These global contrasts inevitably lead to continued migration pressures, which add to those of the legacy of half a century of immigration in Western Europe. Labour immigration followed by family reunion, then from the 1980s increased numbers of asylum seekers, have been the bequest to policy makers in the 1990s. In Southern Europe, economic growth supplemented by geographical proximity to a suite of poorer countries (the Mediterranean basin is one of the steepest demographic and economic gradients in the world) has created new immigration countries, forcing their governments to adopt immigration legislation for the first time and to put increasing resources into entry control. Central and Eastern Europe and the former Soviet Union was a region of controlled emigration and limited immigration under Communism, but since 1989 has become a highly complex migration field, characterised by an enormous variety of both long and short term movements from, to and within the region.

In the 1990s the European migration vocabulary has become rich in novel terms: 'transit migration', 'incomplete migration', 'migrant trafficking', 'petty trading', 'labour tourism', and others. New ethnically based migrations are a visible manifestation of older nationalisms and minorities. Even these take a number of forms: co-nationals returning to a 'mother country' (such as *Aussiedler* to Germany, Jews to Israel); deported persons returning to their homeland (Poles from Russia to Poland, Tartars to Crimea); Russians from the Baltic and other CIS states back to the Russian Federation.

These migration trends have occurred against a changing political background. In Western Europe the economic dichotomy of the EC and EFTA has become fused into the EEA. The economic development of the EU, including the Single European Act and the Treaty of Maastricht together with the incorporation of new member states, has created a powerful political decision-making block. The EU's initiatives and measures, developed through both First and Third Pillars, are now shaping migration policy across the continent as a whole. The "communitarisation" of asylum and migration matters following the entry into force of the Treaty of Amsterdam should confirm this trend.

This process seems set to continue as discussions about the enlargement of the EU continue. Most immediately affected will be the candidate countries themselves, whose migration policy development can be expected to approximate even more closely to that of the existing Union members. Other countries in Central and Eastern Europe are likely to follow suit, in order to assure access for their own citizens and to prevent themselves becoming even more of a vestibule for migrants seeking to get to Western Europe. The progressive removal of border controls, with the expansion of the Schengen system, merely adds weight to this process.

While the predominantly monolithic development of the EU has been leading the development of migration policy in Western Europe, albeit largely through intergovernmental co-operation, in Central and Eastern Europe recent years have seen a series of new groupings and associations within which migration policies have been initiated and developed. Some of these, like the Vienna process, have been transformed into other forms. Others, like the Budapest process, may continue to develop, providing the basis for more coherent and harmonious policy development within the region. Thus, while the EU continues to dominate policy development in Western Europe, the states of Central and Eastern Europe are in the process of developing their own associations and attempts at co-operation. Given the likely length of the EU enlargement and transition process, through what will inevitably be several phases, it is important that ways are found to harness these other initiatives and groups, and to develop a forum for dialogue on pan-European policy development and migration management. The Council of Europe is best placed to act in this capacity.

The new political map of Europe, the new migrations, and Europe's global position necessitate a pan-European policy perspective to migration and to related issues, but one which recognises that the continent faces a geographically highly differentiated set of issues. There is thus a migration management problem for countries, individually and acting in concert, which is to reconcile this differentiation at the national scale with the development of an internationally harmonious policy response. Furthermore, that response must be flexible enough to cope with new types of migration while being comprehensive enough to cover the full range of migration matters.

2. EUROPEAN MIGRATION IN THE 1990s

2.1 Current Trends

There are currently around 19.9 million foreign nationals recorded as resident in Western Europe, with perhaps a further 2.8 million or so in Central and Eastern Europe (including the Baltic States but not the C.I.S.). From 1988 to 1996/7 total foreign national stocks in Western Europe increased by about 5 million (33 per cent), although in recent years there seems to have been a noticeable fall in the rate of increase. For those countries for which it is possible to calculate net flows the period c.1980-c.1996 saw a net aggregate gain of 7.14 million by migration. 1992 seems to have been the peak of recorded immigration flows.

There are about 7.46 million recorded foreign workers in Western Europe, representing an increase of about 27 per cent on the 1988 figure (6.2 million). Thus, as the West European economy has gone into recession it has done so while increasing its foreign labour force. However, there is a substantial irregular workforce, though it is not possible to produce an estimate of its size that may not be grossly in error.

Asylum seekers have made a major contribution to rising numbers of migrants. In 1983 Europe had about 70,000 applications for asylum; in 1992, the peak year, there were 702,000, falling to 245,000 in 1996, then rising to 335,619 in 1998.

Recently, net gains have tended to fall, almost universally in those countries for which data are available. However, these data probably underestimate total net inflows, since for the most part they exclude a number of categories of temporary immigrants, many of whom it is known stay irregularly. Indeed, it may be that the bulk of factual annual immigration in Europe today is not covered by official entry

statistics, but takes place in an irregular fashion. ICMPD has estimated that in 1993 irregular inflows in Western Europe totalled around 350,000. In truth, though, no one has much idea of what the real number is.

Perhaps the biggest management problem in recent years has been created by a succession of mass migrations generated by local wars. These have led to sudden and large-scale influxes in neighbouring countries. In total they amount to several millions of Bosnians, Kosovars, Kurds, Caucasians and others. Many, but not all, have subsequently returned home.

2.2 Who are the migrants?

Most national migration policies have been designed to deal with settlement migration. These have operated via measures to control entry (and, in the Communist era, exit) and to integrate those immigrants who have been allowed in. Many of what are perceived to be immigration problems today, notably the large settled minorities of different cultures, stem from either directive policies linked with needs for foreign labour manpower and recruitment of foreign workers, or from hangovers of colonial regimes. Even today, arthritic notions of immigration based on these past ideas dominate policy thinking about migration management.

Within contemporary international population movements the concept of 'permanent' is no longer clear (if it ever was). No European country now sets out to attract new permanent settlers, with the exception of businessmen specifically targeted for the investment they bring. Over most of Europe, however, permanent settlement migration continues to occur indirectly as a development of previous temporary migrations, mainly through family reunion and family formation. Indeed, most 'permanent' settlement today may be associated with return migration to their home countries by former labour migrants, by former citizens of Central and Eastern European countries and the former Soviet Union who left during the Communist period, and by certain ethnic groups.

In Central and Eastern Europe, and especially in Germany, permanent settlement migration in recent years has been associated with specific ethnic groups, 'returning' to a homeland where they have been granted an automatic right of settlement. Amongst those involved are the German *Aussiedler*, Ingrian Finns, Bulgarian nationals of Turkish origin, Pontian Greeks, and Romanian Magyars. Other ethnic groups involved in migration, notably the Roma, have no homeland to return to. Perhaps the most salient migration phenomenon currently affecting Central and Eastern Europe is that of transit migrants. These are people who enter the territory of a state in order to travel on to another. Their presence is turning some of the new democracies into countries with substantial considerable immigration. With the aim to manage immigration these countries have been developing their immigration legislation and policy in accordance with international standards and with the best practice of Council of Europe member States.

Most voluntary migration in recent decades has featured temporary labour migrants, generally low skilled and low-paid, moving abroad to work for varying periods of time. Many of them are seasonal workers. Sometimes they move within organised schemes; at others they respond to spontaneous labour market requirements. At the other extreme are the highly skilled professional, managerial and technical workers. This is another diverse group, and includes those working for transnational corporations and intergovernmental organisations (IGOs), professionals in health and education, academics, project specialists, clergy, entertainers and sports people, and others. Economically, their movements reflect the global nature of modern business and culture; socially they constitute an 'invisible' group of immigrants in Europe, middle class, well off, in many senses international citizens. Most countries place few or no barriers to their entry; indeed states may be perceived to have forfeited control over their movements. Students, and other young people in the early phases of their careers, constitute an ephemeral mobile group.

During the last few years asylum seekers have dominated policy attention. Some of them are accepted as refugees under the 1951 UN Convention. However, governments are also accepting applicants on humanitarian grounds, where they feel that although the convention criteria are not fully met, it would be

unreasonable or impossible to enforce return. Persons in need of international protection are frequently granted some form of protection on a temporary basis.

A growing group of international migrants are those who have placed themselves in an irregular position. Most irregular immigrants in fact enter the host country legally and then become irregular either by overstaying, or otherwise breaking their terms of entry, usually by taking employment. They may oscillate between legal and illegal. Others enter the host country clandestinely, and attempt to sink into the background. There is growing evidence that trafficking in migrants is increasingly responsible for placing them in an irregular position. Countering the agents and institutions involved in this practice is arguably at present the central concern of governments seeking to manage migration flows.

There are numerous other international movers, whose status easily blends into that of migrant. Many of these now characterise the new migration space that is Central and Eastern Europe. They include daily cross-border commuters, labour tourists who cross international borders as visitors, but with the intention of taking temporary or seasonal work, and petty traders, some of whom cross borders on a daily basis, others for longer periods. Others are what Okolski refers to as 'incomplete migrants'. These are people who cross national borders to work/sell for periods of only days or weeks at a time, but who do it so frequently that they live and work for most of the year outside their own countries. Finally, any international migration strategy has to take some account of the vast numbers of tourists and business travellers. Not only may they take on the characteristics of temporary migrants, but in sustaining a global network of travel infrastructure (including routes, information, agencies and the like) they contribute to a reduction in the friction of distance which ultimately makes migration easier. For many of them, brief trips abroad are fact-finding missions, which ultimately lead to longer-term moves. Furthermore, their movements impose duties of entry control upon governments, which means that they become, *nolens volens*, part of the migration policy debate.

These diverse groups should not be seen as separate, since one type of migrant or traveller may be metamorphosed into another. It means that migration streams are highly complex in both time and space: they involve different types of people and motivations, are influenced and managed by different institutions, and have different roles and methods of insertion into host societies. Devising a management strategy to cope with all these variations presents formidable difficulties. At the very least a distinction must be made between a management strategy aimed at the individual migrant and one aimed at the range of institutional actors with a vested interest in promoting movement.

3. THE NEED FOR A NEW MANAGEMENT APPROACH

The increasingly apparent need for a new European policy on migration stems from a combination of the inadequacies of the policies evolving since the 1970s and the changing nature of migration and attitudes to it. The existing policy model is based on two major lines of action: the closing of borders to new influxes of immigrant labour, and measures to promote the social integration of the immigrant populations in place. This model has proved inadequate in dealing with existing stocks and flows, and there is little likelihood that it is flexible enough to deal with the new situation. The implication is that new models now need to be considered. Not only are the migration problems confronting the wider Europe of the 1990s different from those faced by Western Europe in the 1970s, but the new democracies will also wish to avoid the mistakes made historically by their western neighbours.

Closing borders to foreign workers emerged as the main response to a new economic situation in the 1980s marked by the end of growth and by recession. However, in a world increasingly characterised by global networks for producing and exchanging goods, services and information, and where states have forfeited much of their control over capital movements and the organisation of production, excessive reliance on policies to control labour flows may not be successful. It is clear, too, that large numbers of new unskilled jobs continue to be created, many of them in the 'informal' sector, filled by immigrants willing to work at wage levels unacceptable to indigenous workers. Given the existence of such jobs, and the willingness of immigrants to take them, it is difficult for governments to control

entry to them. Furthermore, in the face of the prevailing economic ethos for flexibility and deregulation in labour markets, which are adversely affecting wage rates and conditions of work, tightening immigration control appears to be a contradictory strategy.

There is therefore an economic logic, buttressed in some countries by the possibility of a demographic shortfall due to changing age structures, to relax control on immigrant workers. However, a weakness of control policies focusing primarily on immigrant labour is that they do not take sufficient account of moves inspired by family reunion and family formation, and by humanitarian concerns. This type of movement is strongly justified by a conception of individual rights that stresses the importance of individual freedom. It is by no means clear what values might justify restricting the right to mobility and the right to seek actively to improve one's living conditions. In the absence of such justification admission for human rights reasons, with appropriate degrees of control, seems inevitable.

A partial solution to the over reliance on entry control mechanisms is temporary immigration programmes, designed to provide a safety valve by allowing in some workers, at the same time keeping movement within legal channels. This strategy is reasonable from the point of view of European governments and intellectually satisfying, provided that the administration is capable of controlling the situation and length of stay of these workers and of sending them home when their contracts come to an end. Frequently this has not happened, however, and as a result, temporary migration programmes are capable of providing a proper legal framework only for those immigrants who have no intention of settling on a permanent basis.

3.1 Immigration Controls

Since the labour immigration "stop" in 1974 (though family reunion continued and accelerated), and more markedly since the asylum crisis from the mid-1980s, Europe has become more control-oriented in its migration policies. The controls have been introduced on entry, within the territory, and during the procedures. The outcome of these measures is far greater consistency and coherence in immigration and asylum entry control policy. Particularly with respect to asylum policy however, a major unresolved problem is the failure to ensure return for those who are not given the right to stay. In part this demonstrates how difficult it is to make a clear distinction between those who are in need of protection and those who can safely be returned. Equally, however, it is due to the lack of an established international framework for the return of unauthorised arrivals to their country of origin. These are issues that now particularly impinge upon the countries of Central and Eastern Europe. Refugee law is the area of migration law, which has received most attention over the last few years in these countries. Procedures related to the right to asylum, in compliance with international refugee law have been developed or are in the process of being finalised.

The failure to ensure return has become a critical issue. On the one hand, countries should not be seen to be weak on returning those who are irregular. But on the other, sending them back is costly and, typically, subject to lengthy delays. A consequence of this state of affairs is that the possibility of staying in a country perceived as one of opportunity, even if irregularly, may be seen by potential emigrants as a pull factor. Although many states have increased their rate of deportations in recent years, the threat of forced return is not yet credible. States lack effective removal strategies; even where such strategies exist, they do not affect a significant number of persons. For many countries, especially in Central and Eastern Europe, the sheer costs of operating a removal system are a major deterrent to introducing one.

3.2 Effectiveness of control

The mass East-West migrations feared at the beginning of the 1990s have not occurred, and since 1993 in most countries the indicators of legal immigration have been downward. What has emerged in Central and Eastern Europe, though, is a new circulatory system which has become difficult to control because of the volume of movement. The emergencies in the Balkans, Turkey and the Middle East

have put pressures on the asylum system, partly alleviated by temporary protection. The continued functioning of these depends on the development of effective return strategies.

Overall, entry controls would appear to have had some success in Western Europe, though it is clear that their effects have not been uniform across countries, giving rise to discussions about the need for the adoption of burden-sharing arrangements. Migration policies are still generally reactive rather than proactive, and characterised by crisis management, not consistency. The circumstances of the 1990s have led to the evolution of a series of migration-related policies pursued in parallel rather than in an integrated fashion. As a result, labour and family reunion policies are generally not integrated, while asylum policy has grown up separately from them. The situation now is that a new strand of policy, dealing with trafficking, is being added to the warp. Thus European migration policies currently address a series of issues separately: labour; family reunion and formation; asylum; trafficking and irregular flows; integration. Cutting across these are broader management issues such as those of regularisation and return, and prevention: only a comprehensive strategic approach will deal with these.

3.3 Addressing the root causes

The tackling of root causes of migration, particularly economic and social underdevelopment in the countries of origin, has been put forward as an alternative to more stringent entry controls. Development aid is sometimes presented to public opinion as an alternative to migration, a well-meaning attempt to spare these populations the sacrifices and psychological hardships involved in being uprooted from their own culture. The approach has a number of drawbacks, however. First, it is not clear how aid can be targeted to reduce emigration. Secondly, any resulting economic growth in origin countries has the effect in the short and medium terms of increasing emigration from them. Third, using economic growth in origin countries as a vehicle for reducing emigration pressures raises other issues, such as trade agreements and remittance flows, which may lead to new foreign and trade policy difficulties. Finally, donors may seem to be operating from selfish motives, leading to a tension between origin and destination states not easily resolved. For these reasons, neither development assistance nor the creation of free trade zones, though an important part of the policy equation, may be regarded as substitutes for comprehensive migration policies.

3.4 Integration policies

Experience of attempts at integration over three decades indicates that a successful integration process involves three main elements: adaptation by immigrants to the host society; adaptation by the host society to immigrants; and adequate communications strategies between the two populations and between each of them and governments. Implicit in the last is the need for an acceptable 'grammar' of rules and forms for communication and a mutuality of language for expressing ideas and meanings in order to prevent distortion of views and ideologies. Without these, recognition of cultural diversity often remains on a purely theoretical level.

The efforts made over the last 10 years in Europe to implement active integration policies, including promotion of equal opportunities, vocational advancement, access to social services, socio-cultural integration and civic participation by immigrant communities, have been considerable. The results achieved do not seem to be commensurate with the efforts made. Europe in the 1990s is characterised by the withdrawal of minorities into their shells, partly in response to their rejection by host populations, by the over-representation of immigrant populations in the increasing unemployment figures, by their social exclusion and by increasing public hostility to their presence, reflected in the rise of nationalistic, racist and xenophobic political forces. A major problem is that public opinion is increasingly negative, and the more negative public opinion becomes, the harder it is for political leaders to address the issue in positive terms.

This negative view is reinforced by the perception that immigrants impose a welfare burden that is not compensated by their contribution to economic growth. Integration policies, explicitly designed to foster participation by immigrants in every area of life, have tended to focus on the most obvious problems (the language barrier, obstacles in education and civic life) linked to their status as immigrants, and this has to some extent overshadowed their frequently positive contribution in the labour market.

4. POLICY AND REALITY: WHAT DO WE WANT TO MANAGE?

4.1 The rationale for management

Underpinning all our thinking is that no government can prevent immigration or emigration, even if it wished. Even the most repressive regimes have had porous borders. Within democratic societies, which have accepted the principles of individual human rights, a degree of immigration by non-citizens is inevitable. Further, the complex and dynamic nature of the migration phenomenon means that it is in a constant state of flux. Individual governments are therefore put in the position of seeking to exert some control over often formidable pressures for movement. The position of King Canute in trying to stem the ocean tide is as ineffective now as it was in the 11th century.

The best that governments can do is to guide and influence flows, implementing policies, which work with the tide rather than against it. They should develop policy measures that are flexible enough to deal both with swings in prevailing trends and with sudden lurches into new directions. Given the internationalism of migration, a *sine qua non* for this is inter-state co-operation, without which a single country is powerless to control its borders, even after applying the most draconian of measures.

The need for a positive management strategy also applies to the development of effective social integration processes, with particular emphasis on the integration of minority groups. Governments cannot dictate integration and good community relations. They must work with public opinion, but to lead rather than follow. Conditions must be created in which minority and majority populations accept that is in their own best interests for the integration process to succeed. The management process must therefore involve education and confidence-building measures in all communities. At the same time measures must be put in place designed to eliminate the causes that lead to the marginalisation of any minority group from society as a whole.

In short, we are arguing that migration will occur anyway, and the best course for a state is to influence it in directions consistent with human rights and the best achievable outcomes in terms of social and economic conditions for both migrants and host communities. Integration is a linked but separate policy area where management means creating the conditions for individuals in both indigenous and immigrant communities to find their own ways towards social harmony.

4.2 Managers and managed

Traditionally international migration has been conceived of as a relationship between an individual or household moving for purposes of permanent settlement or work, and a government acting as gatekeeper for entry into a country and acquisition of its citizenship. Today, it is better regarded as a diverse international business, with a vast budget, providing hundreds of thousands of jobs world-wide, and managed by a set of individuals and institutions each of which has an interest in how the business develops. Such a view has important consequences for governments since it raises questions about the effectiveness of regulatory mechanisms and policies framed largely in terms of a contractual relationship between the migrant and the state.

In essence, the main managerial role is that of government. However, this must be exercised in partnership with a wide range of other actors. At a general level these include migrants themselves and the social partners - employers, trades unions, migrant organisations. It can be argued that a major failure

of migration policy in Europe has been the lack of any real cohesion between these actors in the formulation of a migration strategy. In consequence, problems have too often been tackled piecemeal, and without considering all relevant views. One result has been unintended side effects of specific policy measures.

It is not just flows of migrants and their integration into host societies for which a management strategy is required. The object of management today is a global migration business which consists of a set of institutions, agents and individuals such as recruitment and travel agencies, transport operators, legal and advisory firms, traffickers and others. The business is not homogeneous. Most obviously it may be divided into a legitimate (legal/regular) and an illegitimate (illegal/irregular) component, each of which may be further subdivided, be differently valued, and represent a particular business niche.

It is probably trafficking that presents the most immediate management problems for governments. It is a business that is becoming increasingly global in scope as advances in transport and communications, and links to international organised crime, make it easier to operate across regions and continents. Understood as a business, trafficking is, like legitimate businesses, remarkably adept at circumventing systems designed to control it. As some avenues close others are opened up. The business is remarkably responsive to change and always seems to remain one or several steps ahead of those seeking to control it. National authorities often have to agree concerted action, and this takes time. Thus relative to the ability of governments to control them, traffickers demonstrate greater flexibility, organisation and speed of response. Trafficking therefore presents policy makers with new challenges in the management and control of migration flows across borders. In particular, it suggests the need to look at immigration controls in new ways, placing a greater focus on the institutions and vested interests involved rather than on the migrants themselves. Given the international nature of the trafficking business, policies must be collaborative between states.

4.3 Managing public expectations

One of the difficulties of devising a management strategy is the need to reconcile two conflicting trends, which influence public attitudes and expectations. The first is the move towards globalisation, a process which is linking together national economies into a single entity while at the same time seeming to promote a uniform mass culture. The second is a reaction to this, in the form of a countervailing trend towards a greater reliance by the individual on the local community. This process is characterised by nationalism and fragmentation, and may in certain circumstances result in social unrest, caused by unemployment and labour market marginalisation as local economies are perceived to be powerless in the face of dominant global forces. A danger then is that a negative migration ideology is fostered, characterised by a public perception that contemporary migration flows are part of the system of global exchanges that are no longer controlled by states and in the face of which local communities are powerless.

It is the job of governments to create a more positive atmosphere in which migration policy matters may be discussed by leading rather than following public opinion. Essential prerequisites in developing policy are consistency, clarity and coherence, in order that public debate is informed by fact and not prejudice. It is also important to avoid creating false impressions and reassuring public opinion in the short term in a way that only leads to greater dissatisfaction at a later date. For example, it may be counterproductive for governments to state that they will allow only temporary immigration (as a means of reassuring public opinion) when they know that they will be unable to prevent the immigrants admitted lawfully on a temporary basis from being joined by their families and then settling permanently.

There can be no doubt that tighter border controls reduce - but do not completely prevent - irregular immigration and that, without them, the authorities would be faced with many very serious social problems such as an influx resulting from the reunion of extended families, large-scale immigration for economic reasons and the arrival of large numbers of sick people seeking treatment. From this point of view, public opinion is certainly in favour of maintaining such controls. However, there is a danger that

improved border controls, beyond as well as within the EU, including those implemented under the Schengen agreement, may trigger defensive reactions, which are not conducive to integration.

It is important that host populations realise that legally present immigrants must be integrated into the national population and that it is essential to avoid discriminating against them in any way. Great care must be exercised; however, in adducing a simple causal relationship between entry control and integration, fostering the view that policies designed to control immigration are the precondition for successful integration. Such a view is conceptually unsound and empirically unproved.

Public expectations are difficult to satisfy, and the path of persuasion open to governments is a narrow one. It is unlikely that policies based largely on entry controls can ever be really effective in persuading the public of the positive benefits of immigration. Persuading them that integration works is equally problematic, since they are more likely to judge the effectiveness of integration policies in terms of the absence of problems. What is needed, therefore, is a broadly based management strategy, which is holistic and proactive rather than partial and reactive. It must beware of raising public expectations that cannot be met, but at the same time should not refrain from measures, which in the long run are likely to result in greater social harmony and the protection of individual human rights.

5. A NEW MANAGEMENT STRATEGY

The overall approach develops a management strategy based on four principles

- orderliness
- protection
- integration
- co-operation

The strategic objectives are:

1. To develop a set of measures able to manage migration in an orderly manner, so as to maximise opportunities and benefits to individual migrants and to host societies and to minimise trafficking and irregular movement.
2. To provide an appropriate capability for protection and for dealing with disorderly or sudden movements.
3. To provide an environment conducive to integration.
4. To engage in dialogue and co-operation with origin countries in order to link foreign policy and migration policy objectives.

An integrated management strategy is now required to bring these together. To establish such a strategy requires a number of conditions to be met by individual governments, bearing in mind that not all countries will have the same policy entry points. First, all countries should develop a comprehensive migration policy, beginning with a review of existing aims and measures, which is designed to identify gaps and introduce greater coherence. Currently, most European governments have policies to deal with some aspects of migration, but few of them can claim to range across the whole spectrum of migration types and issues. Second, that policy should be internally co-ordinated between all government departments with responsibilities for migration and integration matters in order to ensure coherence in both initiatives and response and this may involve the creation of specific structures. Third, a strategic approach to management of migration matters requires the input of all

actors in the migration field, including a wide range of NGOs. Fourth, migration policy should be transparent, so that all actors feel that they have a positive role, with initiatives and decisions being openly communicated. Finally, national policies should be internationally co-ordinated to ensure the greatest possible degree of agreement and harmonisation. Existing Council of Europe structures provide appropriate fora and means for co-ordination.

5.1 Measures to manage migration in an orderly manner

5.1.1. Improved information systems

An essential prerequisite for a successful management system is an efficient and comprehensive information framework and system capable of responding flexibly to policy issues as they arise. Information is required by migrants and other non-governmental agents and institutions, as well as by national and local governments. An improved supply of information to potential migrants on conditions and procedures in destination countries will help promote more orderly migration flows. Information flows between governments are also needed in order to minimise the knock-on effects of new policy initiatives. Within countries there is a need for systems to ensure the efficient flow of information relating to migration matters between relevant government departments, and between central and local government.

The need for individual governments to respond to the changing situation in the 1990s and beyond, both individually and in co-operation, places the need for accurate and timely information in the forefront of developing management systems. At present these requirements are not being met. Much of the statistical and documentary information required for sound decision making does not reach policy makers, or does so only after inordinate delay. For various reasons, information is not shared between governments, partly because of secrecy, partly because information provision and requirements vary from country to country.

It is not only information that should be shared, but operational analysis too. In this respect special mention should be made of exchanges that exist on a regular basis among EU members and on an occasional basis among IGC member states and other groups of states. Improved systems must be developed to allow mutual and comparative analyses and data exchange. Particularly vulnerable are the smaller states, and the new democracies, which lack the analytical infrastructure and resources to optimise their use of available information.

Considerable thought is also needed about the nature of information collected and required. Much currently tends to be about procedures, such as those relating to entry, border crossings, lodging applications and so on, rather than about the people and institutions involved. More needs to be known about the consequences of procedures, for example, the impact of measures of control on the stock and characteristics of irregular migrants.

There is, therefore, the need for a fundamental rethink about the statistical and documentary information required for a migration management system. It must be timely, accurate, reliable, open and transparent. It must be able to take advantage of all available and relevant sources, to be flexible, and to incorporate the requirements of all migration actors.

5.1.2 Mobility as a human right

Mobility is a human right which can be exercised in conditions to be fixed by governments in legal instruments. It assumes that governments which are signatories to various conventions and expressions of human rights will apply them in the areas of their own jurisdiction. The underlying principle is the universal and indivisible nature of human rights and fundamental freedoms, based on the dignity and equality of all human beings.

With this in mind, European countries should seek progressively to reduce the barriers between them, allowing greater freedom of movement not only of all their citizens, but of third country nationals who are legally established within them. Such freedom of movement is a major element in the quest for a more socially as well as politically unified Europe. The approximation of entry policies and procedures between European states is a prerequisite for the establishment of this freedom to travel, so that moves towards harmonisation of procedures, including the issue of visas, are necessary for combating irregular migration, and screening asylum seekers in accordance with the requirements of international law.

To achieve these objectives, policies must be clear and transparent so that potential migrants are not encouraged to move because of misconceptions about the conditions they will face upon or after entry. Governments must thus spell out the conditions under which foreign citizens are allowed to stay, and by doing so introduce a degree of clarity and predictability. The advantage of clarity is to redefine entry in positive terms, making it clear who is allowed to come, rather than the current negative emphasis which has the effect of placing the onus on the immigrant to explain why (s)he should be allowed entry.

5.1.3 Labour migration policy

(a) Scales of operation

Migration is inextricably linked with the labour market. Labour migration policies must deal with a wide range of types of foreign worker, possessing variable levels of skill and degrees of permanency. Some foreigners are in a precarious situation. Others are highly skilled and consider themselves as transnational citizens. Their acceptability and attractiveness to host countries depends on the state of the labour market. Given the tendency for the labour markets of individual states to be merged into a single market, it is essential that management planning is appropriate for a range of temporal and geographical scales.

It is not clear what degree of long-run planning is possible, given uncertainties in labour requirements at times of economic fluctuation, and where the incidence of sudden/mass movements calls for flexibility in the policies and structures established to deal with labour requirements. In purely economic terms, labour movements must be seen as only one set of elements in a global economy that consists of networks of national economies and interests which necessitate a management strategy that is able to handle the complexity. Furthermore, migration grows ever more diverse, so that the meaning of 'permanent' today is different from what was meant in the past. The consequence is that in managing migration that may lead to settlement, governments are in the position of dealing with a much wider range of types of movements and motivations over varying time periods than has formerly been the case.

The geographical scale for management is also variable. At a broad international and national scale there is demand for cheap, low-skilled labour within most European countries. That demand is operationalised in local labour markets, but in most countries national governments have little detailed say in their function: in general, governments create the environment in which local labour markets operate. Thus, a local shortage of labour force frequently results in irregular immigration despite government efforts to avoid it. Hence, there is a gap between deregulation and decentralisation of labour markets on the one hand, and government efforts to stop migration on the other. Thus, when governments are formulating their migration management strategies they must take account of the fact that a labour market demand for irregular workers does exist, and that wider economic considerations than illegality need to be taken into account.

(b) Linkage between external labour demand, unemployment and demographic developments

Apart from cases where it is governed by humanitarian motives (asylum, family reunion), immigration mainly reflects a need for economic activity which immigrants cannot profitably fulfil in their own country.

Immigrants looking for a job in the country where they hope to go and earn their living come up against two major obstacles: firstly, employment has become difficult to obtain in many European countries and, secondly, the available workforce, which is overabundant as a result of this, has to be protected even if unemployed.

The scarcity of work initially prompts governments to introduce incentive measures such as early retirement, reductions in working hours, or various means of combating undeclared work by nationals (black market jobs), enabling the authorities to collect taxes and social contributions while revealing hidden jobs.

The harmonisation policy pursued within the European Union, with a view to limiting the violations of member States' labour legislation, which may occur when services are provided between different countries of the Community, represents a similar attempt to protect the labour force from economic dumping.

Policies to combat irregular work by foreigners are becoming ever more widespread in Europe and most frequently penalise employers and dissuade them from making use of unregistered foreign labour. In addition to this, countries are implementing more general immigration policies limiting the numbers of visas granted to countries with a "migratory risk".

On the other hand, social policies are introduced not only to get the unemployed back to work but also to help women, young people and people with disabilities lead a decent life and, wherever possible, to work. It goes without saying that all of these groups include refugees, legal immigrants and members of their families.

For the time being none of this seems to leave much room for new foreign workers and this is probably the reason why immigration is generally seen in a negative light in Europe, whereas it is viewed more positively in the United States.

The changing demography of Europe may create a new situation. Between 1996 and 2020 the total population of Western Europe is projected to rise by 2.3 per cent while the working age population (15-64) falls by 1.4 per cent. During the same period those aged 65 and over will increase by 34.6 per cent.

In the next few years, governments may have to keep a close track on the development of their labour market and grant the work permits to foreigners when specific labour requirements arise, while providing support for the education of the families of immigrant workers and refugees who are still authorised to settle in their countries.

As we have now realised, it is easy to fill gaps in the ordinary workforce by temporarily or permanently bringing in immigrant workers. As regards shortages of highly skilled labour, these will be offset by temporary contributions from specialists recruited on the highly competitive international labour market, as is already the case in 1999 with computer scientists.

In case of shortage in the labour force in the national labour market, when possibilities of employing indigenous manpower have been exhausted, governments should develop intergovernmental co-operation on a bilateral or multilateral basis for temporary labour exchange.

Within labour markets the management of selection and recruitment still tends to be largely in the hands of employers. In order to retain management control governments should work with a range of social partners, engaging in discussion, sharing responsibility and generating a broad measure of agreement on appropriate policy initiatives and responses.

What this means is the 'privatisation' of management whereby the principal actors in the labour market - employers, trades unions, together with certain other NGOs - should be encouraged to co-operate with governments rather than seeming to be in the position of fighting them. This implies that governments and employers must make an accommodation, based on the principle that the amount of

foreign labour entering is a compromise between the government's duty to restrict inflows that harm the employment chances of the indigenous population and those foreigners lawfully residing, and the employers' interests in using whatever immigrant labour is available at the minimum price and conditions.

Thus, governments should, after due consultation with the social partners, set broad conditions for wages and conditions of work, and an appropriate environment for maximising employment among the indigenous population. The detailed operation of the policy has then to be placed in the hands of employers. In this way, labour immigration control is increasingly to be viewed as a co-operative venture, with a form of contract negotiated and agreed between all the social partners. This does not imply an abdication of responsibility by the state, but rather the establishment of a more transparent policy-making process.

5.1.4 Family reunification

The family is the basic unit of society and as such deserves special attention. The main principle of management should be one that reaffirms the right to live in families, and therefore the principle of family reunion should be universally accepted. States should undertake, as far as possible, to prevent family separation; to consider favourably applications for family reunification from migrants having the legal right to long-term residence and from those recognised to be in need of protection; and to facilitate, through appropriate mechanisms, family contacts and visits. This means also accepting that the labour immigration of individuals may well entail family migration and that the right of protection given to a person who has been granted asylum also conveys the right to family reunion. However, there has to be a diversity of approach to allow for the particular circumstances of individuals to be fully taken into account.

States should elaborate the necessary instruments to allow them to protect basic human rights. Migration policies should reaffirm, with regard to all migrant workers, the fundamental principles of family reunification enshrined in the European Social Charter (ETS N°35), and in the European Convention on the Legal Status of Migrant Workers (ETS N° 93). These affirm the right of migrant workers and their families to protection and assistance, including facilitating as far as possible the reunion of the family (including spouse and dependent children under the age of 21 (ETS N° 35) or the unmarried children, as long as they are considered to be minors by the relevant law of the hosting State, who are dependent on the migrant worker (ETS N° 93)) of a foreign worker permitted to establish him/herself on the territory, conditional upon a waiting period not exceeding twelve months. Thus far, 21 out of 41 European states have ratified the Social Charter, 4 the revised Social Charter and only eight the European Convention on the Legal Status of Migrant Workers.

There are, however, difficulties in setting conditions for orderly family reunion, and it is widely recognised that in recent years the trend has been towards making them stricter. States have increasing difficulties treading a path between the prevention of abuse of family reunion claims and nibbling away at family reunion rights. Getting the right balance is difficult, but the policy should aim never to be over intrusive in prescribing how and where families should live.

5.1.5 Prevention of irregular immigration

(a) The need for a holistic approach to dealing with irregular migration

The issues surrounding irregular migration are currently exercising governments across the whole of Europe. Indeed, it can be argued that the subject has become the prism through which the whole migration issue is viewed and discussed. Unfortunately, this concentration upon irregular migration distorts the debate about more general management concerns relating to migration as a whole. It is, therefore, important to project a more balanced view, regarding irregular migration as only a part of a

more general management problem. The corollary is that the best way of managing the problem of irregularity is the development and application of a comprehensive migration strategy.

This means that the prevention of irregular migration is not just a matter of developing policies aimed at those who are in an irregular situation. It has to be recognised that illegality may be a consequence of the unintended side effects of other policies, or result from the absence of policies. The strategy we propose for dealing with the problems arising from migrants in an irregular situation is for governments to apply the complete package of measures outlined here which should lead to orderly migration according to realistic goals. Such action will not remove irregular migration altogether: at best it will reduce the problem to more manageable levels; at worst it will prevent the situation deteriorating.

(b) Irregularity is both a migrant stock and a flow problem

The existence of irregularity is an indication that migration policies are not working. This failure has engendered various responses from governments. A distinction thus has to be made between irregular flows (those who enter clandestinely) and irregular stocks (those who enter legally but who change to an irregular status). In both these cases violations of human rights occur, for example, through harm or death during the process of entry, or through exploitation in the workplace, including debt bondage. Governments should take whatever steps are necessary to eradicate such violations.

Prevention of irregular entry is a priority for most states, and is where most enforcement effort is focused. For many countries, however, borders are porous and difficult and expensive to police, so that deterring irregular entry is only a part of the problem. In a majority of states stocks of irregular migrants have arisen as a result of legal entrants subsequently breaching the terms upon which their entry and stay was allowed, thus becoming irregular. This applies to asylum seekers whose applications have been turned down but who have not left, and to visitors who have entered the labour market without the necessary permit or permission. There is a strong case for extending co-operation between states in the region, and entering into constructive dialogue with the countries of origin of irregular migrants. A pan-European approach is essential in order to facilitate freedom to travel and to ensure those multilateral arrangements, which are necessary to ensure orderly migration.

It is not known what the scale of irregular migrant stocks is, but it is thought to be considerable. One solution, adopted by several governments, particularly those in Southern Europe, has been to make their stay legal. Regularisation programmes (amnesties) have been undertaken in an effort to prevent the growth of an underclass of foreign citizens unable to participate actively in the society. Such programmes have a supportive role in dealing with irregular immigration. While achieving some success for those who are amnestied, they are really only short-term solutions and do little to deter the build-up of new generations of irregularly present migrants.

The best hope for a solution to the problem of stocks of irregular migrants is a comprehensive, agreed framework on return, in effect an elaboration of the concept of 'circulation' rather than migration. This concept is based on the fact that much movement is ephemeral; the persons involved circulating between countries in search of temporary work or protection. It acknowledges that many moves between states involve both origin and hosting governments as actors, and that their roles may switch with the direction of migrant flows. A *sine qua non* for a framework of return is for origin countries to take more readily responsibility for their own citizens. This includes full co-operation with host countries in making readmission agreements work.

(c) Information exchange on irregular migration

There is a need for better information systems and for better information exchange on irregular migration. By its nature, this form of migration escapes normal statistical accounting, so that only by co-operation will states be able to combat the problem. Some mechanisms for information exchange are already in existence or being improved, but not all are open to all states. Irregular migration can only be tackled efficiently if there are comprehensive and compatible systems for the collection, processing and

distribution of information which involve all participating states. Systems must, however, adhere to the 1981 European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS N° 108).

(d) Technical and financial assistance to Central and Eastern European States

The geographical location of Central and Eastern European states combines with their role as 'corridors' and 'vestibules' for transit migrants to place a considerable burden upon them in the control of irregular migration in Europe as a whole. They are also the arena for new forms of mobility, for example associated with petty trading and other forms of intensive cross-border movement. These developments reinforce the need for technical co-operation. Frequently the Central and Eastern countries lack the resources available to meet such new migration challenges and both technical and financial assistance are required. Funds such as PHARE and TACIS are important sources of assistance, allied to the development of new border management control programmes throughout the region, and will help build the capacity of these countries to manage migration not only on their own behalf but of that of the states to the west as well.

(e) Harmonisation of legislation to combat trafficking in aliens

There is no doubt that a major cause, as well as a method, of irregular migration is trafficking in human beings, which can be seen as a business-seeking customers (who may also be perceived as "commodities"). Governments are only just beginning to understand the nature of the problem and to develop information sources to deal with it. One illustration of this concern was the conference of ministers held in Prague in October 1997 on measures to prevent irregular migration.

For the most part, trafficking is rightly regarded as a criminal activity, but that is not the only perspective that is justifiable. For many migrants, the services of traffickers constitute a lifeline, the only way out for people who need to move. Unless measures are taken to provide alternatives for those who need them, trafficker roles will continue to exist. In so far as trafficking constitutes a migration business, then measures to control the practice must focus on its organisation and institutions.

The nature of trafficking varies across Europe. Confronting it presents different problems for governments, depending amongst other things on accidents of geography. The issues facing transit migration countries in Central and Eastern Europe and the former USSR, with their extensive land borders, are different from those of the islands constituting the UK and Ireland. An attempt by one state to harmonise its policies with those of others must also take account of events and initiatives elsewhere. One government's legislation may have knock-on effects upon others, so there is a need for mutual awareness as a prelude to the harmonisation process. This awareness can only come from well-developed information systems.

States should also be aware of the need for greater precision in the development of a common legal framework for combating trafficking, with special attention paid to the coercion of migrants by traffickers and its implications for human rights, for example, placing people (especially women and minors) in debt bondage. Hence, it is important for governments to work towards a common understanding of the term "trafficking in aliens", and to reach agreement on criminalizing the practice in order to apply effective sanctions on the perpetrators. Each time there is evidence of a relationship between trafficking in migrants and organised crime, the various national and international agencies concerned with crime detection and prevention must work together. Measures to combat trafficking must, however, be developed and instituted in accordance with the relevant international legal and human rights instruments.

5.2 An appropriate capability for protection and return and for dealing with disorderly or sudden movements.

5.2.1 Protection

The last decade has seen the emergence of new protection requirements demanding a Europe - wide response. The framework for dealing with asylum is set by the 1951 Convention and the 1967 Protocol. The way these instruments are interpreted by the competent authorities does not always cover all protection needs. Sudden and massive flows of persons in need of international protection create specific problems; some other complications arise from geographical and historical reasons.

There are several categories of persons. Firstly, those refugees who are granted protection under the 1951 Convention. Secondly, persons who in case of their expulsion to their country of origin would risk torture or inhuman or degrading treatment or punishment, therefore they are protected under Article 3 of the European Convention on Human Rights. Thirdly, persons whose return would be unreasonable or impossible and who are granted protection on humanitarian grounds. Fourthly, there are other persons who have legally valid authorisation to stay in the host country. Finally, there are persons who are neither in need of any form of protection as listed above, nor have other legal grounds to stay in the host country, therefore they need to return to the country of origin. Questions related to the latter category are discussed in detail under the forthcoming chapter (5.2.2. Return).

(a) How the 1951 Convention responds to these needs

The current complexity of the asylum issue, together with the growth of mass movement in search of protection has strained the 1951 Convention. Persons in need of international protection flee from individual persecution or, among others, general deterioration of conditions in the country of origin.

The concept of well – founded fear of persecution is restricted to a certain number of reasons. The interpretation by competent authorities of this concept in several European states has created a situation in which for some persons in need of international protection, a ‘protection gap’ has emerged.

The Convention provides the cornerstone of the asylum system, but flexible and comprehensive additional instruments in the field of international protection need to be identified, established and implemented.

(b) A new protection and assistance framework

The development of a new framework is suggested, based on the totality of international mechanisms and dispositions that can be put in place by states in response to protection needs, also capable of providing a wide range of humanitarian assistance in response to whatever emergencies occur.

Guiding principles should be developed as a basis for harmonising approaches dealing with those protection needs, which are not covered by the 1951 Convention. Where necessary, protection arrangements of temporary nature should be offered, followed by return to the country of origin.

There should be active encouragement to the country of origin to ensure respect for the human rights of all citizens, including marginalised and minority groups.

Such framework should provide more assistance for refugees remaining in the region for protection purposes. Minimum standards for the reception of those seeking protection should be assured.

Finally, there should be acceptance by governments of the principle of international solidarity. This involves humanitarian evacuations, financial, operational and other technical assistance. Use should be made of the relevant Council of Europe instruments, including the European Social Charter and

others relating to human rights. The Council of Europe is well placed to serve as a forum for such discussions.

5.2.2. Return

Migratory movements include the voluntary return of migrants to their country of origin. Migrants in an irregular situation are often sent back to their country of origin or previous residence. Refugees may return when the conditions in their country of origin have changed and protection is no longer needed. This group includes those who were admitted on a temporary basis. Asylum-seekers who have not been granted refugee status are often sent back to the country of origin.

(a) The need for dialogue

A step-by-step approach to return is required, that involves both countries of origin and host countries. An active dialogue is an essential pre-requisite. Return by migrants to their country of origin takes several forms, each requiring a different policy approach. Some of these movements are voluntary, requiring little assistance from governments beyond the provision of information and, in some cases, help with re-integration. Other returns may pose more problems, notably where deportation is involved or where readmission agreements may be required. Refugee return and reintegration may also present policy dilemmas, in the context of minimum guarantees for safe and dignified return.

A particular problem for host countries emerges when the country of origin is unwilling or administratively unable to provide the necessary information in the process of return. As a result, host countries themselves are hesitant to go to the expense of finding and deporting those aliens who have no legal right of residence. The situation is exacerbated by the economic importance of remittances in many countries of origin, the loss of which as a result of large-scale returns might bring about serious economic difficulties. In the circumstances, there is a strong case for exploring ways of encouraging countries of origin to take back their own nationals. Linking co-operation on return with development assistance is a policy issue to consider.

These forms of dialogue often begin bilaterally but ultimately should be multilateral, in the framework of an integral approach to return.

(b) An integral approach to return

The need for temporary protection exists until circumstances in the country of origin significantly change. After that, return to the country of origin is the preferred long-term solution. Effective return arrangements are essential to the maintenance of both orderly approaches to migration and the integrity of protection regimes. The present system is not sustainable because the ability to stay irregularly devalues it in the eyes of the host population, while acting as an encouragement for others without a well-founded case for protection. Effective return and readmission schemes are therefore necessary.

(c) Return and readmission agreements

Efficient return and readmission policies are an integral part of the immigration systems of states and they are particularly important in combating irregular migration. All states should readmit their own nationals under international law. However, voluntary return is preferred in contrast to enforced return. A well-functioning return system requires the full co-operation of countries of origin and transit countries with the host countries. Suitable readmission agreements may be concluded on a bilateral or multilateral basis. A standard form of such agreement would be desirable. A number of readmission agreements have already been concluded among European countries. This network should be developed and extended between European and non-European countries as well. Countries wishing to return aliens who have no right to stay, may need to commit resources to make such schemes effective.

(d) *Assisted voluntary return schemes*

Assisted return should include, where appropriate, financial and organisational assistance, provision of necessary information, measures to assist the re-integration of returning migrants, etc. Governments should assist refugees who do not need protection any longer and who would wish to return to their country of origin by providing them with information on the conditions in the country of origin and return opportunities (e.g. radio, newsletters, reconnaissance travels, dialogue meetings). Vocational training could qualify for the labour market in the country of origin or to start a business. Co-operation projects can be set up, aimed at, for example, the rebuilding of war stricken areas or socio-economic development of regions of origin. Both governments and the private sector can be involved in this type of activities with the objective to give refugees the best possible opportunities to create a good future for themselves.

5.3 An environment conducive to integration

5.3.1 Promotion of integration

Efforts by governments to stress the positive contribution of immigrants to hosting societies are undermined by the emphasis most migration policies place on entry control. It is important that this emphasis is reduced in such a way that the control element in immigration policies is placed in an overall strategy that values international migration and the presence of immigrants.

The main elements of integration policies are secure residence and related rights, promotion of equal socio-economic and civil and political rights, easy and fair naturalisation and the adoption of legal and other measures to combat racial and ethnic discrimination.

(a) *Residence rights*

With reference to security of residence and related rights, there is a direct link between entry control and integration. The granting of a permanent or temporary right to stay is an immigration instrument. Both forms of entry should contain the right to: a) security of residence, including protection against expulsion; b) access to services to familiarise immigrants with the language and customs in the hosting society; c) provision of work for both the migrant and spouse.

The political, social and economic integration at the level of the European Union (and the foreseen enlargement to Southern and Eastern European countries) makes it necessary and inevitable that the (candidate) members harmonise their residence policies. Such a process is in everyone's long-term interests and is realistic in that it makes the legal situation correspond better to the *de facto*. Association and other agreements between the Union, its member states and third countries already have a harmonising effect.

(b) *Measures to promote equality of opportunities*

Securing legal residence rights does not guarantee immigrants are able to rely on equal treatment in the provision of work, housing, education or political participation. Many countries have stepped up their efforts to promote the inclusion of disadvantaged groups, for example, by providing them with the skills and information they need to gain access to employment, housing and education in particular. In particular, language training should be provided for immigrants, since it not only helps them to obtain employment but is essential for participation in the daily life of the host society, enabling them to contribute to and benefit from social and economic opportunities.

All countries should be aware of the need for such measures and take appropriate steps to put them into place. Measures may be general, targeting society at large (such as urban renewal programmes and housing subsidies), or specific, aimed at disadvantaged groups many of which are immigrants or

ethnic minorities. They should also promote recognition for immigrant cultures among the host population.

The 1996 Warsaw meeting of Ministers responsible for immigration affairs stressed that integration and participation go hand in hand. It is still a matter of debate whether political participation, expressed in the right to vote, is the final objective of integration, or an essential means of achieving it. To create an environment more conducive to integration, lawfully resident immigrants should have the right to vote in local, regional and European elections, but the right to vote in national elections should follow rather than precede naturalisation.

(c) Naturalisation and citizenship

Once residence rights have been granted to foreign nationals, there should be easy access to naturalisation, granting full citizenship rights, after a short period and at low cost. Acquiring the nationality or citizenship of a country should be seen as an element in the integration process, not as the result of integration. Hence, part of an immigration policy must be a straightforward naturalisation policy, including a clear position on dual nationality.

(d) Action to combat racism, xenophobia and intolerance

Action to combat racism, xenophobia and intolerance needs to be seen as a crucial part of integration and community relations policy. Moreover, it is clear that integration is a long-term process involving several generations. This means that particular attention needs to be given to the children of immigrants and refugees (as agreed at the Council of Europe ministerial meeting at Athens in 1993).

Within the range of possible actions, there are several important elements. First, there must be reaffirmation by governments that legally resident immigrants are an integral part of the host society, and that racist and xenophobic violence and harassment are unacceptable and must be effectively tackled. Second, adequate laws against discrimination should be in place and effectively implemented. Third, there should be support for positive action by the media to address the problem of discrimination and violence against minorities, and for the sensitive presentation of issues concerning immigrants. Fourth, action at the local level is needed in order to improve community relations between host and immigrant populations.

(e) Co-ordination between government agencies within states

Integration and community relations policy needs to be based on a clear national strategy setting the context for appropriate action by government agencies, local and regional authorities, and non-governmental bodies. The precise approach chosen in different countries will vary in accordance with their differing migration histories and legal and constitutional traditions. To be effective, a national strategy implies co-ordination between all administrative agencies at national, regional and municipal level, and a clear assignment of ministerial responsibility for ensuring that such co-ordination takes place.

5.4 Dialogue and co-operation with countries of origin and transit countries

Migration is usually viewed from the perspective of home affairs and internal policy making. However, regular or irregular movement of people from one country to another, on a temporary or permanent basis, and for whatever reason, is also a matter of international relations and foreign policies. International migration has an impact on international relations in the sense that it may improve these relations or may have a negative or destabilising effect on them. For a range of reasons, migratory movements of all kinds have become more prominently an issue for relations between states. Therefore, migration should be on the agenda of political dialogue between states of origin, of transit and hosting states and issues such as human rights, bilateral technical co-operation, causes of migration, irregular migration as well as obstacles to return should be discussed.

International treaties define the rights and obligations of migrants and asylum seekers and of hosting and origin countries. These treaties are an integral part of the (still developing) international human rights instruments, which to a certain extent regulate international relations.

As this dialogue aims at sustainable co-operation, and as the countries of origin are not particularly interested in the return of emigrants, it is important to first establish a climate of confidence and mutual understanding, which will subsequently allow both parties to negotiate on an equal footing. There is something for everybody in such a situation and it is therefore in the interests of each party to fulfil his side of the contract.

The priority is to align and where possible incorporate migration policies into foreign policies with the aim of creating a suitable environment for co-operation. Relations with origin countries should be developed with the objective of alleviating the conditions, which create emigration pressures. With regard to economic pressures for emigration, it must be recognised that development programmes can only work in the medium to long term (15 years or more), so a major element in policy should be to educate host populations on the need to support attempts at economic, social and political development in origin regions.

There must also be the objective of alleviating political pressures to emigrate through the use of diplomacy. In diplomatic exchanges, states should be aware of the need to prevent sudden and large-scale movements of population. Diplomatic intervention may also be appropriate to prevent smaller scale movements by minority groups who feel they are being repressed.

Dialogue should place migration into a broader foreign and trade policy context, linking it with discussions about trade and capital flows. Origin countries are unlikely to co-operate in taking steps to reduce emigration flows unless the root causes of those flows, expressed in sharp differences in standards of living, are tackled. Trade policies that restrict the ability of origin countries to market their products may well be counter-productive where there is also an aim to reduce immigration pressures.

These attempts should be accompanied by information programmes aimed at potential emigrants designed to educate them with regard to conditions such as those of entry, job and accommodation availability. In this way false expectations and speculative moves will be deterred.

Training programmes should be introduced for staff in institutions including border controllers involved in migration management in order to help them work more efficiently and sympathetically in dealing with migration issues.

6. SUMMARY

The strategy proposed accepts the reality that Europe is a region of immigration, the management of which has to be organised on a comprehensive basis. It adopts a flexible approach and is co-ordinated both between and within countries. It assumes roles for all of the various actors in the migration process and is to be transparently negotiated and communicated.

The strategy emphasises that the protection of individual human rights is the basis of management. It strongly supports measures to integrate foreign populations, while accepting that integration is a two-way process. Integration policy is not simply a central government concern but has to be pushed downwards to local community levels. It is also acknowledged that there will be some emigration pressures from within Europe and the CIS, to which the package of measures suggested here may also apply. In involving all actors in the migration process it spreads the burden of control, while accepting that government is the ultimate arbiter.

Many of the migration problems now confronting governments have resulted from a piecemeal approach to specific problems, such as asylum, irregularity or return. This approach is no longer sustainable. The management strategy proposed here is a comprehensive whole, to be applied over the long term. It recognises that a complex set of problems requires an integrated set of solutions.

Here are the main principles of the strategy:

A comprehensive approach should satisfy certain basic criteria.

First, migration policy should be open and transparent, so that all interests know the rules and how they are applied.

Second, policy-makers and their social partners should be well informed, using information that is as accurate and up-to-date as possible.

Third, the rules and regulations formulated by policy makers and their agents should be as clear and unambiguous as possible.

Fourth, any strategy should be manageable in terms of the resources available, including those of finance, information and time.

Finally, and most importantly, policy must clear aims and objectives, ideally pursued in a consistent manner.

With these things in mind we developed a management strategy based on four principles:

orderliness
protection
integration
co-operation

Our integrated management strategy is designed to bring these four principles together. But in order to establish it, a number of conditions will need to be met by individual governments:

First, all countries should develop a comprehensive migration policy.

Second, policy should be internally co-ordinated.

Third, a strategic approach to management of migration matters requires the input of all actors in the migration field, including a wide range of NGOs.

Fourth, migration policy should be transparent.

Finally, national policies should be internationally co-ordinated.

B. PROCEEDINGS OF THE SEMINAR ON MANAGING MIGRATION IN THE WIDER EUROPE**SEMINAR PROGRAMME****Monday 12 October 1998**

9.30-10.30 Opening session

Addresses by:

- Mr Willibald Pahr, Chairman, former Minister for Foreign Affairs of Austria

- Mr Daniel Tarschys, Secretary General of the Council of Europe

Presentation by Prof. John Salt (Migration Research Unit, University College London) of the report "*Towards a migration management strategy*"

10.30-11.00 Break

11.00-12.30 *Theme 1: European migration in the 1990's: the need for new approaches to the management of migration (chapters 1-3 of the report)*

Discussants: Dr Philip Muus, European Research Centre on Migration and Ethnic Relations (ERCOMER),
Faculty of Social Science, University of Utrecht (Netherlands)

12.30-2.15 Lunch

2.15-3.30 *Theme 2: Policy and reality: what do we want to manage? (chapter 4 of the report)*

Discussant: Prof. Grete Brochmann, Institute for Social Research, University of Oslo (Norway)

3.30-4.00 Break

4.00-5.45 *Theme 3: Elements for a new management strategy
(a) Issues other than protection (chapter 5.1 of the report)*

Discussant: Prof. Patrick Weil, Director, *Centre européen d'études des politiques d'immigration, d'intégration et de la citoyenneté*, Paris

Tuesday 13 October 1998

9.30-11.00 *Theme 4: Elements for a new migration strategy
(b) Protection and return (chapter 5.2 of the report)*

Discussant: Prof. Judit Tóth, Faculty of Law, University of Szeged (Hungary)

Break

11.30-1.00

Theme 5: Elements for a new migration strategy
(c) Relationships between integration policy and the management of migration
(chapter 5.3 of the report)

Discussant: Prof. Giovanna Zincone, Institute for Social Science, University of Torino (Italy)

Lunch

2.45-4.30

Theme 6: Needs for international co-operation
with sending countries
among European countries
the role of the Council of Europe and other international bodies

Discussant: Mr Gervais Appave, Co-ordinator, Secretariat of Intergovernmental Consultations,
Geneva

4.30-5.00

Break

5.00-6.00

Summing-up by the rapporteur, Mr Jonas Widgren (Director of the International
Centre for Migration Policy Development, Vienna)
Comments by participants
Closing remarks by the Chair

OPENING ADDRESS by DANIEL TARSCHYS
Secretary General of the Council of Europe

I have great pleasure in welcoming you all to Strasbourg to this two-day Seminar on managing migration in the wider Europe. As you know this event is an outcome of the Sixth Conference of European Ministers responsible for migration affairs, which was held in Warsaw rather more than two years ago. On that occasion, the Ministers called for “*new thinking about migration policies*”, based on “*a comprehensive approach taking in not only the pressing needs of management of immigration, including efficient control, but also longer term concerns such as integration and the root causes of migration*”.

It is no very easy to come up with “*new thinking*” on such a topic, there has been a lot of “*old thinking*”, and I am glad that the European Committee on Migration - the CDMG - decided to take up the challenge by setting up a reflection group made up of distinguished experts with a long experience of migration questions in Europe. The Chairperson of the Ad Hoc Committee of Experts on Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) also participated in the deliberations of the reflection group. Their report, entitled *Towards a migration management strategy*, is before us now and we in the Council of Europe are eager to know your reactions to it.

This meeting involves a healthy mix of professionals from those working on migration flows and integration issues, such as the experts from the CDMG, specialists dealing with the protection of refugees and other persons in need of international protection, like the experts from the CAHAR, and those most concerned with migration control associated with the work of the Budapest Group. I am also glad to see among the participants and in the programme independent academics from different parts of Europe. I am sure that this mix of people from different backgrounds will bring vivid discussions with a colourful variety of opinions on the issues raised by the report.

It is impossible to open a newspaper these days without being confronted with one or more items of news related to migration and migrants. We used to think of migration perhaps as a rather peripheral and specialised issue but now we see that it poses a range of complex and difficult problems that we have not yet learnt how to handle well. Migration raises acute human problems and poses awkward policy dilemmas. Moreover some forms of migration involve human exploitation of a most serious kind, amounting sometimes to modern slavery. Migration issues bristle with human rights dilemmas and challenges to social cohesion. It is only natural therefore that the Council of Europe devotes a considerable amount of attention to migration questions, both in its intergovernmental work and through the Parliamentary Assembly.

It is important here to emphasise the specific nature of protection issues. The Council of Europe, in the intergovernmental sector, in the work of the Parliamentary Assembly, as well as in the case law of the organs of the European Convention on Human Rights, considers the 1951 Refugee Convention as the cornerstone of refugee protection also in Europe.

In addition to this, the Committee of Ministers recognises the importance of additional instruments of protection. It adopted three weeks ago *Recommendation*

N° (98) 13 on the right to an effective remedy by rejected asylum seekers against decisions on expulsion in the context of Article 3 of the European Convention on Human Rights. This Recommendation was elaborated by the CAHAR and based entirely on the case law of the European Court and the European Commission. Also the Parliamentary Assembly adopted *Recommendation 1348 (1997) on the temporary protection of persons forced to flee their country and requested follow up action both by member States and by the Committee of Ministers*. Later on this week, the CAHAR will consider possibilities for further steps in this field. As you can see, Council of Europe has a great deal of activity in the field.

These standards and guidelines, developed by the Council of Europe with regard to the United Nations High Commissioner for Refugees and the European Union conclusions and resolutions, will

certainly contribute to your search for solutions in understanding the so-called “grey zone” of migrants between Convention refugees and those persons who should be returned to their countries of origin or permanent residence.

Coming back to the general question of migration, one of our problems in Europe, it seems to me, is that we tend to think of migration as something abnormal. We tend to assume that under normal conditions people would stay where they are and it is only because of temporary and special circumstances of one kind or another (labour shortages, wars or humanitarian crises, etc....) that migration does in fact from time to time take place. I would like to suggest, on the contrary, that far from being exceptional, migration is normal. Looking back at the past fifty years, and the picture in fact is not very different if one looks 100 or even 500 years back, Europe has continually been the theatre of substantial migration movements. The nature of those movements, the composition and the direction of the flows and the reasons for which people migrate have changed, but the fact of migration has been constant. Indeed, as far back as one goes in history, one sees that migration has taken place. It is a constant of human behaviour.

I would go even further and add an element of evaluation. Migration is not only normal, it is also – in most respects – a positive phenomenon. The urge to seek “*fresh fields and pastures new*”, the urge to “*go West, young man*” expresses the spirit of adventure and enterprise that fuels human progress. And cultural mixing, although it does not take place without friction and conflict, is the crucible for new and creative developments in the economy, as well as in art, science and society in general.

We all believe in free markets nowadays. If we really believe in free markets then we ought to see freedom of movement of people, of human resources, as something normal and desirable. Regulation is certainly necessary, of course, just as it is in other areas of the market, but regulation should not be so excessive as to stifle necessary and useful mobility. In a world which believes in free markets, the burden of proof lies with those who argue for restrictions, not with those who defend mobility.

“Managing migration” is nevertheless a necessity and is not a contradiction in itself. “Managing” within the scope of this Seminar, should be understood as a threefold process, namely:
to facilitate desirable migration,
to provide adequate and effective protection and care for those in need,
and to control irregular migration flows.

In saying these things, I have emphasised the positive face of migration. I do so deliberately, because we so often hear only the other side of the story. The migration debate has been hi-jacked in recent years by the immigration control agenda. Of course, there are and will continue to be pressing immigration problems which require urgent and decisive action. I do not in any way want to belittle or undermine the often thankless work of those whose job it is who try and keep migration movements within some kind of orderly framework. They are certainly doing a very important job. I do recognise the importance of controlling irregular migration, especially when it takes the form of organised trafficking in human beings. My concern is, however, that we have often turned into mere fire-fighters, rushing to tackle one crisis after another, to damp down the flames of one outbreak of uncontrolled migration after another, and that in doing so we have often lost sight of the broader picture.

In speaking of the broader picture, I start from the observation that in the world we live in, Europe can not but be a continent of immigration. The economic and demographic imbalances of the modern world are so pronounced that a significant level of net immigration into Europe must be reckoned with as a fact of life. We Europeans are of course acutely conscious of our own economic and social problems, but to large parts of the rest of the world, our continent appears as a beacon of prosperity, freedom and peace. This is bound to have consequences in terms of immigration.

The whole problem is how to channel and manage immigration so that it remains at acceptable levels without forcing more and more migrants into illegality. There are limits to the restrictions we can

place on entry. Business circles and the public in general want to see easier international movement; travel has become so much easier and cheaper in recent decades; globalisation leads to increasing international comings and goings - more and more people are going to spend different phases of their lives in different countries - and as the end result of all these processes our societies are becoming more diverse ethnically and culturally.

The question is not how to stop these things happening, but how to manage them so as to maximise the benefits and minimise the drawbacks. We also need to think about how to help public opinion understand and cope with these trends. We have to take notice of people's genuine anxieties and give due weight to them. In integration and community relations policies we must expose false problems but deal honestly and seriously with the real ones, and there are many real ones. The stability and social cohesion of Europe in the future will depend to no small degree on how well we succeed in managing migration and its effects on society.

So now we offer you this report as an attempt to help us address some of these daunting questions. Some of you may find the proposals in the report too bold - although it was interesting that when it was first discussed in the CDMG the main criticism was that they were not bold enough. The report is not meant to be the last word. It leaves many questions unanswered; it does not set out to be a blueprint for the future. But it is an attempt to sketch out what a realistic and fair approach to European migration as a whole might look like. We would like to know what you think about the ideas the report contains.

We would also like to know what you would like us to do next, how should we carry forward this process of reflection and exchange that the Ministers invited us to engage in. There are a number of migration fora in Europe, some would say too many. An important question is who should do what. What particular role do you see for the Council of Europe?

We can offer is a pan-European forum in which all countries in the "*wider Europe*" can meet on an equal footing. How can we make best use of this forum?

I would encourage you to be specific because later this week the CDMG and the CAHAR, in their plenary meetings, will have to finalise their ideas about next year's programme of activities. How would you like us to carry this reflection process forward next year? Are there any particular topics which you would like us to investigate in greater depth? And, finally, what results should we aim to take back to the Ministers responsible for migration affairs?

Should we, considering the broad scope of this Seminar, aim at principles and policies addressing a comprehensive approach to migration movements or should we focus on a limited number of specific aspects, such as issues of return, family reunion, or how to respond to situations of mass influx? Such work could result in guidelines to be proposed to the next Conference of Ministers.

With these words, I should like to wish you a very successful meeting.

TOWARDS A MIGRATION MANAGEMENT STRATEGY

Introductory comments

Professor John Salt

1. BACKGROUND

The Reflection Group regarded the report as **only a starting point** for discussion.

The discussions and written submissions represent a *retreat towards a consensus* based on agreed principles rather than the more positive approach of a set of specific policy proposals designed to deal with designated problems. The reality is that the complexities of migration and the wide array of vested interests - governments, IGOs, NGOs, employers, host communities, migrants and so on - mean different policy priorities in different national situations at different times.

What did we mean by migration? In the 1990s the European migration vocabulary has become rich in novel terms: 'transit migration', 'incomplete migration', 'migrant trafficking', 'petty trading', 'labour tourism', and others which are all sub-categories of a more general concept of 'movement'.

What is the context in which migration occurs? There is a migration management problem for countries, individually and acting in concert, which necessitates **reconciling this differentiation at the national scale with the development of an internationally harmonious policy response**. Furthermore, that response must be flexible enough to cope with new types of migration while being comprehensive enough to cover the full range of migration matters.

Explanation of the rationale for management Since migration will occur anyway, the best course for a state is to influence it in directions consistent with human rights and the best achievable outcomes in terms of social and economic conditions for both migrants and host communities.

Of course, migration policy is more than the management of flows. Whether we like it or not *all European countries have become de facto multicultural*. In consequence a policy regime has developed based on the twin concepts of control of new entry and integration of those immigrants now settled.

But who does the managing? The main managerial role is that of government, exercised in partnership with a wide range of other actors (migrants themselves and the social partners - employers, trades unions, migrant organisations - many of whom have been forced to become part of the migration control apparatus). Our view was that a major failure of migration policy in Europe has been the lack of any real cohesion between these actors in the formulation of a migration strategy. Problems have too often been tackled piecemeal through specific policy measures, without considering all relevant views, frequently resulting in unintended side effects.

A management strategy had to be based on *agreed principles and objectives rather than a prescriptive set of measures*. We would like to have been more radical but felt that a consensus was more likely with less ambitious proposals set at a strategic rather than a tactical level. However, it was important that any management strategy should ultimately appeal to all European governments because of the multitude of ways in which migrant stocks and flows bind them together.

2. THE STRATEGIC APPROACH

A comprehensive approach should satisfy certain *basic criteria*.

First, migration policy should be *open and transparent*, so that all interests know the rules and how they are applied.

Second, policy-makers and their social partners should be *well informed*, using information that is as accurate and up-to-date as possible.

Third, the rules and regulations formulated by policy makers and their agents should be as *clear and unambiguous* as possible.

Fourth, any strategy should be *manageable* in terms of the resources available, including those of finance, information and time.

Finally, and most importantly, policy must *clear aims and objectives*, ideally pursued in a consistent manner.

With these things in mind we developed a management strategy based on four principles

orderliness

protection

integration

co-operation

Our integrated management strategy is designed to bring these four principles together. But in order to establish it, a number of conditions will need to be met by individual governments:

First, all countries should develop a *comprehensive migration policy*.

Second, policy should be *internally co-ordinated*.

Third, a strategic approach to management of migration matters requires the *input of all actors* in the migration field, including a wide range of NGOs.

Fourth, migration policy should be *transparent*.

Finally, national policies should be *internationally co-ordinated*.

How may such a strategy be implemented?

The strategy emphasises that the *protection of individual human rights* is the basis of management. It strongly supports measures to integrate foreign populations, while accepting that integration is a two-way process that has to be pushed downwards to local community levels. The strategy suggests that entry of non-European migrants is best controlled by pushing its nexus away from European borders, *through the use of preventative measures* designed to encourage potential migrants not to come. It is also acknowledged that there will be some emigration pressures from within Europe and the CIS, to which the package of measures suggested here may also apply. In involving all actors in the migration process it *spreads the burden of control*, while accepting that government is the ultimate arbiter.

A persistent, underlying theme to our deliberations was the *need for co-ordination*. A new management strategy should be based on the fundamental principle that European migration presents a complex set of issues requiring *an integrated set of solutions*. Any proposed strategy, to be effective, should thus be *planned as a comprehensive whole*, to be applied over the *long term*.

Our management strategy has been designed to this end. We feel strongly that the measures suggested **must be applied as a complete package**: failure to do so will only replicate the mistakes of the past where action in one direction has served only to create new problems coming from another.

EUROPEAN MIGRATION IN THE 1990'S: THE NEED FOR NEW APPROACHES TO THE MANAGEMENT OF MIGRATION

Dr Phillip MUUS (Faculty of Social sciences, Utrecht University [ERCOMER])

Discussion on the first three chapters of the Final Report "Towards a migration management strategy".

The argument for a forum for pan-European migration management can be defended easily, but the difficulties encountered in practice have thus far shown that migration management at an intergovernmental and / or supra national level is not easily reached. Thus common policies are more likely to develop in the field of ad hoc restrictive measures meant to decrease the numbers of forced and voluntary migrants. Although the Treaty of Amsterdam offers a chance for establishing a common supra-national migration and asylum policy for EU countries, it is not certain that the result will be more than a minimum set of common standards.

The need to give a pan-European policy perspective to migration and to related issues has to encompass general and country specific aspects. The migration management is to reconcile this differentiation at national scale with the development of an international harmonious pol. It must be flexible enough to cope with new types of migration, while being comprehensive enough to cover the full range of migration matters

Here we encounter a number of potential tensions, between the specific and common, and between the flexible and comprehensive.

The political map of Europe is changing, while migration is changing too, partly influenced by processes of internationalisation and globalisation. The question of which aspects of migration must be managed is not clear, and how migration management should take place, is not clear either.

Starting point

For the most part, migration takes place for economic, political or more general humanitarian reasons. A comprehensive migration policy must take into account the fact that these are the basic causes of migration. A policy that only tries to check forced and voluntary migration cannot lead to anything but increased illegal and irregular migration, with increased benefits for criminal traffickers.

As long as we witness major political and humanitarian crises in the world, how can we presuppose that those who fear for their life will not try to reach security in one of the European countries?

Since major immigrant communities have settled in most of Europe, how can we presuppose that migration linkages with the countries of origin will not lead to forms of chain migration?

If a European migration strategy is to be established, will it start from the premises that Europe is one of the important areas of immigration at world level, and that part of migration is desirable for economic reasons, while part of it is economically undesirable, and that part of migration is linked to Europe's humanitarian standard, or will it depart from the notion that Europe does not need (more) immigrants and that arrivals for political or humanitarian reasons must be restricted to the utmost?

To what extent will a pan-European migration strategy start from a recognition of Europe as an area of immigration? Without a common starting point for all European countries, it will be practically impossible to develop a pan-European migration strategy.

In the final report, we read that even today, false notions of immigration based on these past ideas dominate policy-thinking about migration development. While officially no country is favouring permanent immigration, new permanent settlers arrive through family reunification and family formation. In a number of countries it concerns the return of the former citizens, as in the case of the

German *Aussiedler*. At the same time there is no real recognition of the fact that new types of desired temporary migrants have entered the migration flows. Concepts of what is permanent and what is temporary become blurred.

The second chapter of the final report closes with an important remark:

“At the very least a distinction must be made between a management migration strategy aimed at the individual migrant and one aimed at the range of institutional actors with a vested interest in promoting movement”.

European national migration policies are predominantly directed at the individual migrant. It would be a great step forwards if the migration strategy also dealt with the causes of migration and those institutional actors that have vested interests in promoting it. Tackling the causes of forced migration might be one of these issues, as well as the fact that certain migration channels must be kept open in order to combat the otherwise easy business in trafficking.

Chapter 3 is about the need for a new management approach: The existing policy model is said to be based on two major lines of action: the closing of borders to new influxes of immigrant labour, and measures to promote the social integration of the immigrant populations in place. The report is critical of the effectiveness of this policy-model in dealing with stocks and flows. I agree, but I have to mention that restricting access and promoting social integration, are both part and parcel of a very symbolic political process, whereby national governments partly try to convince the public at large that they have control over the situations, on the basis that migration in general will not be favoured.

Here is one of the important paradoxes of Europe, by denying immigration as a reality, nowadays and in the future, policy can never be developed in a more realistic way.

In the final report, there is a proposal to relax control on immigrant workers, partially by introducing temporary immigration programmes. These programmes have proved to be ineffective with regard to their temporary character. I believe that a point-system, related to the qualitative needs of the European labour markets, will be more realistic in controlling labour migration. Secondary migration rights might be established in due term with regard to permanency of stay.

One of the major unresolved problems of control policy is the failure to ensure return of rejected asylum seekers and irregular migrants. There is no possibility for this situation to change if there is no opportunity for international co-operation between sending and receiving countries, or if European asylum countries cannot influence security in refugee-producing countries.

Here is an important role for a pan-European migration strategy. While the final report talks about a number of drawbacks with regard to tackling economic aspects of the root causes of migration, it does not pay attention to the possible role that a pan-European strategy might have in securing peace and safety in refugee producing countries.

Summary

There is a need for a new migration management strategy, a pan-European strategy;

This strategy will fail if it departs from the reality that Europe is an immigration area and will most probably be so in the future.

More restrictive policies will only lead to more irregular migration and an even stronger increase of the importance of criminal traffickers.

A comprehensive migration strategy:
will offer opportunities for legal labour migration;

will incorporate strategies aimed at individuals and at institutional actors;
will incorporate agreements (if feasible) with migrant-sending countries;
will incorporate economic and humanitarian aid/support for the population of refugee producing countries, and political efforts to create security;
will incorporate measures to facilitate integration.

POLICY AND REALITY: WHAT DO WE WANT TO MANAGE?

Grete Brochmann, Institute for Social Research, Oslo

Control or management holds both real and symbolic aspects. When the immigration pressure increases it becomes more important for the authorities to control the access to the territory to uphold the management of the labour market and the general ability to plan. It is also symbolically important for governments to have control over borders.

There are two partly contradictory hypotheses which are often implicitly present in discussions on the interconnections between border control and popular reactions and attitudes towards immigrants and foreigners: a) the underlying assumption that border-control is a necessary precondition for the integration of immigrants in society. This hypothesis has to do with predictability and confidence, and most governments in Europe subscribe to it today.

b) The other hypothesis claims that a restrictive immigration control contributes to the stigmatisation of immigrants. If there is erratic handling of entry restrictions or unforeseen consequences of entry-control policy with new and/or unexpected categories of migrants, seemingly hostile and excluding attitudes towards *all* foreigners may develop, independent of their status as residents. "Immigrant" thus becomes synonymous with "unwanted as far as public opinion is concerned."

Governments today need both restrictions and openness/tolerance at the same time.

This whole interplay between the external and internal dimensions of the migration complex leads to the field of "integration". Here the report wisely states that "Governments cannot dictate integration and good community relations". The good policy credo of the report reads as follows: "Conditions must be created in which minority and majority populations accept that it is in their own best interest for the integration process to succeed". This is in many ways the recipe for a good society where the individuals realise that their private interests and the common good are one and the same. This is a description of an integrated society – sociologically speaking. But what does it mean in practice? This is in my view the weakest part of the report – where the lack of analysis represents a potential limitation for further work.

Any society is composed of actors or individuals with *interests*, and institutions representing interests, which are often conflicting and changing over time. Any strategy for building an ethnically harmonious society must take into account the complexity of contradictory interests in various parts of the population and between different individuals and institutions.

Many of the welfare states in Europe subscribe to the idea of multiculturalism, where "integration" of immigrants means that immigrants should adjust to the norms and regulations in the receiving society while being allowed to preserve what is often labelled "their own culture". But what is the degree of adjustment required to be able to achieve equal opportunity with nationals? When is a person sufficiently integrated? Which aspects of "their own culture" and religion should be accepted and even stimulated to be preserved? Who decides what is acceptable and what is not? And what kind of inequality is the choice of the individual?

On the other hand – what are the legitimate claims on a state and on a society when a person enters from outside? Should one tolerate intolerance? And who is "one" in this respect?

There is no culturally neutral ground for interaction. Many receiving states presuppose a particular differentiation between public and private, between politics and religion. This means that a state sometimes sustains a value basis which collides with the core identity of some immigrant groups.

We here touch upon the borderline between public and private sphere, the scope for management, as well as the legitimacy basis for this very management. These are real dilemmas which generate from the striving for consensus in a society with a mixture of often competing values.

At the same time, we have to realise that societies and different cultures actually draw borders, and it is possible to argue for the necessity of such borders to be able to create social cohesion and a sense of solidarity and community.

The liberal, democratic state balances between the need for common values, solidarity and political identity on the one hand, and the obligation for cultural openness and tolerance towards newcomers as well as equality and justice for minorities on the other. A state which does not create cohesion around certain basic values will have problems legitimising its authority. The multicultural state must build its policy around common conceptions of the good, and at the same time establish arrangements that facilitate the existence of more communities within the same state.

In this respect immigration highlights specific aspects of democratic welfare states and their tacit dependence on some national homogeneity to be able to launch principles of equality and tolerance in the first place. A multicultural society presupposes that there is a certain cultural consensus initially.

Processes related to immigration continuously take place in interplay with other processes in society. Indirectly immigration turns the focus to the receiving society itself; its history and traditions, its political values as well as its self-reflection and identity. Immigration will always be a part of more complex webs of social change, as people's attitudes towards immigrants also will resound in these wider processes.

Therefore, even in a small part of the world like Europe, there will be quite some variation in terms of preconditions for management,- so "what we want to manage" calls for complex answers.

PROTECTION AND RETURN (Chapter 5.2.).

Dr. Judit Tóth, Faculty of Law, University of Szeged (Hungary)

There was no comprehensive migration policy in Europe for at least twenty years but only a *migration control policy*. How must the intention to move forward and to consider the issues in all their complexity be interpreted? Is it a new start or rather the substitution of migration control policy by migration management?

The Final Report defines four basic principles of management strategy (orderliness, protection, integration and co-operation). They are, however, not of equal value from the point of view of legal obligations. The protection of both migrants and the receiving community precedes the other principles referring to absolute human rights.

Moreover, the protection for migrants and the respect of their subjective rights deriving from international legal commitments cannot be considered in isolation. Binding, as well as soft legal provisions applied by administrative authorities or courts, regulate not only individual protection, but they also outline the principles of reception, social integration, return and international co-operation.

For this reason, I propose to accept a *broader meaning of protection* covering migration policy and management at large. Some sentences could be inserted as a sub-chapter drawing the attention of governments to protection against segregation, violation of human dignity of migrants and the escalation of xenophobia. The wider reference to prevention, reception, legal procedures, return, social integration in the country of destination and the interests of newcomers, local communities and the country of origin may help to start a new period of *migration strategy*. This *extended, long-term approach* instead of the rather technical term of “migration management” should be applied.

Can migratory movements be influenced by governmental actions, agencies and normative systems? The Final Report is based on the assumption that migratory movements can be and shall be managed at least partially by law. That means, that not only restrictive provisions on entry, residence or asylum shall be implemented, but that provisions aimed at migrants or law enforcement staff would be equally relevant in the whole set of instruments. The *complexity of migration issues and balance of defensive and offensive legal provisions on migration management* demands skilled administrators, appropriate public finance and regular exchanges of information on the international stage, such as at the Council of Europe.

The Final Report is not exhaustive as regards international law. It refers only to the 1951 Geneva Convention and the 1967 New York Protocol on the status of refugees. For historical reasons these instruments are silent on asylum procedures, the biggest challenge for the European states. There is also no international tribunal or body responsible for a unified jurisprudence or interpretation of definitions and fair asylum proceedings. *Despite certain shortcomings the 1951 Convention and 1967 Protocol – especially the 31-33 Articles on non-refoulement and no punishment for illegal entry – have remained the first pillar of the legal protection* for asylum-seekers. Other conventions and respective case-law established by competent tribunals and independent bodies have been developed as *further pillars for migrants in need of protection* (the Universal Declaration of Human Rights (1948), UN Covenants on Civil, Political, Economic, Social and Cultural Rights (1966), UN Additional Protocol to the 1949 Geneva Convention relating to the protection of Victims of Non-international Armed Conflicts (1977), UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), UN Convention on the Rights of the Child (1989), UN Convention on the Protection of the Rights of All Migrant Workers and Members of the Families (1990), ILO recommendation No.86 concerning Migration for Employment and Model Agreement on Temporary and Permanent Migration for Employment (1949)).

The European Convention for Protection of Human Rights (especially Articles 3 and 8) together with Protocol No.4 and No. 7, as well as the European Convention for Prevention of Torture are the most

relevant, effective legal instruments of protection in Europe. For this reason, the Final Report should refer to it in the sub-title on new protection framework.

Moreover, international law regulates certain protective aspects of human migration in different ways. Absolute rights cannot be limited or derogated.

The introduction of limits and derogations to rights provide discretionary power to law enforcement official. Certain rights may be subjected to certain restrictions for public order, moral, security or health.

As can be seen, individuals' subjective rights to enter foreign countries and to be granted asylum are missing from the above mentioned human rights. Due to this fact, standards developed in the Council of Europe in the field of legal protection of migrants have become more precious. For instance: Certain rights are provided on the basis of reciprocity among States parties ,

Soft law may inspire the legal practice and actions made by public administration in favour of migrants in need of protection.

The Final Report cannot describe exhaustively international public law with regard to migration management. But reference to the protected rights and values (unaccompanied minors, asylum-seekers, protection against torture, inhuman, degrading treatment, war victims, respect for family life, cultural identity, local community, social re/integration) as a totality would be desirable. We agree with the opinion of the Reflection Group saying that respect for *human rights is vital not only in general but especially concerning rights of minority groups in the countries of origin.* It would be the most effective prevention of forced or mass migration.

Awareness of the normative system with regard to protection aimed at the actors of migration processes would be strengthened in public administration and government policy and would establish the *autonomy of legislation in accordance with international commitments.*

As regards the subject of return, the Final Report makes a distinction between an “undesirable majority” and an “honourable minority” of migrants. The previous are to be involuntarily returned in the framework of readmission agreements while the latter are assisted in returning voluntarily either spontaneously or through the implementation of bilateral agreements on return. However, there is neither a universal guarantee for reintegration nor systematic monitoring on human rights in the country of origin, *inter alia*, due to the introduced safe-country clause excluding the regular data collection from states without risk. Finally, there are several technical objections to return migrants immediately (missing consular officials, refusal of the application for a passport at the embassy, etc.). The personal scope of readmission agreements – in particular in the case of transit countries – covers nationals from non-EU states in addition to the Dublin Convention and the Schengen Agreements, in spite of the Vienna Convention (1969) on the Law of Treaties. Taking into consideration these circumstances, the adoption of a “standard form of (readmission) agreement” – as the Final Report proposes – cannot be accepted. Endorsing a pan-European approach, we cannot propose solutions breaching solidarity, international law and human rights. Instead the Final Report may refer to *practical methods on voluntary return*, for instance, involving independent organisations, social workers, information campaigns. The Council of Europe should rather endorse *a standard form of protection clause in accordance with the European Convention of Human Rights to be inserted into readmission agreements concluded in Europe. In other words, if return is organised in a legal framework, returnees may prefer to return to and remain in their country of origin.*

RELATIONSHIPS BETWEEN INTEGRATION POLICY AND MANAGEMENT OF MIGRATION

Prof. Giovanna ZINCONI

The purpose of my comments are twofold: to reinforce the positive features of this report and to suggest a supplementary approach to the matter. The positive features that I try to reinforce are: a problematic attitude - the awareness that integration is the result of good policies. I suggest reinforcing this feature by singling out the presence of immigration dilemmas: the fact that social problems, immigration problems in particular, can be trapped between two possible political strategies both loaded with negative side-effects. The second positive feature I intend to highlight is wideness and coherence against narrowness and fragmentation. Referring to this holistic attitude towards integration, I suggest that we take into consideration the possibility of including other sets of policies as possible instruments of integration and that we evaluate the potential effectiveness of some of the measures proposed in the report (and the policies of integration in particular) taking into account the distinction between practical consequences and symbolic impact. I would finally try to widen the focus of the report by adding a different perspective. I suggest an approach to the integration policies setting which starts by giving a simple definition of the aim (what do we want to reach when we talk of integration), then moves to single out the main obstacles, the main reasons for non integration and finally sees if it is possible to find a way of reducing the obstacles and gives examples of successful cases.

Dilemmas. 1. While it is the government's duty to prevent unfair competition with domestic and legally resident immigrant labour forces, there is also the need to take into consideration the employers' interests in using labour at minimum price and conditions. Surveys reveal that a growing number of European citizens believe that immigrants in their countries are too many but economic surveys show that immigrants fill important labour market gaps, thus improving the economic performance of the whole system.

2. It is impossible to expel all illegal immigrants but it is risky to make too much use of legalisation and to provide undocumented immigrants with social rights, because of the pull effect of these measures. Legal status is probably the most crucial step towards integration, schooling being another important factor. Therefore important integration measures could also act as pull factors for illegal immigration.

Positive features: Coherence, wideness, long-term attitude. The report could have widened yet further the set of measures capable of influencing the integration process, for instance by quoting the policies of entry and stay. Does a 'qualitative' screening of immigrants help integration? A score system is conceived to give priority to those potential immigrants that are supposed to be more apt to be integrated in the economic, cultural and social systems. Those people who are clearly defined as unfitted to live in the country by the very laws of the State will become objects of public "legitimate" intolerance. Selective policies of entry are another good example of a dilemma: they facilitate easier integration and can also deepen the hostility towards those immigrants who do not meet the selective criteria. It can therefore produce social stigma towards those who do not meet the selective criteria. Furthermore the score system contrasts with the national quota system that can prove a useful instrument of bargaining with the main countries of illegal immigrants.

The report mentions as a possible tool of integration the right to a local vote which can make it convenient for political actors to undertake the difficult task of politically socialising immigrants. These practical consequences are not significant. Their symbolic consequences are more important. Granting a local vote is a crucial step towards accepting immigrants into the political system, into the public arena.

Distinguishing between the practical consequences and the symbolic impact of the immigration policies. Simplifying naturalisation procedures can have a strong symbolic impact: a public sign of readiness to accept immigrants as full member of the receiving country.

Another possible approach

Integration implies *decent relations* between the members of a society and the perception by each member of not being deprived of crucial assets, a perception of *integrity*. If we agree on this simple definition we can focus on some reasons for **non integration**, some reasons for fear and uneasiness on both sides. By nationals: welfare burden, unemployment and downward competition, urban security, fear of the coming back of pre-modern values; by immigrants and new minorities: difficult access to a legal status, restrictions to family reunion, discriminated access to social services and labour market, urban security, loss of moral values. We could try to examine each problem and eliminate false perceptions by proving them wrong, while also attacking the material reasons for grounded fears.

Final questions:

1) When we conceive integration policies do we aim only at legal immigrants or at least to some extent also at undocumented immigrants? In case we also want to address undocumented immigrants are we sure that we do not need any kind of limited and circumscribed amnesty measure, or any provision of essential social rights? More in general is it possible to avoid pull effects of illegal immigration and to foster integration? In addition to classic education, naturalisation, long-term residence permits, local vote, can we single out tools of integration specifically oriented to dismantle both immigrants and citizens fears, immigrants' and citizens' reasons for uneasiness?

Three basic positions emerged from the debate: a) Rights are the rewards of a successful integration-process (as shown for instance by linguistic competence, familiarity with the culture of country etc.). Thus there is not much need for 'intermediate rights' (such as the right of local vote). b) Rights are an important integration tool and must be given in advance to all documented immigrants, those undocumented must be expelled. c) Since it impossible to expel all the undocumented at once, some basic rights such as education, public health must be given to them to prevent their moral and social decay. I favour option c).

INTERNATIONAL CO-OPERATION IN THE FIELD OF MIGRATION

Gervais Appave, Co-ordinator, IGC

From the point of view of Governments, the management of migration flows boils down to the challenge of managing the tension between two contradictory objectives: the first objective is the facilitation of travel as an essential component of contemporary social, economic and cultural life. The second is to respond to and to control forced or irregular population movements. The dilemma is all the more intense for policy makers because they do not have the luxury of choice. It cannot be one or the other: given current realities, it has to be both at the same time.

The dilemma is perhaps best exemplified in the European Union's determination to maintain the integrity of its external borders against unauthorised crossings while creating conditions for ease and convenience of internal travel, but is known to every country which would like to maximise benefits accruing from trade and tourism, meet its humanitarian obligation to provide asylum to refugees while at the same time protecting itself against irregular migration.

Given the complexity of this assignment, the successful management of migratory flows requires that all parties concerned - including countries of origin, transit and destination, regional bodies, international organisations, and non-governmental organisations - join their efforts.

What is more difficult to establish is the manner in which these international endeavours must be conducted to ensure that they yield the desired outcomes.

The report offers some very specific suggestions about how we might be able to go about creating a more positive international climate for the effective management of migratory flows.

Under Sub-Section 5.4, four broad avenues are sign posted: first, the alignment and - wherever possible - the incorporation of migration policies into foreign policies with the aim of creating a suitable environment for co-operation; second, the implementation of information programs aimed at potential emigrants designed to educate them about migration possibilities and to dispel false expectations; third, the establishment of training programmes for officials in sending countries involved in migration management; and fourth, the development of a dialogue with sending countries to address root causes of irregular migratory flows and identify appropriate solutions.

Points 1 and 2 relate to the integration of migration into the broader framework of international affairs. The suggestion here that migration must be addressed, not exclusively as the domestic, national sovereignty issue which it undoubtedly is, but also as a prime agenda item on the international agenda. How might this be done?

It is one thing to acknowledge, as everyone does, that migration is an issue of great relevance, sensitivity and concern to the international community as a whole. It is quite another to address it with the levels of purposefulness and coherence which have been achieved in other fields: multilateral efforts on international migration appear to be rather lacking in sharpness and definition.

Perhaps the place to begin is in fact at the national level, by integrating migration or at least co-ordinating migration issues with other relevant government policies? Often migration related issues are dealt with in isolation, with relatively little or even no co-ordination among concerned government agencies. Typically, ministries of interior or justice deal with entry control issues; ministries of foreign affairs handle humanitarian issues, ministries of social affairs are responsible for integration, and so on. It would appear reasonable to presume that international co-operation will be more easily achievable if effective communication lines have been established at the national levels.

An important follow-up to that first step might be the redefinition of migration management so that it is no longer seen as something to be dealt with exclusively at or within the border of the country of destination, but as a phenomenon which should be managed as far upstream as possible, taking account of and addressing conditions at source. This is not making a case for a simple shift in the locus of responsibility from countries of destination to countries of origin; it is arguing for more effective and comprehensive strategies of intervention. The key word here is one which is at the heart of the Reflection Group's paper: comprehensiveness. This term should not be misunderstood.

Developing a *comprehensive migration policy* is not the same as launching and/or promoting a *migration programme*. “Comprehensive migration policy” is not synonymous with “large-scale migration programme”. It is simply a balanced and coherent government response to all issues related to cross-border movements; an approach which knits all relevant policy elements: border control, asylum, family reunion, integration, migrant trafficking, return, into an integrated package.

Such a comprehensive outlook is badly needed if there is to be a meaningful conversation between countries of origin and countries of destination, but in addition to that, there is a need for these parties to develop a mutual understanding of the specific interests they wish to uphold and defend. There is, here again, a problem of communication needing to be resolved: One side speaks the language of law and order, the other, the language of economic survival and human rights.

Given these differences in priorities it is not difficult to understand why co-operation in international migration remains an ideal to be reached rather than a practical reality, but the fact remains that if there is to be genuine progress towards a framework for orderly international movement, the search for an agreed agenda must continue. The Reflection Group’s paper, for instance, calls for consideration to be given to adjustments to trade and capital flows, and to the implementation of judiciously targeted development programmes as means of alleviating emigration pressure. None of these suggestions offers an easy way forward. Development programmes are a case in point: while they are frequently held up as a promising solution, the hard reality suggests otherwise. It would be naïve to believe that it would be a simple matter to add a migration component to already overburdened development programmes. Rigorous thinking is required on the part of the international community to determine what is and what is not feasible, and perhaps to test out possibilities through careful experimentation.

Point 3 in the paper sees knowledge and technology transfer as an effective instrument of co-operation. But this should not be seen merely as the handover of pieces of hardware or tried and true policy formulae. How can there be an effective sharing of experience?

All forms of consultation, networking, and inter-governmental communication obviously have their part to play, but one fundamental necessity is documentation on activities and projects planned or conducted to avoid duplication. To illustrate the point, there has been, in recent years, a great deal of migration-oriented activity in Central and Eastern European countries aimed variously at the development of national legislative or administrative infrastructures, or the setting up of specific projects in respect of border control or asylum procedures, or again, skills enhancement for migration officials. What is still missing is a comprehensive record of what has been attempted, or is planned, to enable a more rational and effective deployment of resources.

Point 2 of the paper deals with information provision. It recommends, specifically, the development of information programmes for the benefit of potential emigrants. Unfortunately, we have only very limited information about the manner in which intending migrants, especially intending irregular migrants, seek and process information in order to make personal choices about the timing of their departure, routes and destinations. We do know, however, that the information reaches them through multiple channels. We have good reasons to suspect that much of the information is incomplete or inaccurate; and, in some cases, it will have been distorted deliberately to encourage them to take up the “services” offered by migrant traffickers. We assume therefore, that they have difficulty in sifting through and assessing the value of each thread of information. All of which would appear to make a strong case for much greater attention to be given to the dissemination of clear and authoritative information, through channels which are both accessible and credible to the intending migrants.

In addition, there is a strong argument for believing that inter-governmental co-operation will be considerably more effective if sustained attention is given to the gathering and exchange of data and statistics on international migratory flows. The international community can ill afford to continue to rely on generally vague estimates or orders of magnitude and will be repaid for all serious investment in the development of reliable databases.

SUMMING-UP AND CONCLUSIONS¹

Statement by Mr. Jonas Widgren

The report of the Reflection Group was welcomed

No participant has rejected either the paper of the Reflection Group, or the conceptual structure upon which it is based. There have been numerous critical comments on formulations and overtones in the report (like those relating to free movement), on alleged causalities (like the questioned relationship between restrictive entry policies and illegal migration, and between entry control and the integration of immigrants), and there have also been critical notes on the lack of depth of parts of the analysis (for instance those parts which relate to the integration of immigrants). But as a whole, the report of the Reflection Group has been apprehended as a package deal which reflects the corporate thinking of European Governments today on the complex issue of migration policies.

Discussion on the status of the report of the Reflection Group

The report of the Reflection Group is a systematic compilation of ideas aimed at furthering a collective thinking process, but it is definitely not intended to constitute a negotiating text, and it is definitely not a text towards which Governments are presumed to have any commitments at all. I would think it could best serve its purpose if it continues to be circulated within the Council of Europe bodies, with a warning note on the cover that it does not commit any Member State. It could also be published, e.g. in an academic journal. It is very important to be absolutely clear on the status issue, because otherwise the inspiring process, which has developed during the Seminar in terms of seeking to outline a comprehensive migration policy approach for the next millennium may be abruptly halted.

The need for a comprehensive approach - how to avoid a standstill?

5. The notion that (i) entry control policies, (ii) immigrant integration policies and (iii) the foreign policies of a state are highly interdependent is not a very old one. The frustrating insight of European states in the mid 1980's highlighted the fact that it was much easier to start than to stop immigration. In the late 1980's, with the radical changes in the East and the collapse of the bipolar world order, Western Governments rushed to outline a comprehensive migration policy approach which would seek to contain expected massive displacements and migration pressures on Europe by concerted multilateral preventive action, and which also was geared towards reforming asylum systems, enforcing returns, and ensuring social cohesion domestically. This resulted in a first set of comprehensive migration policy texts, all of them issued in 1991, such as the final documents of the 1991 Vienna, Berlin, Rome and Luxembourg Ministerial Conferences on migration, the strategy platform of the Informal Consultations, the European Commission Communications on Asylum and Immigration, followed by a consolidated EU document one year later, namely the Edinburgh EU Summit Declaration of 1992, a verbal masterpiece, though weakly implemented. These were good news, in terms of outlining a comprehensive migration policy approach up to the next millennium.

6. The bad news was that a coherent multilateral framework to further cultivate such a comprehensive approach was never established in conjunction with the launching of the now mentioned long-term policy documents, maybe with the exception of the Vienna-process, which however ran out of steam in a few years. The Bosnia war, and the paralysis of European states in terms of not forcefully implementing the earlier prevention principles with regard to this war, was one reason for the standstill in the strategy process. There were also other reasons. Then, in 1994 a new effort was made to relaunch the strategy process, this time by the European Commission, through a new

¹ Please refer to MG-SEM-MAN (99)2 [Addendum] for German and Russian Comments

Communication, dealing with immigration, asylum, the integration of immigrants and the prevention of displacements in a single framework. However, the EU member States, meeting in the framework of the Third Pillar of the Maastricht Treaty, did not react at all to this excellent document, and four more years were lost in terms of carrying the strategy debate on migration further on, in an appropriate multilateral framework.

7. A renewed effort has recently been made in the EU context, this time by the present Austrian EU-Presidency, to seek consensus on a comprehensive EU migration policy approach. However, as the innovative Austrian strategy paper has been filed within the highly formalised framework of the Third Pillar, it might not easily get off the ground, although it contains a number of suggestions which are more or less identical with those in the Reflection Group report (for instance, both the Austrian proposal and the report of the Reflection Group advocates the need for more modern European refugee policy instruments, supplementary to, but not replacing the Geneva Convention). This includes the need for a European refugee and burden-sharing regime of its own, an idea long cherished by the Parliamentary Assembly. However, such a European refugee regime should obviously not supersede the one of the Geneva Convention, as was rightly emphasised in the debate by the French delegation, but have it as its base. There are also a number of other innovative ideas which are broached in a similar manner in the report of the Reflection Group and the Austrian EU migration strategy proposal. Given the standstill in the European debate on long-term migration policies over the last four years, and the recent relaunching of the debate through these two very similar strategy documents, it would indeed be tragic if silence reigned in the future. A conclusion to be drawn from our Seminar is that the Council of Europe should therefore be encouraged to carry this debate further, in wider circles.

Do long-term strategies in reality influence Government action?

8. Do comprehensive, inter-disciplinary, long-term migration policies have any practical implications at all? Would flows and stocks of immigrants have been different had European Governments and institutions not initiated a debate on this some ten years ago? The answer to be indirectly derived from the debate during this Seminar is: yes. The CIS-Conference and its follow-up (on displacement problems in the States emanating from the former Soviet Union), the OSCE monitoring presence in many hot-spots in the broader European region, the EU Phare and Tacis assistance for Third Pillar purposes, the introduction of readmission clauses in EU mixed agreements, the anti-emigration elements in the present re-negotiation of the Lomé-agreement, the extended OECD/DAC analysis of aid and migration, up to the NATO military action now under preparation to stop the blood-shed in Kosovo and to ensure protection and assistance to the refugees, all this has easier come about as a result of growing awareness at higher decision-making level of the linkages between prevention, protection and mass displacements.

9. An issue raised yesterday in this regard is whether to start from the top or from the bottom in further fostering comprehensiveness. Obviously, the process has to start from the bottom, from experiences at operational level. I distinctly recall the heated discussions in Stockholm only some 15 years ago between our Ministry, responsible for entry control, and the Foreign Ministry, on the need to work hand in hand to regulate flows, protect refugees and ensure their return, and not against each other. It takes time to become holistic. The absence in the debate at this Seminar of voices from many of the Central and Eastern European members of the Council of Europe probably has to do with the fact that this domestic inter-ministerial process is only just starting there, which is quite natural, in view of the circumstances.

The possible tasks of the Council of Europe

10. Mr. Daniel Tarschys explicitly stated that he "would like to know what you would like to do next, how we should carry forward this process of reflection". He further stated that "there are a number of migration fora in Europe, some would say too many. An important question is who should do what. What particular role do you see for the Council of Europe? He finally underlined the pan-European character of the Council as a particular asset, he then referred to the CDMG and CAHAR planning for

next year, and he asked "should the Council address a comprehensive approach or only deal with a limited number of specific aspects?".

11. Let us be frank in our response to the Secretary General. The Council of Europe is not in a position to cook all the fancy meals on the migration strategy menu, only a few of them, but these ones will surely be very tasty, given the considerable comparative advantage of the Council in these specific areas.

12. A first obvious task for the Council of Europe as a whole, with all its related institutions (notably the Parliamentary Assembly), has already been mentioned. The Council should be invited to continuously foster and cultivate the comprehensive strategy approach which has been put forward at this Seminar, as the Council provides an excellent forum to further a broad and transport dialogue in a pan-European framework. What else should the Council do?

13. A second overriding task follows from the very vocation of the Council: with regard to the four major policy principles of the Reflection Group report the Council has a role in terms of generally promoting international co-operation. This implies, among others, the promotion of long-term human rights action to prevent mass displacements from taking place, and to enable good state relations to prosper. It naturally also covers the monitoring of human rights in the field, in close co-operation with i.a. OSCE. In this way, the Council of Europe has an important role to play, as a human rights institution preventing displacements from taking place.

14. But could the Council, through its inter-governmental programme, do much more to prevent mass displacements from occurring? Involve itself in free trade, investment and development assistance policies for the sake of job creation? No. Establish information programmes in countries with emigration pressures to avert irregular movements? Probably no. Train border control officials in sending countries outside the region on the EU visa rules? No. Mobilize NATO-action with regard to the Kosovo crisis? No.

15. Let us move on to the principle of orderliness, in terms of providing better transparency and establishing a coherent European system regulating who is allowed to get in and who not, i.e. the regulation of flows through pre-entry screening by way of the visa system, the harmonizing of entry and other admission principles, the negotiating of readmission agreements and the stimulating of voluntary and the enforcing of non-voluntary return, to mention just a few sub-areas. What is and what may be the tasks of the Council in terms of regulating migration and making it more orderly?

16. The predecessors of CDMG entered into contact with these issues in an illogical fashion, as they first dealt with returns (of the guest-workers) and not with entries. However, the predecessors of CDMG, as well as the present CDMG, came later to deal with sub-aspects related to admission policies.

17. Basically, CDMG and the regular Council of Europe Conferences of Ministers responsible for Migration, were to deal with the integration of immigrants. However, the 1987 Ministerial Conference in Oporto landed unavoidably at a crossroad, since the need for a stronger regulation of flows by that time was awarded higher political priority than the integration of immigrants. The Warsaw Conference sparked off the present exercise on "managing migration in the wider Europe". We are expected to provide an answer to this dilemma namely whether the Council of Europe is to deal with migrant flows or stocks, or both.

18. I think we have to be prudent and realistic here. The centrifugal harmonisation process with regard to entry control, or orderliness if you so wish, including the combat of trafficking, will be even more a matter for the EU Brussels institutions with the reinforcement provided by the Amsterdam Treaty, and with the communitarisation of the Third Pillar and the incorporation of Schengen which follows from the Treaty.

19. Likewise, as regards long-term migration planning ventures (such as the immigrant quota system hinted at in the Reflection Group report), the Council of Europe probably has little to offer. A comment may here be warranted with regard to the discussion on entry quotas which took place during the first day of the Seminar. It is correct to say that the Reflection Group report does not explicitly refer to this issue, but it does talk about the need for consistency, clarity and coherence in terms of indicating who may come and who not, and it does hint at the possible need for new regulatory mechanisms in future possible situations of labour demand or demographic shortages. Although the issue of national quotas or ceilings for total annual non-refugee related immigration is not so relevant to the European scene, or is a premature item, the related issue of national immigration planning could have been discussed more at this Seminar. Maybe the Council could play a certain catalytic role here by way of its statistical services, by simply aggregating the total annual inflow figures to member States (gross and net), so as to foster a multilateral long-term planning process based on realistic figures. As one expert at the Seminar put it, the apparent goal of member States is to reduce inflows insofar they are reducible, but this has to be done on a realistic basis.

20. What does the Reflection Group report have to say about immigration control.

On the one hand, there were warnings against simplifications with regard to evaluating the effects of entry control measures, against any assessment which may question the enormous factual role of national admission mechanisms in terms of keeping out those who should be kept out. The fact that there is illegal immigration does not contradict the statement that entry control indeed has a well functioning regulatory and blocking effect.

21. To state that the inter-governmental work programme of the Council of Europe should not get involved in entry policies in general is not, however, to say that the Council, through CDMG as well as CAHAR, may not deal constructively with various related sub-aspects. Return policies, both voluntary and non-voluntary (i.e. those related to the end of an asylum or TPS procedure as well as those related to unsuccessful migrants at large) is one such sub-issue which these committees may fruitfully re-embark upon. Also family reunion policies could be dealt with successfully by the Council of Europe together with some other admission items.

22. Protection and integration items of the Reflection Group

These two items should focus on Council efforts in the migration and refugee field. Protection issues are to be dealt with through CAHAR, with a strong emphasis on two objectives. A first objective would be to help transmitting the EU asylum and refugee *acquis* further towards the East and South-East, not in an automatic but in an analytical fashion, building in the relevant legal framework of the Council of Europe. A second task for CAHAR would be to provide additional birth-assistance to the coming EU refugee regime, including TPS and burden-sharing and appropriate institutions, which painstakingly but surely will come about as a result of the Amsterdam Treaty.

23. And finally, as regards the integration of immigrants, there was general consensus that the Council of Europe should continue to maintain its leading role among all international agencies. The Council should obviously continue with the wide variety of normative and analytical activities in this regard, which are carried out not only under the auspices of CDMG, but also under ECRI (the European Commission against racism and intolerance) and CJ-NA (the Committee of experts on nationality) and other appropriate groups. But I would interject a warning here: when going further with the issue of "multiculturalism", please observe what was said about underlying non-defined values on the part of national representatives; without such a self-critical approach many of the exercises on "multiculturalism" in fact run the risk of becoming futile.

24. There is general agreement among member States that the Council of Europe is indeed the leading agency in our region to promote the integration of immigrants. There are no competitive activities emanating from the European Commission, and as regards this area there seems to be a fair division of labour between these two big agencies.

How to continue?

25. It has already been indicated (explicitly or implicitly), on the fruitful discussions at the Seminar, that the Council of Europe has an important task in (i) fostering a comprehensive and pan-European migration policy approach through debates and the preparation of policy documents as regards related operational activities, that (ii) the Council should refrain from issues relating to displacement prevention (other than the overriding task of promoting human rights and minority rights) and that (iii) the Council has no major role to play with regard to entry control (other than sub-areas such as family reunion etc.). Moreover, (iv) the work of CAHAR on refugee protection should continue, with the basic task of assisting in giving birth to a European refugee regime as well as (v) the activities of CDMG with regard to the integration of immigrants, which indeed is the area of all mentioned where the Council of Europe has a long-standing record and is not in competition with any other regional agency.

26. The question now is, how should the Council continue its work, if the above-mentioned principles are accepted?

27. The Council of Europe needs to be careful, selective and goal-oriented in planning projects and meetings, so as to keep its comparative advantages, i.e. its focus on human rights, integration of immigrants and pan-Europeanism. As there are some 50 European inter-governmental groups dealing with migration-related issues today it becomes indispensable for the Council to reflect more on this issue of comparative advantages. How could the Council of Europe make its activities on migration more perspicuous, goal-oriented and efficient?

28. There is a multitude of fora within the Council of Europe framework dealing with migration, but the basic ones are CDMG and CAHAR. Should CDMG and CAHAR merge? No, but they should continue to draw upon each other, as they have been doing so constructively these last five years, e.g. through joint Bureau meetings.

29. Should the Council take the risk of stepping up the migration activities in Central, Eastern and South-Eastern countries to the detriment of immediate interests of individual Western countries, i.e. stepping up activities with regard to those countries which have few relations with the EU migration activities, such as Russian Federation, Moldova, Ukraine, Croatia, Bosnia and Herzegovina, Macedonia, Albania and Turkey. Yes.

30. Is it really needed that CDMG meets twice a year? Could the second yearly meeting be replaced by an enlarged Bureau-meeting? Should CDMG and other bodies be a bit more careful in setting up sub-groups, in the interest of multilateral economising, i.e. in the interest of counteracting the general multilateral vegetation process in the migration field, much referred to during the Seminar? Yes.

31. These provocative administrative questions are indeed related to the needed concrete implementation of the ideas in the strategy report..

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ANNEX**Relevant Documents on migrants' rights, return and protection adopted at the Council of Europe in general (without reference to various national groups of forced migration)**

European Convention	1950	Protection of Human Rights and Fundamental Freedoms (Art.3., 8., 13., 14.), its Protocols (especially No.4, No.7)
European Convention	1955	On Establishment
European Convention	1955	Social and medical Assistance and its Protocol
European Convention	1957	On Extradition
European Agreement	1959	Abolition of Visas for Refugees
European Charter	1961	Social Charter and its Additional and Amending protocols
European Convention	1967	Consular Functions and Protocol concerning Refugees
European Convention	1970	Repatriation of Minors
European Convention	1977	Legal Status of Migrant Workers
European Agreement	1980	Transfer of Responsibility for Refugees
European Convention	1992	Participation of Foreigners in Public Life at Local Level
European Charter	1992	For Regional or Minority Languages
European Framework Convention	1994	Protection of National Minorities
European Convention	1997	On Nationality
Resolution (Committee of Ministers)	14 (1967)	Asylum to Persons in Danger of Persecution
Resolution (Committee of Ministers)	7 (1969)	Return of Migrant Workers to their Home Country
Resolution (Committee of Ministers)	70(2) (1970)	Acquisition by Refugees of Nationality of their Country of Residence
Resolution (Committee of Ministers)	35 (1970)	School Education for the Children of Migrant Workers
Resolution (Committee of Ministers)	15 (1974)	Equal Treatment of National and Migrant Workers (working conditions, remuneration, dismissal, geographical and occupational mobility)
Resolution (Committee of Ministers)	11 (1976)	Equal Treatment for National and Migrant Workers in CE Member States
Declaration (Committee of Ministers)	1977	Territorial Asylum
Resolution (Committee of Ministers)	33 (1978)	Reunion of Families of Migrant Workers in CE Member States
Resolution (Committee of Ministers)	44 (1978)	Clandestine Immigration and the Illegal Employment of Foreign Workers
Recommendation (Committee of Ministers)	R (1979) 7	Speeding up of the Payment of Mixed Career Pensions
Recommendation (Committee of Ministers)	R (1979) 10	Women Migrants
Recommendation (Committee of Ministers)	R (1980) 14	Vocational Reintegration of Migrant Workers Who Return to their Countries of origin
Recommendation (Committee of Ministers)	R (1981)16	Harmonisation of National Procedures relating to Asylum
Recommendation (Committee of Ministers)	R (1984)1	Protection of Persons Not Formally Recognised as Refugees

Recommendation (Committee of Ministers)	R (1984) 9	Second-generation of Migrants
Recommendation (Committee of Ministers)	R (1984) 13	On the Situation of Foreign Students
Recommendation (Committee of Ministers)	R (1984) 18	Training of Teachers in Education for Intercultural Understanding Notably in the Context of Migration
Recommendation (Committee of Ministers)	R (1988) 6	Social Reactions to Juvenile Delinquency among Young People Coming from Migrant Families
Recommendation (Committee of Ministers)	R (1988) 14	Migrants' Housing
Recommendation (Committee of Ministers)	R (1990) 14	Preparation of and Information Brochures on the Social Security Rights and Obligations of Migrant Workers and their Families
Recommendation (Committee of Ministers)	R (1991) 3	Social Security protection of Seconded Workers
Recommendation (Committee of Ministers)	R (1992) 12	On Community Relations
Recommendation (Committee of Ministers)	R (1994) 5	Guidelines on Inspiring Practices of the CE Member States concerning the Arrival of Asylum-seekers at European Airports
Recommendation (Committee of Ministers)	R (1997) 22	Application of the Safe Third Country Concept
Recommendation (Assembly)	293 (1961)	Right of Asylum
Recommendation (Assembly)	434 (1965)	Right of Asylum
Recommendation (Assembly)	564 (1969)	Acquisition by Refugees of Nationality
Recommendation (Assembly)	773(1976)	De Facto Refugees
Recommendation (Assembly)	787(1976)	Harmonisation of Eligibility Practice under 1951 Convention and 1967 Protocol
Recommendation (Assembly)	817 (1977)	Right of Asylum
Recommendation (Assembly)	1144 (1991)	Situation of Frontier Population and Workers
Recommendation (Assembly)	1148 (1991)	Europe and Migration Policy
Recommendation (Assembly)	1156 (1991)	Recent Activities of the Social Development Fund
Recommendation (Assembly)	1187 (1992)	Relations between Migrants and Trade Unions
Recommendation (Assembly)	1206 (1993)	On the Integration of Migrants and Community Relations
Recommendation (Assembly)	1211 (1993)	On Clandestine Migration – Traffickers and Employers of Clandestine Migrants
Recommendation (Assembly)	1236 (1994)	On the Right of Asylum
Recommendation (Assembly)	1261 (1995)	On the Situation of Immigrant Women in Europe
Recommendation (Assembly)	1277 (1995)	Migrants, Ethnic Minorities and Media
Recommendation (Assembly)	1278 (1995)	Refugees and Asylum-seekers in Central and Eastern Europe

Recommendation (Assembly)	1306 (1996)	Migration from developing Countries to the European Industrialised Countries
Recommendation (Assembly)	1309 (1996)	Training of Officials Receiving Asylum-seekers at Border Points
Recommendation (Assembly)	1325 (1997)	On the Traffic in Women and Forced Prostitution in the CE Member States
Recommendation (Assembly)	1327 (1997)	Protection and Reinforcement of the Human Rights of Refugees and Asylum-seekers in Europe
Recommendation (Assembly)	1348 (1997)	Temporary Protection of persons Forced to Flee their Countries